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Federal Register
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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 401, 443, and 457

RIN 0563–AB28

General Crop Insurance Regulations, Various Endorsements; Hybrid Seed Crop Insurance Regulations; and Common Crop Insurance Regulations, Sunflower Seed Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation (''FCIC'') hereby amends the General Crop Insurance Regulations, Hybrid Sorghum Seed and Rice Endorsements; the Hybrid Seed Crop Insurance Regulations; and the Common Crop Insurance Regulations, Sunflower Seed Crop Insurance Provisions; applicable for the 1995 crop year only, by revising the prevented planting coverage. The intended effect of this regulation is to allow an insured to collect both a guaranteed deficiency payment under the so-called 50/92 and 0/92 provisions of the wheat, feed grains, cotton, and rice programs administered by the United States Department of Agriculture (''USDA'') under the authority of the Agricultural Act of 1949, as amended, and a prevented planting indemnity under the crop insurance program.

DATES: This rule is effective January 1, 1995. Written comments, data, and opinions on this rule will be accepted until close of business August 7, 1995 and will be considered when the rule is to be made final.

ADDRESSES: Written comments, data, and opinion on this interim rule should be sent to Diana Moslak, Regulatory and Procedural Development Staff, Federal Crop Insurance Corporation, USDA, Washington, D.C. 20250. Hand or messenger delivery may be made to 2101 L Street, N.W., Suite 500, Washington D.C. Written comments will be available for public inspection and copying in the Office of the Manager, 2101 L Street, N.W., 5th Floor, Washington, D.C., during regular business hours, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Diana Moslak, Regulatory and Procedural Development Staff, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250. Telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under United States Department of Agriculture (''USDA'') procedures established by Executive Order 12866 and Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for hybrid sorghum seed is May 1, 2000; rice is August 29, 1998; hybrid seed is October 1, 1997; and sunflower seed is March 1, 1999.

This rule has been determined to be ''not significant'' for the purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget (''OMB'').

The information collection requirements contained in these regulations (7 CFR parts 401, 443, and 457) were previously approved by OMB pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), under OMB control numbers 0563–0001, 0563–0003, 0563–0014, 0563–0023, 0563–0025, 0563–0029, 0563–0032, and 0563–0036. The amendments set forth in this rule do not revise the content or alter the frequency of reporting for any of the forms cleared under the above-referenced dockets. Public reporting burden for the collection of information is estimated to range from 15 to 90 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions and procedures contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

This regulation will not have a significant impact on a substantial number of small entities. The amount of work required of the insurance companies delivering these policies and the procedures therein will not increase from the amount of work currently required to deliver previous policies to which this regulation applies. This rule does not have any greater or lesser impact on the insured farmer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in subsections 2(a) and 2(b)(2) of Executive Order 12778. The provisions of this rule will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The provisions of this rule are retroactive to January 1, 1995, so as to make the benefits hereunder available to all insureds for the applicable 1995 crop year. The implementation of the provision is not adverse to any insured. The administrative appeal provisions located at 7 CFR part 400, subpart J, or promulgated by the National Appeals Division, whichever is applicable, must be exhausted before judicial action may be brought.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

The Omnibus Budget Reconciliation Act of 1993 (OBRA) made the 50/92 and the 0/92 provisions available to producers who were prevented from planting or had failed acreage for crop years 1994 through 1997. Currently, the prevented planting crop insurance provisions prohibit prevented planting coverage for any acreage considered to have been left unplanted under any other United States Department of Agriculture program. By this rule, an insured may collect both a guaranteed deficiency payment under the ''0/85'' and ''0/92'' provisions of the various commodity programs administered by United States Department of Agriculture under the Agricultural Act of 1949, as amended, and a prevented planting indemnity under the crop insurance program. Because the weather conditions in various parts of the midwest have not been conducive to timely planting of various 1995 program crops, an emergency situation exists for many producers which requires that this rule be made effective retroactive to January 1, 1995, without prior notice and comment. Comments are solicited for 60 days after the date of publication in the **Federal Register** and will be considered by FCIC before this rule is made final.

List of Subjects

7 CFR Part 401

Crop insurance, hybrid sorghum seed, rice.

7 CFR Part 443

Crop insurance, hybrid seed.

7 CFR Part 457

Crop insurance, sunflower seed.

Interim Rule

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the General Crop Insurance Regulations (7 CFR Part 401) by amending the Hybrid Sorghum Seed (§ 401.109) and Rice (§ 401.120) Endorsements; the Hybrid Seed Crop Insurance Regulations (7 CFR Part 443); and the Common Crop Insurance Regulations (7 CFR Part 457) by amending the Sunflower Seed Crop Insurance Provisions (§ 457.108); applicable for the 1995 crop year only, to read as follows:

PARTS 401, 443, AND 457—[AMENDED]

1. The authority citation for 7 CFR part 401 is revised to read as follows:

Authority: 7 U.S.C. 1506(1).

2. Section 401.109 is amended by revising subparagraph 12.(d)(3)(iii)(C) of the Hybrid Sorghum Seed Endorsement to read as follows:

§ 401.109 Hybrid sorghum seed endorsement.

* * * * *

12. Late Planting and Prevented Planting

* * * * *

(d) * * *

(3) * * *

(iii) * * *

(C) Land used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture (Proof that the insured had the inputs available to plant and produce a crop with the expectation of at least producing the production guarantee may be required.);

* * * * *

3. Section 401.120 is amended by revising subparagraph 10.(d)(3)(ii)(C) of the Rice Endorsement to read as follows:

§ 401.120 Rice endorsement.

* * * * *

10. Late Planting and Prevented Planting

* * * * *

(d) * * *

(3) * * *

(ii) * * *

(C) Land used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture (Proof that the insured had the inputs available to plant and produce a crop with the expectation of at least producing the production guarantee may be required.);

* * * * *

4. The authority citation for 7 CFR part 443 is revised to read as follows:

Authority: 7 U.S.C. 1506(l).

5. Section 443.7(d) is amended by revising subparagraph 17.(d)(3)(iii)(C) of the Hybrid Seed Crop Insurance Policy to read as follows:

§ 443.7 The application and policy.

* * * * *

(d) * * *

17. Late Planting and Prevented Planting

* * * * *

(d) * * *

(3) * * *

(iii) * * *

(C) Land used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture (Proof that the insured had the inputs available to plant and produce a crop with the expectation of at least producing the production guarantee may be required.);

* * * * *

6. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l).

7. Section 457.108 is amended by revising subparagraph 13.(d)(3)(iv)(C) of the Sunflower Seed Crop Provisions to read as follows:

§ 457.108 Sunflower Seed Crop Insurance Provisions.

* * * * *

13. Late Planting and Prevented Planting

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(d) * * *

(3) * * *

(iv) * * *

(C) Land used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture (Proof that the insured had the inputs available to plant and produce a crop with the expectation of at least producing the production guarantee may be required.);

* * * * *

Done in Washington, D.C., on June 2, 1995.

Suzette M. Dittrich,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 95–14032 Filed 6–6–95; 8:45 am]

BILLING CODE 3410–08–P

Agricultural Marketing Service

7 CFR Part 1220

RIN 0581–AB18

[No. LS–94–003]

Soybean Promotion and Research: Amend the Order To Adjust Representation on the United Soybean Board and Adjust Number of Board Meetings Required

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule adjusts the number of members for certain States on the United Soybean Board (Board) to reflect changes in production levels which have occurred since the Board was appointed in 1991 and decreases the number of required Board meetings from four a year to three a year.

EFFECTIVE DATE: June 7, 1995.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch; Livestock and Seed Division; Agricultural Marketing Service (AMS), USDA, room 2606–S; P.O. Box 96456; Washington, D.C. 20090–6456. Telephone number 202/720–1115.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Proposed Rule—Soybean Promotion and Research: Amend the Order to Adjust Representation on the United Soybean

Board and Adjust Number of Board Meetings Required published March 22, 1995 (60 FR 15082).

Executive Orders 12866 and 12778 and Regulatory Flexibility Act

The Department of Agriculture is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order No. 12778, Civil Justice Reform. It is not intended to have a retroactive effect.

The Soybean Promotion, Research, and Consumer Information Act (Act) provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 1971 of the Act, a person subject to the Soybean Promotion and Research Order (Order) may file with the Secretary a petition stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not in accordance with law and requesting a modification of the Order or an exemption from the Order. The petitioner has the opportunity for a hearing on the petition. After a hearing the Secretary will rule on the petition. The statute provides that the district court of the United States in any district in which the person resides or carries on a business has jurisdiction to review a ruling on the petition if a complaint for that purpose is filed not later than 20 days after the date of entry of the ruling.

Further, section 1974 of the Act provides, with certain exceptions, that nothing in the Act may be construed to preempt or supersede any other program organized and operated under the laws of the United States relating to soybean promotion, research, consumer industry, or industry information. One exception in the Act concerns assessments collected by Qualified State Soybean Boards (QSSBs). This exception provides that, in order to ensure adequate funding of the operations of QSSBs under the Act, no State law or regulation may limit or have the effect of limiting the full amount of assessments that a QSSB in that State may collect, and which is authorized to be credited under the Act. Another exception concerns certain referenda conducted during specified periods by a State relating to the continuation or termination of a QSSB or State soybean assessment.

This action has also been reviewed under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This final rule adjusts representation on the Board to reflect changes in production levels that have occurred since the Board was appointed in 1991. It also decreases the number of required Board meetings from four a year to three a year. The Administrator of AMS has determined that this rule will not have a significant economic impact on a substantial number of small business entities.

Background

The Act (7 U.S.C. 6301–6311) provides for the establishment of a coordinated program of promotion and research designed to strengthen the soybean industry's position in the marketplace, and to maintain and expand domestic and foreign markets and uses for soybeans and soybean products. The program is financed by an assessment of 0.5 of 1 percent of the net market price of soybeans sold by producers. Pursuant to the Act, an Order was made effective July 9, 1991. The Order established a Board of 60 members. For purposes of establishing the Board, the United States was divided into 31 geographic units. Representation on the Board from each unit was determined by the level of production in each unit. The Secretary appointed the initial Board on July 11, 1991.

Section 1220.201(c) of the Order provides that at the end of each 3 year period, the Board shall review soybean production levels in the geographic units throughout the United States. The Board may recommend to the Secretary modification in the levels of production necessary for Board membership for each unit. At its September 1994 meeting and again at its December 1994 meeting, the Board voted to recommend to the Secretary that no modification be made.

Section 1220.201(d) of the Order provides that at the end of each 3 year period, the Secretary must review the volume of production of each unit and adjust the boundaries of any unit and the number of Board members from each such unit as necessary to conform with the criteria set forth in § 1220.201(e): (1) To the extent practicable, States with annual average soybean production of less than 3,000,000 bushels shall be grouped into geographically contiguous units, each of which has a combined production level equal to or greater than 3,000,000 bushels, and each such group shall be entitled to at least one member on the Board; (2) units with at least 3,000,000 bushels, but fewer than 15,000,000 bushels shall be entitled to one Board member; (3) units with 15,000,000 bushels or more but fewer than 70,000,000 bushels shall be entitled to two Board members; (4) units with 70,000,000 bushels or more but fewer than 200,000,000 bushels shall be entitled to three Board members; and (5) units with 200,000,000 bushels or more shall be entitled to four members.

Representation on the Board, effective with this final rule, is based on average production levels for the years 1989–1993 (excluding the crops in the years in which production was the highest and in which production was the lowest) as reported by the National Agricultural Statistics Service of the U.S. Department of Agriculture.

Based on the average production levels for the years 1989–1993, this rule adjusts the number of geographic units from 31 to 30; and Board members from 60 to 59. Florida is no longer a separate unit. It joins the Eastern Region, and is represented by its Board representative. Georgia and South Carolina each lose one member and Wisconsin and Maryland each gain one member.

This adjustment is effective with the 1995 nominations and appointments.

Section 1220.212(a) of the Order provides that the Board shall meet at least four times a year, and more often if necessary for the Board to carry out its responsibilities. The Board, which operates under a 5 percent administrative cap, has recommended to the Secretary that in order to reduce its administrative costs and comply with the 5 percent cap, § 1220.212(a) be amended to reduce the number of required yearly Board meetings to three. This rule reduces the required minimum number of Board meetings from four to three a year.

On March 22, 1995, AMS published in the **Federal Register** (60 FR 15082) a proposed rule adjusting representation on the Board and adjusting the number of Board meetings required.

The proposed rule was published with a request for comments to be submitted by April 21, 1995.

The Department received four written comments. The comments and our responses follow:

The South Carolina Soybean Board (South Carolina Board) and the Georgia Agricultural Commodity Commission for Soybeans (Georgia Commission) objected to the proposed reapportionment because it would reduce Board membership for each State by one seat. Both assert that the Department did not adhere directly to the Act and Order by using the 1989–1993 crop production data to adjust representation on the Board. Based on their interpretation they suggest that the crop production years used in the proposed reapportionment should be 1988–1992. The South Carolina Soybean Association's (Association) and the Georgia Soybean Association's

(Association) comments also objected to the proposed reapportionment.

The Department decision to use the crop production years 1989–1993 was based on section 1969(b)(2)(E) of the Act and § 1220.201 of the Order which provides that at the end of each 3 year period starting on the effective date of the Order (July 9, 1991) the Secretary shall review the volume of production of each State or unit and shall adjust the number of Board members to conform with the volume of production specified in the Act and Order. The Act and Order also state that average annual soybean production shall be determined by using the average of the production for the State or unit over the five previous years, excluding the crops in which production was the highest and lowest.

Accordingly, in July of 1994, at the end of the first 3 year period, the Department reviewed the volume of production for the required 5 years. The five previous years data available in July 1994 were 1989–1993. Since the commenters' assertions are not consistent with the requirements of the Act and Order, no change is being made in this final rule.

The South Carolina Board and the Georgia Commission argue that reapportionment of the Board should have been made effective with the 1994 appointments to the Board. The two State Associations commented in support of this position.

To ensure sufficient time for Departmental clearance and appointment by December, the nomination and selection process for Board appointment has been initiated prior to July each year. Thus, the nominations for 1994 appointments by the Secretary had already been submitted based on the allocation of Board seats established by the initial Order when the reapportionment process began in July of 1994. Also, in order for the appointments to be made under a revised allocation based on reapportionment, a final rule must be promulgated which establishes the new allocation of Board seats. Consequently, the 1995 appointments rather than 1994 appointments are the first appointments which can be made under this reapportionment. Accordingly, no change is being made in this final rule.

Effective Date

Pursuant to 5 U.S.C. 553 it is found and determined that good cause exists for not postponing the effective date of the action until 30 days after publication of this rule in the **Federal Register**. This rule adjusts representation on the Board and reduces the required number of meetings of the Board and should be made effective upon publication in order to begin the 1995 nomination and appointment process and to allow the Board to schedule fiscal year 1995 meetings accordingly.

List of Subjects in 7 CFR Part 1220

Agricultural research, Reporting and recordkeeping requirements, Soybeans.

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

PART 1220—SOYBEAN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR part 1220 continues to read as follows:

Authority: 7 U.S.C. 6301–6311.

2. Section 1220.201 is amended by revising the section heading and paragraph (a), removing paragraph (f), and redesignating paragraph (g) as paragraph (f) as follows:

§ 1220.201 Membership of board.

(a) For the purposes of nominating and appointing producers to the Board, the United States shall be divided into 30 geographic units and the number of Board members from each unit, subject to paragraphs (d) and (e) of this section shall be as follows:

Unit	No. of members
Illinois	4
Iowa	4
Minnesota	3
Indiana	3
Missouri	3
Ohio	3
Arkansas	3
Nebraska	3
Mississippi	2
Kansas	2
Louisiana	2
South Dakota	2
Tennessee	2
North Carolina	2
Kentucky	2
Michigan	2
Virginia	2
Maryland	2
Wisconsin	2
Georgia	1
South Carolina	1
Alabama	1
North Dakota	1
Delaware	1
Texas	1
Pennsylvania	1
Oklahoma	1
New Jersey	1
Eastern Region (New York, Massachusetts, Connecticut, Florida, Rhode Island, Vermont, New Hampshire, Maine, West Virginia, District of Columbia, and Puerto Rico)	1
Western Region (Montana, Wyoming, Colorado, New Mexico, Idaho, Utah, Arizona, Washington, Oregon, Nevada, California, Hawaii, and Alaska)	1

* * * * *

3. In § 1220.212, paragraph (a) is revised to read as follows:

§ 1220.212 Duties.

* * * * *

(a) To meet not less than three times annually, or more often if required for the Board to carry out its responsibilities pursuant to this subpart.

* * * * *

Dated: June 1, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–13921 Filed 6–6–95; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 1230

RIN 0581–AB36

[No. LS–94–010]

Pork Promotion, Research, and Consumer Information Act of 1985—Increase in Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Pursuant to the Pork Promotion, Research, and Consumer Information Act of 1985 (Act) and the Pork Promotion, Research, and Consumer Information Order (Order) thereunder, this final rule increases the rate of assessment of 0.35 percent of market value of porcine animals to 0.45 percent; and adjusts the amount of assessment per pound due on imported pork and pork products to reflect the assessment rate increase of 0.10 percent and the decrease in the 1994 average price for domestic barrows and gilts. The assessment increase and the adjustment in assessments on imported pork and pork products will increase annual funding of the promotion, research, and consumer information program by an estimated $10 million to $12 million over a 12-month period.

EFFECTIVE DATE: September 3, 1995.

ADDRESSES: Ralph L. Tapp, Chief; Marketing Programs Branch; Livestock

and Seed Division; Agricultural Marketing Service (AMS), USDA; P.O. Box 96456, Room 2606–S; Washington, DC 20090–6456.

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

SUPPLEMENTARY INFORMATION:

Executive Orders 12866 and 12778 and Regulatory Flexibility Act

This 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.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This final rule is not intended to have a retroactive effect. The Act states that the statute is intended to occupy the field of promotion and consumer education involving pork and pork products and of obtaining funds thereof from pork producers and that the regulation of such activity (other than a regulation or requirement relating to a matter of public health or the provision of State or local funds for such activity) that is in addition to or different from the Act may not be imposed by a State.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 1625 of the Act, a person subject to an order may file a petition with the Secretary stating that such order, a provision of such order or an obligation imposed in connection with such order is not in accordance with law; and requesting a modification of the order or an exemption from the order. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in the district in which the person resides or does business has jurisdiction to review the Secretary's determination, if a complaint is filed not later than 20 days after the date such person receives notice of such determination.

Information available to the Department indicates that nearly all of the estimated 278,000 pork producers and many of the estimated 200 importers can be classified as small entities. This final rule increases the rate of the assessment from 0.35 percent of the market value of porcine animals to 0.45 percent, and increases the cents per pound and per kilogram of assessments on imported pork and pork products subject to assessment. Adjusting the rate of assessment from 0.35 to 0.45 percent and increasing the assessment on imported pork and pork products results in an estimated increase in assessments of $10 million to $12 million over a 12-month period. However, the gross market value of all swine marketed in the United States during 1993 exceeded $10.6 billion. The economic impact of the assessments will not be a significant part of the total market value of swine.

This rule also adjusts importer assessments to reflect the increase in the assessment rate from 0.35 to 0.45 percent and to reflect a decrease in the 1994 average market price for domestic barrows and gilts. The combined effect of the assessment rate increase and the decrease in the average market price increases the assessments on imported pork and pork products subject to assessments by two- to four-hundredths of a cent per pound, or as expressed in cents per kilogram, four- to nine-hundredths of a cent per kilogram. Adjusting the assessments on imported pork and pork products would result in an estimated increase in assessments of $175,000 over a 12-month period.

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

The information collection requirements contained in part 1230, subparts A and B, have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB Control Number 0851–0151.

The Act (7 U.S.C. 4801–4819) approved December 23, 1985, authorized the establishment of a national pork promotion, research, and consumer information program. The program is funded by an assessment rate of 0.35 percent of the market value of all porcine animals marketed in the United States and an equivalent amount of assessment on imported porcine animals, pork, and pork products. The final Order establishing a pork promotion, research, and consumer information program was published in the September 5, 1986, issue of the **Federal Register** (51 FR 31898; as corrected, at 51 FR 36383, and amended at 53 FR 1909, 53 FR 30243, 56 FR 4, and 56 FR 51635). Assessments began on November 1, 1986.

The Order requires that producers pay to the Board an assessment of 0.35 percent of the market value of each porcine animal upon sale. However, for purposes of collecting and remitting assessments, porcine animals are divided into three separate categories (1) feeder pigs, (2) slaughter hogs, and (3) breeding stock. The Order specifies that purchasers of feeder pigs, slaughter hogs, and breeding stock shall collect an assessment on these animals if assessments are due. The Order further provides that for the purpose of collecting and remitting assessments persons engaged as a commission merchant, auction market or livestock market in the business of receiving such porcine animals for sale on commission for or on behalf of a producer shall be deemed to be a purchaser.

The Order requires importers of porcine animals to pay the U.S. Customs Service (USCS), upon importation, the assessment of 0.35 percent of the porcine animal's declared value and importers of pork and pork products to pay USCS, upon importation, the assessment of 0.35 percent of the market value of the live porcine animals from which such pork and pork products were produced.

The procedures for collection and remittance of assessments are specified in § 1230.71 of the Order.

Pursuant to section 1620 of the Act, the assessment rate of 0.25 percent of the market value of porcine animals, pork, or pork products sold or imported was established in the initial Order and was changed to 0.35 percent on December 1, 1991. Based on the assessment rate of 0.35 percent, the total annual assessments collected during 1994 were approximately $42 million. Assessments on imported pork and pork products accounted for about $1.5 million of the total.

The Act and § 1230.71 of the Order contain provisions for increasing the initial rate of assessment. Section 1620(b)(2) of the Act provides that the rate of the assessment in the initial Order may be increased by not more than 0.1 percent per year upon recommendation of the National Pork Producers Delegate Body (Delegate Body) whose producer and importer members are appointed annually by the Secretary. The Act further provides that the rate of assessment may be increased by no more than 0.1 percent annually not to exceed 0.5 percent of the market value unless the Delegate Body recommends a greater increase and the increase is approved in a referendum.

The 1994 Delegate Body, at its annual meeting on March 3–5, 1994, in Kansas City, Missouri, voted overwhelmingly to recommend to the Secretary that the rate of assessment of 0.35 percent be increased to 0.45 percent. There were 170 Delegate Body members appointed by the Secretary in 1994. At the Delegate Body meeting 154 delegates were present during voting and voted 37,226 valid share votes. States and importers are allotted one share per $1,000 of the

aggregated amount of assessment collected. There were 31,089 share votes cast in favor of the 0.1 percent increase.

On February 15, 1995, AMS published in the **Federal Register** (60 FR 8579) a proposed rule to increase the rate of assessment of 0.35 percent of market value of porcine animals to 0.45 percent; and adjust the amount of assessment per pound due on imported pork and pork products to reflect the assessment rate increase of 0.10 percent and the decrease in the 1994 average price for domestic barrows and gilts. The proposed rule was published with a request for comments by March 17, 1995.

The following example will illustrate the effect of the increase of 0.10 percent on a per head basis. Based on the 1994 annual average five market price of $39.57 per hundredweight for barrows and gilts with an average weight of 248 pounds as reported in the USDA's publication ''Livestock, Meat, and Wool Weekly Summary and Statistics'' published in January 1995, the total assessment per head at the assessment rate of 0.45 percent would be 44 cents. At the assessment rate of 0.35 percent, the total per-head assessment would be 34 cents. Based on the Delegate Body's recommendation in accordance with § 1230.71(d) of the Order, this final rule increases the rate of assessment from 0.35 to 0.45 percent, which would increase assessments collected $10 million to $12 million over a 12-month period.

This final rule also increases the amount of assessment on all of the imported pork and pork products subject to assessment as published in the **Federal Register** as a final rule September 8, 1994, and effective on October 11, 1994 (59 FR 46323). This adjustment reflects the increase in the assessment rate to 0.45 percent and would be consistent with the decrease in the annual average price of domestic barrows and gilts for calendar year 1994 as reported by USDA, AMS, Livestock and Grain Market News (LGMN) Branch. This adjustment in assessments will make the equivalent market value of the live porcine animal from which the imported pork and pork products were derived reflect the recent decrease in the market value of domestic porcine animals, thereby promoting comparability between the importer and domestic assessments.

The methodology for determining the per-pound amounts for imported pork and pork products was described in the supplementary information accompanying the Order and published in the September 5, 1986, **Federal Register** at 51 FR 31901. The weight of imported pork and pork products is converted to a carcass weight equivalent by utilizing conversion factors which are published in the USDA Statistical Bulletin No. 616 ''Conversion Factors and Weights and Measures.'' These conversion factors take into account the removal of bone, weight lost in cooking or other processing, and the nonpork components of pork products. Secondly, the carcass weight equivalent is converted to a live animal equivalent weight by dividing the carcass weight equivalent by 70 percent, which is the average dressing percentage of porcine animals in the United States. Thirdly, the equivalent value of the live porcine animal is determined by multiplying the live animal equivalent weight by an annual average market price for barrows and gilts as reported by the USDA, AMS, LGMN Branch. The annual average price, which was based on price data from six major markets, is now based on only five markets as one of the six markets—St. Louis—closed in 1994. This average price is published on a yearly basis during the month of January in the LGMN Branch's publication ''Livestock, Meat, and Wool Weekly Summary and Statistics.'' Finally, the equivalent value is multiplied by the applicable assessment rate of 0.45 percent due on imported pork and pork products. The end result is expressed in an amount per pound for each type of pork or pork product. To determine the amount per kilogram for pork and pork products subject to assessment under the Act and Order, the cent-per-pound assessments are multiplied by a metric conversion factor 2.2046 and carried to the sixth decimal.

The formula in the preamble for the Order at 51 FR 31901 contemplated that it would be necessary to recalculate the equivalent live animal value of imported pork and pork products to reflect increases in the rate of assessments or changes in the annual average price of domestic barrows and gilts to maintain equity of assessments between domestic porcine animals and imported pork and pork products.

Substituting the assessment rate of 0.45 percent in the formula and using the 1994 average annual five market price for domestic barrows and gilts of $39.57 per hundredweight results in an increase in assessments for all the Harmonized Tariff Systems (HTS) numbers in the table in § 1230.110, 59 FR 46323; September 8, 1994, of an amount equal to two- to four-hundredths of a cent per pound, or as expressed in cents per kilogram, four- to nine-hundredths of a cent per kilogram. Based on Department of Commerce, Bureau of Census, data on the volume of imported pork and pork products available for the period January 1, 1994, through September 30, 1994, the increase in the assessment amounts would result in an estimated $175,000 increase in importer assessments over a 12-month period.

The Department's review of the supplementary information revealed that the location of the March 3–5, 1994, Delegate Body meeting was incorrectly listed as Denver, Colorado. The meeting was held in Kansas City, Missouri, and the supplementary information has been corrected.

The Department received 87 comments after the publication of the proposed rule. Thirty-four commenters, including the National Pork Board, the National Pork Producers Council, 23 State pork producer associations representing over 62,000 producers which represents a significant proportion of the estimated State producer association members nationwide, and 9 individuals supported the rate increase stating that it would provide additional opportunities for enhanced returns to pork producers and it is consistent with industry goals and plans. Fifty-one individual commenters did not support the rate increase, citing the decline in live hog prices, disfavor with the program and suggesting that the current rate was high enough or that there should be no assessment at all. Two commenters did not specifically address the proposed assessment rate increase; however they both believed the pork promotion program was successful.

One of the two commenters argued that the comment period of 30 days was not sufficient time for producers to review the proposed rule and submit comments since most pork producers do not receive the **Federal Register**. The Department believes that a 30 day comment period is sufficient to allow for public comment. A press release was issued when the proposed rule was published to facilitate timely notification of interested parties of their opportunity to comment. The press release also indicated that interested persons could request copies of the proposed rule either by the phone or mail and listed the phone number and address. The other commenter expressed concern about the magnitude of the price spread between the wholesale price and retail price for pork.

The Department carefully considered the comments, the recommendation of the Delegate Body and additional information regarding the usefulness of the proposed assessment rate increase. It has been determined that the additional

revenues which will be gained from the increase will be useful in strengthening the position of the pork industry in the marketplace and in maintaining, developing, and expanding markets for pork and pork products.

The increase in total annual assessments, resulting from the increase in the assessment rate from .35 to .45 percent, will enable the pork promotion and research program to continue the funding pattern that has helped keep pork competitive with other meats and poultry since 1987. The increase will also provide the necessary funding to finance the pork industry's long range strategic plan which will address issues and initiatives that pork producers and importers believe will have the most significant economic impact on the future of the industry. These issues include environmental management, odor control, animal care, swine health, and food safety. The increase in annual assessment will provide the additional funding necessary to help producers take full advantage of the enhanced foreign trade opportunities created by NAFTA and GATT. In voting for the assessment rate increase, the National Pork Producers Delegate Body believed that the increase was necessary to make sure all producers have access to the latest research, technology, and information available to help them remain competitive in a rapidly changing industry.

Accordingly, this final rule adopts the increase in the assessment rate from 0.35 percent of market value of porcine animals to 0.45 percent as proposed; and the adjustment in the amount of assessment per pound due on imported pork and pork products to reflect the assessment rate increase of 0.10 percent and the decrease in the 1994 average price for domestic barrows and gilts as proposed.

List of Subjects in 7 CFR Part 1230

Administrative practice and procedure, Advertising, Agriculture research, Marketing agreement, Meat and meat products, Pork and pork products.

For the reasons set forth in the preamble, 7 CFR part 1230 is amended as set forth below:

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR Part 1230 continues to read as follows:

Authority: 7 U.S.C. 4801–4819.

Subpart—[Amended]

2. Subpart B—Rules and Regulations is amended by revising § 1220.110 to read as follows:

§ 1230.110 Assessments on imported pork and pork products.

(a) The following HTS categories of imported live porcine animals are subject to assessment at the rate specified.

Live porcine animals	Assessment
0103.10.0000	0.45 percent Customs Entered Value.
0103.91.0000	0.45 percent Customs Entered Value.
0103.92.0000	0.45 percent Customs Entered Value.

(b) The following HTS categories of imported pork and pork products are subject to assessment at the rates specified.

Pork and pork products	Assessment	
	cents/lb	cents/kg
0203.11.0000	.25	.551150
0203.12.1010	.25	.551150
0203.12.1020	.25	.551150
0203.12.9010	.25	.551150
0203.12.9020	.25	.551150
0203.19.2010	.30	.661380
0203.19.2090	.30	.661380
0203.19.4010	.25	.551150
0203.19.4090	.25	.551150
0203.21.0000	.25	.551150
0203.22.1000	.25	.551150
0203.22.9000	.25	.551150
0203.29.2000	.30	.661380
0203.29.4000	.25	.551150
0206.30.0000	.25	.551150
0206.41.0000	.25	.551150
0206.49.0000	.25	.551150
0210.11.0010	.25	.551150
0210.11.0020	.25	.551150
0210.12.0020	.25	.551150
0210.12.0040	.25	.551150
0210.19.0010	.30	.661380
0210.19.0090	.30	.661380
1601.00.2010	.35	.771610
1601.00.2090	.35	.771610
1602.41.2020	.38	.837748
1602.41.2040	.38	.837748
1602.41.9000	.25	.551150
1602.42.2020	.38	.837748
1602.42.2040	.38	.837748
1602.42.4000	.25	.551150
1602.49.2000	.35	.771610
1602.49.4000	.30	.661380

3. Subpart B–Rules and Regulations is amended by revising § 1230.112 to read as follows:

§ 1230.112 Rate of assessment.

In accordance with § 1230.71(d) the rate of assessment shall be 0.45 percent of market value.

Dated: June 1, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–13920 Filed 6–6–95; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Regulation B; Docket No. R–0865]

Equal Credit Opportunity

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; official staff interpretation.

SUMMARY: The Board is revising its official staff commentary to Regulation B (Equal Credit Opportunity). The commentary applies and interprets the requirements of Regulation B and is a substitute for individual staff interpretations. The revisions to the commentary provide guidance on several issues including disparate treatment, special purpose credit programs, credit scoring systems, and marital status discrimination.

EFFECTIVE DATE: June 5, 1995.

FOR FURTHER INFORMATION CONTACT: Jane Jensen Gell, Sheilah Goodman, Natalie E. Taylor, or Manley Williams, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf, (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691–1691f, makes it unlawful for creditors to discriminate in any aspect of a credit transaction on the basis of sex, marital status, age, race, national origin, color, religion, receipt of public assistance, or the exercise of rights under the Consumer Credit Protection Act. The Board's Regulation B (12 CFR Part 202) implements this statute. In addition, the Board's official staff commentary (12 CFR Part 202 (Supp. I)) interprets the regulation. The commentary provides general guidance in applying the regulation to various credit transactions and is updated periodically.

II. Summary of Revisions to the Commentary

In December 1994 (59 FR 67235, December 29, 1994), the Board proposed amendments to the staff commentary to Regulation B. The Board received nearly 100 letters on the proposal. After reviewing the comment letters and upon further analysis, the Board is adopting final amendments to the staff commentary.

Section 202.2—Definitions

2(c)(1)(i) Application for Extension of Credit

The Board proposed a new comment 2(c)(2)(iii)–2 to address court decisions that misapplied portions of that section. Commenters suggested that to the extent the comment defined types of adverse action, it more clearly fit under section 202.2(c)(1)(i). The Board agrees. The Board is adopting comment 2(c)(1)(i)–1 to clarify that the refusal to refinance or extend the term of a business or other loan is adverse action if the applicant applied in accordance with the creditor's procedures.

2(c)(2)(iii) Application for Increase in Available Credit

The Board proposed comment 2(c)(2)(iii)–2 to clarify that a denial of an application to increase available credit or for a change in terms is adverse action. Many commenters expressed concern that the phrase ''change in terms'' was overly broad, requiring a creditor to provide an adverse action notice in a variety of situations in which it is not now required. The Board has changed the comment heading and has narrowed its scope to refer only to applications to increase credit.

2(p) Empirically Derived and Other Credit Scoring Systems

The Board has adopted comment 2(p)–3, regarding pooled data scoring systems, as proposed.

The proposed comment 2(p)–4 clarified that a credit scoring system—even if ''empirically derived, demonstrably and statistically sound''—is subject to review under the ECOA and Regulation B. When a scoring system is used in conjunction with individual discretion, disparate treatment could still occur. In addition, a system could have a disparate impact on a prohibited basis, and could be challenged. Whether such a challenge would be successful depends on a variety of factors, as commenters noted.

More generally, commenters questioned how the standards set out in the proposed comment related to the discussion of disparate impact in comment 6(a)–2. Commenters believed that the proposal's reference to disparate impact was attempting to describe a highly complex area of law in a condensed manner. The Board has deleted the proposed reference to the standards of proof and burdens of persuasion the parties must meet, and instead has added a reference to comment 6(a)–2.

Section 202.4—General Rule Prohibiting Discrimination

Comment 4–1 addresses the legal concept known as ''disparate treatment,'' which is a particular type of discrimination. The proposed amendment clarified that disparate treatment might be found even absent a conscious will to discriminate. Some commenters expressed concern that the proposal meant that ''intent,'' as that term has been interpreted by courts in discrimination cases, is not an element of disparate treatment. The Board has revised the comment to clarify that treating individuals differently is not unlawful *per se*. However, treating individuals differently on a prohibited basis is unlawful discrimination (''disparate treatment'') if there is no credible, nondiscriminatory reason that explains the difference in treatment. In the examples given, the differential treatment would constitute disparate treatment if the creditor lacked a legitimate nondiscriminatory reason for its action, or if the asserted reason was found to be a pretext for discrimination.

Section 202.5a—Rules on Providing Appraisal Reports

5a(a) Providing Appraisals

The Board proposed comment 5a(a)–1 to clarify that section 202.5a applies to applications for credit to be secured by a dwelling, whether the credit is for a business or a consumer purpose. Commenters generally supported the proposed comment. It was suggested that the Board should eliminate a reference to the ''consumer's'' dwelling, given the definition of ''dwelling'' used in sections 202.5a(a) and (c). It was noted that ''consumer's dwelling'' could be read as both more limited than ''dwelling'' (including only transactions that involve a consumer's dwelling, as ''consumer'' is defined elsewhere) and more expansive (any dwelling, not limited to one-to-four family dwellings). The Board has revised the comment accordingly.

The Board proposed comment 5a(a)–2 to clarify that section 202.5a applies to a request for renewal of an existing extension of credit secured by a dwelling if the creditor obtains and uses a new appraisal report in evaluating the request.

Section 202.5a does not apply if a consumer requests renewal of existing credit and the creditor does not obtain a new appraisal. Commenters supported this clarification.

5a(a)(2)(i) Notice

The Board proposed comment 5a(a)(2)(i)–1 to clarify the rule for credit involving more than one applicant, which parallels the rule in section 202.9 concerning notices of action taken where there is more than one applicant. Commenters supported this clarification.

5a(a)(2)(ii) Delivery

The Board proposed a new comment 5a(a)(2)(ii)–1 to clarify that in all cases creditors may seek reimbursement for photocopy and postage costs incurred in providing the copy of the appraisal report unless prohibited by state or other law, or unless the consumer has already paid for the report.

The proposal provided that if the creditor does not otherwise charge for the report, as in ''no closing cost'' loans, the creditor may not require payment solely from those consumers who request a copy of the report. Commenters were divided on this issue. Some noted that these loans benefit consumers by reducing the upfront costs of applying for credit. Several commenters believed that a prohibition on reimbursement for an appraisal report for ''no closing cost'' loans would have a chilling effect on creditors' willingness to offer these products. Commenters said that for no-cost loans that close, creditors who waive closing costs (including the cost of an appraisal) recover those costs over the term of the loan; they do not recover the cost of the appraisal for no-cost loans that are denied or withdrawn. Commenters requested that in such cases, the Board allow creditors to charge for the cost of the appraisal when applicants ask for a copy of the report.

The statute gives a creditor the right to require an applicant to reimburse the creditor for the cost of the appraisal. Upon further analysis, the Board believes that creditors may collect the costs of an appraisal unless the consumer has already paid for the report.

5a(c) Definitions

New comments 5a(c)–1 and 5a(c)–2 address the scope of the term ''appraisal report.'' Under the proposal, publicly available listings of valuations for dwellings, such as published home sales prices or mortgage amounts, are not

covered. The appraisal rules guard against discriminatory evaluations of a dwelling's value. The Board believes that publicly available reports of home sales prices or tax assessments, among others, are unlikely to be influenced by the type of subjectivity the law is intended to eliminate.

Commenters generally supported the clarifications to the definitions. The Board has adopted the comments as proposed.

Section 202.6—Rules Concerning Evaluation of Applications

6(a) General Rule Concerning Use of Information

The Board did not propose commentary under this section. In addressing the issue of disparate impact under proposed comment 2(p)–4, however, many commenters discussed comment 2 to this section. The commenters uniformly expressed concern, in regard to this comment and comment 2(p)–4, about the Board's articulation of the standards of proof and burdens of persuasion under a disparate impact analysis (sometimes referred to as the effects test). The Board recognizes that this is an evolving area of law, one in which creditors and consumers alike would benefit from more specificity. However, given that the Board did not propose any amendments to this section of the commentary, the only change to the existing commentary is the addition of a reference to the Civil Rights Act of 1991, which codifies the standards used for disparate impact under Title VII. The Board will consider addressing these issues further in future commentary proposals.

6(b)(1) Prohibited Basis—Marital Status

The Board proposed to revise comment 6(b)(1)–1 to clarify that if a creditor chooses to offer joint credit, the creditor generally may not take the applicants' marital status into account in credit evaluations, except to the extent necessary for determining rights and remedies under state law. Commenters generally supported this clarification.

A few commenters requested clarification on how the commentary applied to other parties such as cosigners or guarantors. Creditors are not required to combine the debts and incomes of two parties when one of them is a cosigner or guarantor for the other. (Comment 7(d)(5)–1 provides guidance on standards that creditors may use in requesting additional parties.)

Section 202.8—Special-Purpose Credit Programs

8(a) Standards for Programs

The Board proposed comments 8(a)–5 and –6 to clarify the requirements that for-profit organizations must meet to establish special-purpose credit programs under section 202.8(a).

Commenters generally supported both comments. In response to some commenters' concerns, the Board has added language to comment 8(a)–5 clarifying that the program can be designed to benefit a class of people who would otherwise receive credit on less favorable terms, as well as those who would be denied credit.

Two issues have been clarified in comment 8(a)–6. First, some commenters were concerned about the statement that the plan should specify the length of time that it will be in effect and that it be reevaluated after that time. Some commenters said that this added regulatory burden. The Board believes that because special purpose credit programs are designed to fulfill a particular need, they must be reevaluated periodically to determine if there is a continuing need for the program. The comment has been amended to reflect this position. Second, the reference to avoiding a negative effect on individuals who are not in the class the program was designed to benefit, by denying them rights or opportunities they might otherwise have, has been deleted because it is not clear precisely how this condition applies in the credit context.

Section 202.9—Notifications

The Board proposed comment 9–5 to address when a creditor must send a notice of action taken under prequalification, preapproval, and similar programs. The comment clarified that the guidance provided in the commentary to section 202.2(f), addressing applications and inquiries, applies to all types of inquiries, including prequalification and preapproval programs. Thus, if a creditor—in giving information to a consumer about a prequalification or preapproval program—decides it will not grant credit, and communicates this to the consumer, the creditor has treated the inquiry as an application (by virtue of having made a credit decision) and must comply with the notification rules in § 202.9. Commenters generally supported the guidance provided in the proposal.

Appendix C of Supplement I to Part 202—Sample Notification Forms

The Board proposed a comment to Appendix C to provide examples of additions that may be made to Model Form C–9. The commenters supported the comment and the Board has adopted it as proposed.

List of Subjects in 12 CFR Part 202

Aged, Banks, banking, Civil rights, Credit, Federal Reserve System, Marital status discrimination, Penalties, Religious discrimination, Reporting and recordkeeping requirements, Sex discrimination.

For the reasons set forth in the preamble, the Board is amending 12 CFR part 202 as set forth below:

PART 202—EQUAL CREDIT OPPORTUNITY (REGULATION B)

1. The authority citation for part 202 continues to read as follows:

Authority: 15 U.S.C. 1691–1691f.

2. In Supplement I to Part 202, *Section 202.2—Definitions,* is amended as follows:

a. Under *2(c) Adverse action.*, preceding 1. *Move from service area.*, a new paragraph heading 2(c)(1)(i), a new paragraph 1., and a new paragraph heading 2(c)(1)(ii) are added;

b. Under Paragraph (2)(c)(2)(iii), a new paragraph 2. is added; and

c. Under *2(p),* the paragraph heading for *2(p)* is revised and new paragraphs 3. and 4. are added.

The additions and revision read as follow:

Supplement I to Part 202—Official Staff Interpretations

* * * * *

Section 202.2 Definitions

2(c) Adverse action.

Paragraph 2(c)(1)(i)

1. *Application for credit.* A refusal to refinance or extend the term of a business or other loan is adverse action if the applicant applied in accordance with the creditor's procedures.

Paragraph 2(c)(1)(ii)

1. *Move from service area.* * * *

* * * * *

Paragraph 2(c)(2)(iii)

* * * * *

2. *Application for increase in available credit.* A refusal or failure to authorize an account transaction at the point of sale or loan is not adverse action, except when the refusal is a denial of an application, submitted in accordance with the creditor's procedures, for an increase in the amount of credit.

* * * * *

2(p) Empirically derived and other credit scoring systems.

* * * * *

3. *Pooled data scoring systems.* A scoring system or the data from which to develop such a system may be obtained from either a single credit grantor or multiple credit grantors. The resulting system will qualify as an empirically derived, demonstrably and statistically sound, credit scoring system provided the criteria set forth in paragraph (p)(1) (i) through (iv) of this section are met.

4. *Effects test and disparate treatment.* An empirically derived, demonstrably and statistically sound, credit scoring system may include age as a predictive factor (provided that the age of an elderly applicant is not assigned a negative factor or value). Besides age, no other prohibited basis may be used as a variable. Generally, credit scoring systems treat all applicants objectively and thus avoid problems of disparate treatment. In cases where a credit scoring system is used in conjunction with individual discretion, disparate treatment could conceivably occur in the evaluation process. In addition, neutral factors used in credit scoring systems could nonetheless be subject to challenge under the effects test. (See comment 6(a)–2 for a discussion of the effects test).

* * * * *

3. In Supplement I to part 202, under *Section 202.4—General Rule Prohibiting Discrimination,* four new sentences are added at the end of paragraph 1. To read as follows:

* * * * *

Section 202.4—General Rule Prohibiting Discrimination

1. *Scope of section.* * * * Disparate treatment on a prohibited basis is illegal whether or not it results from a conscious intent to discriminate. Disparate treatment would be found, for example, where a creditor requires a minority applicant to provide greater documentation to obtain a loan than a similarly situated nonminority applicant. Disparate treatment also would be found where a creditor waives or relaxes credit standards for a nonminority applicant but not for a similarly situated minority applicant. Treating applicants differently on a prohibited basis is unlawful if the creditor lacks a legitimate nondiscriminatory reason for its action, or if the asserted reason is found to be a pretext for discrimination.

* * * * *

4. In Supplement I to part 202, a new *Section 202.5a,* is added in numerical order to read as follows:

* * * * *

Section 202.5a—Rules on Providing Appraisal Reports

5a(a) Providing appraisals.

1. *Coverage.* This section covers applications for credit to be secured by a lien on a dwelling, as that term is defined in § 202.5a(c), whether the credit is for a business purpose (for example, a loan to start a business) or a consumer purpose (for example, a loan to finance a child's education).

2. *Renewals.* If an applicant requests that a creditor renew an existing extension of credit, and the creditor obtains a new appraisal report to evaluate the request, this section applies. This section does not apply to a renewal request if the creditor uses the appraisal report previously obtained in connection with the decision to grant credit.

5a(a)(2)(i) Notice.

1. *Multiple applicants.* When an application that is subject to this section involves more than one applicant, the notice about the appraisal report need only be given to one applicant, but it must be given to the primary applicant where one is readily apparent.

5a(a)(2)(ii) Delivery.

1. *Reimbursement.* Creditors may charge for photocopy and postage costs incurred in providing a copy of the appraisal report, unless prohibited by state or other law. If the consumer has already paid for the report—for example, as part of an application fee—the creditor may not require additional fees for the appraisal (other than photocopy and postage costs).

5a(c) Definitions.

1. *Appraisal reports.* Examples of appraisal reports are:

i. A report prepared by an appraiser (whether or not licensed or certified), including written comments and other documents submitted to the creditor in support of the appraiser's estimate or opinion of value.

ii. A document prepared by the creditor's staff which assigns value to the property, if a third-party appraisal report has not been used.

iii. An internal review document reflecting that the creditor's valuation is different from a valuation in a third party's appraisal report (or different from valuations that are publicly available or valuations such as manufacturers' invoices for mobile homes).

2. *Other reports.* The term ''appraisal report'' does not cover all documents relating to the value of the applicant's property. Examples of reports not covered are:

i. Internal documents, if a third-party appraisal report was used to establish the value of the property.

ii. Governmental agency statements of appraised value.

iii. Valuations lists that are publicly available (such as published sales prices or mortgage amounts, tax assessments, and retail price ranges) and valuations such as manufacturers' invoices for mobile homes.

* * * * *

5. In Supplement I to Part 202, *Section 202.6—Rules Concerning Evaluation of Applications,* is amended as follows:

a. Under *6(a) General rule concerning use of information.*, the first sentence in paragraph 2. is revised; and

b. Under Paragraph 6(b)(1), three new sentences are added at the end of paragraph 1.

The additions and revision read as follow:

* * * * *

Section 202.6—Rules Concerning Evaluation of Applications

6(a) General rule concerning use of information.

* * * * *

2. *Effects test.* The effects test is a judicial doctrine that was developed in a series of employment cases decided by the Supreme Court under Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.), and the burdens of proof for such employment cases were codified by Congress in the Civil Rights Act of 1991 (42 U.S.C. 2000e-2). * * *

* * * * *

Paragraph 6(b)(1)

1. *Prohibited basis—marital status.* * * * Except to the extent necessary to determine rights and remedies for a specific credit transaction, a creditor that offers joint credit may not take the applicants' marital status into account in credit evaluations. Because it is unlawful for creditors to take marital status into account, creditors are barred from applying different standards in evaluating married and unmarried applicants. In making credit decisions, creditors may not treat joint applicants differently based on the existence, the absence, or the likelihood of a marital relationship between the parties.

* * * * *

6. In Supplement I to Part 202, *Section 202.8—Special Purpose Credit Programs,* under *8(a) Standards for programs.*, new paragraphs 5. and 6. are added to read as follows:

* * * * *

Section 202.8—Special Purpose Credit Programs

(8)(a) Standards for Programs

* * * * *

5. *Determining need.* In designing a special-purpose program under § 202.8(a), a for-profit organization must determine that the program will benefit a class of people who would otherwise be denied credit or would receive it on less favorable terms. This determination can be based on a broad analysis using the organization's own research or data from outside sources including governmental reports and studies. For example, a bank could review Home Mortgage Disclosure Act data along with demographic data for its assessment area and conclude that there is a need for a special-purpose credit program for low-income minority borrowers.

6. *Elements of the program.* The written plan must contain information that supports the need for the particular program. The plan also must either state a specific period of time for which the program will last, or contain a statement regarding when the program will be reevaluated to determine if there is a continuing need for it.

* * * * *

7. In Supplement I to Part 202, *Section 202.9—Notifications,* a new paragraph 5. is added to read as follows:

* * * * *

Section 202.9—Notifications

* * * * *

5. *Prequalification and preapproval programs.* Whether a creditor must provide a notice of action taken for a prequalification or preapproval request depends on the creditor's response to the request, as discussed in the commentary to section 202.2(f). For instance, a creditor may treat the request as an inquiry if the creditor provides general information such as loan terms and the maximum amount a consumer could borrow under various loan programs, explaining the process the consumer must follow to submit a mortgage application and the information the creditor will analyze in reaching a credit decision. On the other hand, a creditor has treated a request as an application, and is subject to the adverse action notice requirements of § 202.9 if, after evaluating information, the creditor decides that it will not approve the request and communicates that decision to the consumer. For example, if in reviewing a request for prequalification, a creditor tells the consumer that it would not approve an application for a mortgage because of a bankruptcy in the consumer's record, the creditor has denied an application for credit.

* * * * *

8. In Supplement I to Part 202, a new Appendix C—Sample Notification Forms is added at the end to read as follows:

* * * * *

Appendix C—Sample Notification Forms

Form C–9. Creditors may design their own form, add to, or modify the model form to reflect their individual policies and procedures. For example, a creditor may want to add:

i. A telephone number that applicants may call to leave their name and the address to which an appraisal report should be sent.

ii. A notice of the cost the applicant will be required to pay the creditor for the appraisal or a copy of the report.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, June 1, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–13862 Filed 6–6–95; 8:45 am]

BILLING CODE 6210–01–P

12 CFR Part 226

[Regulation Z; Docket No. R–0858]

Truth in Lending; Mortgage Disclosures; Correction

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Corrections to final regulation.

SUMMARY: This document contains corrections to the final rule (Docket No. R–0858) which was published Friday, March 24, 1995 (60 FR 15463). The amendments to Regulation Z concerned new disclosure requirements on certain home loans bearing rates or fees above a certain percentage or amount and on reverse mortgage transactions.

EFFECTIVE DATE: June 7, 1995.

FOR FURTHER INFORMATION CONTACT: Jane Ahrens, Senior Attorney, or Kyung Cho-Miller, Sheilah Goodman, or Kurt Schumacher, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for the hearing impaired *only*, Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

Background

The regulation that is the subject of the corrections is Regulation Z (12 CFR part 226), which implements the Truth in Lending Act (15 U.S.C. 1601–1666j). The act (TILA) requires creditors to disclose credit terms for consumer transactions. The final rule implemented the Home Ownership and Equity Protection Act of 1994 (HOEPA), contained in the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–325, 108 Stat. 2160). Section 152 of the HOEPA adds a new section 129 to the TILA dealing with certain mortgages bearing rates or fees above a certain percentage or amount.

Need for Correction

As published, the final rule implementing new TILA section 129 contains errors which could be confusing and should be clarified.

Correction of Publication

Accordingly, the publication on March 24, 1995, of the final regulation (Docket No. R–0858), which was the subject of FR Doc. 95–7231, is corrected as follows:

§ 226.31 [Corrected]

On page 15472, in the first column, in § 226.31, in paragraph (g), in the third line, the phrase ''annual percentage yield'' is corrected to read ''annual percentage rate''.

§ 226.32 [Corrected]

On page 15472, in the second column, in § 226.32, in paragraph (b)(1)(iii), in the first and second lines, the phrase ''required to be disclosed under'' is corrected to read ''listed in''.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board, June 1, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–13863 Filed 6–6–95; 8:45 am]

BILLING CODE 6210–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121 and 124

Small Business Size Regulations; Minority Small Business and Captial Ownership Development Assistance

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) hereby amends its regulations governing the Minority Small Business and Capital Ownership Development program authorized by sections 7(j)(10) and 8(a) of the Small Business Act, 15 U.S.C. 636(j)(10), 637(a). This final rule amends both eligibility requirements for and contractual assistance provisions within the 8(a) program. It is designed to streamline the operation of the 8(a) program and to ease certain restrictions perceived to be burdensome on Program Participants.

EFFECTIVE DATE: Except for § 124.311(a)(2), this rule is effective on June 7, 1995.

Section 124.311(a)(2) shall be effective August 7, 1995. It is applicable for all 8(a) requirements accepted by SBA on or after August 7, 1995.

FOR FURTHER INFORMATION CONTACT: Michael P. McHale, Deputy Associate Administrator for Minority Enterprise Development, (202) 205–6410.

SUPPLEMENTARY INFORMATION: On August 30, 1994, SBA published a proposed rule in the **Federal Register** (59 FR 44652) to amend both eligibility requirements for and contractual assistance provisions within the SBA's section 8(a) program. That proposal called for a 30-day comment period which was scheduled to close on September 29, 1994. In response to concerns raised that the 30-day comment period may not have been a sufficient amount of time to permit proper and thoughtful public comments, SBA, on October 27, 1994, extended the comment period through November 28, 1994. 59 FR 53947.

SBA received a total of 175 comments in response to its proposed rule. After reviewing these comments, SBA now issues this final rule.

SBA proposed this rule initially in order to simplify the operation of the

8(a) program, to make clarifying changes to the regulations deemed necessary through experience, and to permit program participants to proceed in a more entrepreneurial manner, while maintaining a high degree of program integrity. After considering the comments received, and after further review of all proposed changes, SBA has concluded that the number and scope of the proposed changes was broader than was necessary to achieve SBA's immediate and most important objectives. Accordingly, this final rule is limited to only those changes that will streamline the operation of the 8(a) program or are particularly significant, as set forth below. The remaining proposed changes will be considered as part of a more far-reaching review of the 8(a) program and will not be implemented at the present time.

This rule makes eleven significant revisions to current regulations, as follows:

(1) It permits participation in the 8(a) program by qualified small businesses owned by Community Development Corporations to an extent that is not consistent with the requirements of the 8(a) program as imposed by the Small Business Act.

(2) It simplifies 8(a) contracting procedures by eliminating the distinction established in SBA's regulations between ''local buy'' and ''national buy'' requirements, except with regard to construction projects.

(3) It eliminates the restriction on the dollar value of 8(a) contracts received by Program Participants previously imposed by SBA regulations.

(4) It eliminates the separate treatment for applying the requirements for 8(a) competitive procurements which has existed for indefinite quantity or indefinite delivery type contracts.

(5) It eliminates the separate treatment for individuals who are owners and participants of 8(a) concerns in the developmental stage of program participation so that they, like owners and principals of 8(a) concerns in the transitional stage, are eligible if their includable net worth is $750,000 or less.

(6) It streamlines procedures by eliminating the requirement that an 8(a) concern be notified twice of a termination or graduation action.

(7) It makes it easier for an 8(a) firm to add SIC codes to its business plan. Previously, concerns would have to show that a proposed new business SIC was a logical progression from its existing SIC. Under the new regulations, a concerned need merely show that it has a sound business explanation for requesting the new SIC code.

(8) It eases the ownership restrictions placed on former Program Participants.

(9) It streamlines SBA regulations by eliminating provisions dealing with SBA's expired authority to grant exemptions to the requirements of the Walsh-Healey Act and Miller Act.

(10) In response to a Court of Federal Claims directive, it establishes eligibility requirements for small disadvantaged business joint ventures.

(11) It reduces reporting requirements imposed on program participants. Each of these changes is discussed below in SBA's summary of and response to the comments received to its August 30, 1994 proposed rule. This final rule also makes various technical changes to the regulations necessary to implement these significant revisions.

Summary of Issues Raised by Public Comment

Initially, many commenters objected to the brevity of the 30-day comment period and requested that SBA extend it. As a result of these requests, SBA extended the comment period until November 28, 1994.

SBA received many comments regarding provisions for its 8(a) regulations that were not the subject of proposed changes.

Because such comments are outside the scope of this rulemaking process, SBA does not respond to them in this final rule. One commenter objected to the process by which the regulations were proposed on the grounds that SBA failed to adhere to economic analysis, planning, review, and comment requirements mandated by Executive Order 12866. SBA maintains that its issuance of the proposed rule was proper. SBA submitted the proposed rule to the Office of Management and Budget (OMB) in conformity with the requirements of the Executive Order. OMB did not believe that a full analysis of the proposed rule under Executive Order 12866 was necessary and directed SBA to publish the rule without its review under the Executive Order.

Addition of CDC-owned businesses to the 8(a) Program.

The rule adds a new § 124.114 which specifically authorizes CDC-owned small business concerns to participant in the 8(a) program. The regulation prohibits more than one concern with the same primary industry classification owned by the same CDC from entry into the program. It also establishes that disadvantaged individuals involved in the management and control of the business are not considered to have used up their eligibility under § 124.108(c) even if their personal disadvantage is used to establish eligibility of the CDC-owned concern.

This rule also makes a technical amendment to § 121.401(b) that recognizes that concerns owned by a Community Development Corporation (CDC), authorized by 42 U.S.C. 9805 *et seq.*, are not deemed to be affiliated with the CDC. This exemption from affiliation is contained in the proposed rule at § 124.114(b). SBA believes that it should also appear in this section as well. In making this amendment, the final rule separates the various provisions of § 121.401(b) into distinct paragraphs for clarity and ease of use.

This final rule adds definitions of the term ''CDC-owned concern'' and ''Community Development Corporation or CDC'' to § 124.100. Finally, the rule makes minor technical changes to §§ 124.101(a), 124.101(b), 124.102(a), 124.103, 124.104, and 124.109(d) in order to recognize the eligibility of CDC-owned concerns for participation in the 8(a) program.

A number of commenters objected to the participation of CDCs in the 8(a) program generally. As noted in the proposed rule, the participation of CDCs in the 8(a) program is required by statute and cannot be administratively eliminated by SBA.

In addition, one commenter, an association representing CDCs, urged that SBA not require that the management and control of a CDC-owned business be in the hands of one or more disadvantaged individuals. The commenter pointed out that CDCs may acquire already existing business concerns, and that it may not be a prudent business decision to immediately replace nondisadvantaged managers of such a concern in order to meet 8(a) eligibility requirements. After further review, SBA has decided to revise the rule.

In issuing regulations implementing the inclusion of CDCs pursuant to 42 U.S.C. 9815, SBA has analogized CDCs to Indian tribes. In the case of an applicant concern that is tribally-owned, section 8(a)(4)(B)(ii) of the Small Business Act, 15 U.S.C. 637(a)(4)(B)(ii), permits the management and daily business operations of the concern to be controlled by one or more members of an economically disadvantaged Indian tribe. Thus, a tribally-owned concern need not be controlled by an individual determined to be socially and economically disadvantaged. SBA believes that similar treatment can be provided to CDC-owned companies. This result is also consistent with the treatment of concerns owned by Alaska Native Corporations (ANCs), which are entities established for the economic

development of their villages or regions. ANC-owned concerns are not required to be controlled by Alaska Natives in order to participate in the 8(a) program. The Alaska Native Claims Settlement Act provides that a concern owned by an ANC shall be deemed to be both owned and controlled by such ANC. Thus, the final rule provides that a concern that is at least 51% owned by a CDC shall be deemed to be controlled by such CDC and eligible for participation in the 8(a) program, provided that it meets other eligibility criteria and its management and daily business operations are conducted by one or more individuals determined to have managerial or technical experience and competency directly related to the primary industry in which the applicant concern is seeking certification. Because of this change, the requirement that a CDC-owned concern be controlled by socially and economically disadvantaged individuals is deleted from the final rule.

Simplifying 8(a) Contracting Procedures by Eliminating the Distinction Established in SBA's Regulations Between ''Local Buy'' and ''National Buy'' Requirements, Except With Regard to Construction Projects

The rule eliminates the definitions for ''local buy'' and ''national buy'' requirements from § 124.100. The limitations in former § 124.311 (h)(3) and (h)(4) effecting who may bid on local contracts has been eliminated, except for construction contracts. All requirements other than construction requirements will now be open to eligible 8(a) Participants nationally. Construction requirements are exempt from this change because section 8(a)(11) of the Small Business Act, 15 U.S.C. 637(a)(11), requires, ''to the maximum extent practicable,'' that 8(a) construction contracts ''be awarded within the county or State where the work is to be performed.'' The final rule limits competition for 8(a) construction contracts to those Program Participants within the geographical boundaries of one or more SBA district offices. SBA believes that a Program Participant may be considered as being located within a geographical boundary if it regularly maintains an office which employs at least one full-time individual within that geographical boundary. SBA also believes that a procuring agency may offer a local sole source 8(a) construction requirement to SBA on behalf of a concern that regularly maintains an office which employs at least one full-time individual within that geographical boundary.

Several commenters expressed concern that eliminating the distinction between local and national buy requirements will adversely affect new or smaller 8(a) firms. Based on its experience with the operation of the present regulations, SBA believes that the adverse effect on new and smaller 8(a) firms will be negligible. In addition, SBA believes that the elimination of the local/national buy distinction will eliminate artificial barriers and promote national competition, something necessary for the survival of 8(a) concerns once they leave the program.

One commenter claimed that the elimination of the local/national buy distinction would restrict procurement opportunities to all but those firms located around major procurement centers such as Washington, DC, and Los Angeles, CA. SBA believes that the physical location of firms will have little bearing on where they can market themselves. In fact, 8(a) firms will have more opportunities to market themselves because they will not be restricted by district or regional boundaries.

One Federal agency opposed the elimination of the definitions for local and national buys because it believed that such elimination would create an increased opportunity for fraud and abuse. SBA does not believe fraud and abuse will increase simply by permitting 8(a) concerns to seek 8(a) contracts nationwide. SBA remains committed, however, to opposing any kind of fraud in the 8(a) program, and will work with procuring agencies to thwart such possibilities.

Eliminating Support Requirements

Section 124.307 is amended by redesignating paragraph (d) as paragraph (e) and by adding a new paragraph (d) that eliminates approved 8(a) support levels as a basis for denying 8(a) contract awards in excess of those levels. Most of the commenters supported the proposed rule. One commenter recommended that 124.307(d) be amended by adding the clause ''or approved remedial plan'' after the words ''competitive business mix'' and before the words ''imposed by 124.312'' for clarification. SBA believes that this is a logical clarification of the intent of this proposed rule, and as such, it is to be incorporated into the final rule.

The SBA Inspector General recommended that there should be some type of support level requirements. He urged that if annual levels are impractical, SBA should establish an overall dollar limit of 8(a) contracts that any individual company can receive. According to the comment, this would simplify administration of the program concerning continued eligibility and would eliminate concentration of 8(a) contracts within a small number of companies. SBA believes that a maximum support level, whether on an annual or some other basis, is not necessary with careful enforcement of competitive business mix requirements. SBA also believes that support levels unnecessarily impede the growth of 8(a) firms that are in full compliance with the mix requirements. Therefore, this recommendation was not incorporated into the final rule.

Indefinite Quantity, Indefinite Delivery

This rule also amends § 124.311(a) concerning how the competitive threshold requirements should be applied for indefinite quantity and indefinite delivery (IDIQ) requirements. Before this amendment, § 124.311(a)(2) specified that ''[f]or purposes of indefinite quantity/delivery contracts, the thresholds will be applied to the guaranteed minimum value of the contract.'' Based on its experience with the rule, SBA now believes this provision to be unacceptable because of the wide differences commonly occurring between the ''guaranteed minimum'' amounts on procurements offered to the 8(a) program and the amounts actually expended under the procurements.

The prior regulation was subject to substantial criticism. Under the prior rule, procuring agencies could offer very large procurement requirements to the 8(a) program as indefinite quantity type requirements with guaranteed minimum amounts below the applicable 8(a) competitive threshold in order that such contracts could be procured on a sole source basis, even though the procurement would very likely exceed the applicable competitive threshold during the performance of the contract. SBA believes that requirements that traditionally were procured through other contract types were being offered and accepted into the 8(a) program as indefinite quantity requirements solely to take advantage of the guaranteed minimum rule and avoid the necessity for competition. In order to eliminate this potential abuse, SBA proposed to amend its regulation to specify that the competitive threshold requirements which would be applied for *all* types of contracts, including quantity/delivery contracts, would be the Government estimate of the requirement, including options, as identified by the procuring agency.

SBA received 96 comments regarding this proposal. Most of the comments

objected to the proposed change. Many comments suggested that the change would result in a decline in the number of requirements being offered to the 8(a) program, and that this would increase costs to Program Participants as they would have to compete for requirements outside the confines of the 8(a) program that were previously accepted as sole source 8(a) awards.

Many of the individual comments that opposed the proposed change were reflected also in the comments made by the National Association of Minority Business (NAMB). NAMB opposed the change because it contended that many IDIQ contracts do not exceed the guaranteed minimum value, and that many procuring activities do not exercise options on such contracts. Accordingly, they believed that the guaranteed minimum amount is a more accurate reflection of the value of the contract than any other figure. NAMB also claimed that the expansion work under an IDIQ contract is the direct result of strong performance by the 8(a) company, and that the proposed change would, therefore, penalize 8(a) firms for good performance.

SBA's Inspector General and the Department of the Treasury submitted strong comments in support of the proposed change, citing various abuses they have found conducting periodic reviews of 8(a) contracts.

SBA shares some of the same concerns voiced by NAMB.

Clearly, not all IDIQ contracts ultimately exceed the guaranteed minimum amount. Many commenters, NAMB among them, argue that most contracts do not exceed the guaranteed minimum amount and some fall short even of that figure. Certainly, reliance on a contract's maximum authorized amount as a basis for determining the contract's value could leave small disadvantaged firms with inflated expectations and adversely affect their business development under the 8(a) program. It is for these same reasons that SBA initially adopted the separate competitive threshold requirement for IDIQ requirements.

SBA now believes, however, that the frequency of abuses to the 8(a) procurement process caused by the inappropriate use of IDIQ contracts outweighs the possible disruption to business planning caused when a guaranteed minimum amount is not exceeded. Because of the overriding need for controlling the potential for abuse in this area, SBA adopts the proposed language in this final rule, although the formatting of the section is changed for clarity from the proposed rule.

In addition, as pointed out in the NAMB analysis, SBA believes that a majority of IDIQ contracts, even when measured by the Government estimate, do not exceed the applicable competitive threshold amount. Because most IDIQ contracts will not exceed the competitive threshold, the change made in this final rule should not greatly affect the number of requirements offered to the 8(a) program.

Other commenters felt that no change was needed to the IDIQ requirement because the newly enacted Government-wide Small Disadvantaged Business (SDB) program will consolidate competitive requirements and will result in the entry of fewer firms into the 8(a) program. However, SBA does not believe that the enactment of a Government-wide SDB program lessens SBA's responsibility to deal with the inappropriate use of 8(a) IDIQ contracts.

Because of the change concerning IDIQ requirements, one commenter was concerned that procuring agencies would circumvent the competitive threshold requirement, and, thus, perpetuate past abuses of the program, by dividing one contract that exceeds the threshold amount into several smaller contracts, each below the competitive threshold amount and all to be awarded as sole source 8(a) contracts to the same Program Participant. SBA agrees that such a division would not be appropriate where a procuring agency seeks to award one large requirement to one 8(a) concern through a series of smaller sole source 8(a) awards. SBA has made a change to the regulation to take this concern into account. Specifically, the new provision will state that an 8(a) requirement with an estimated value exceeding the applicable competitive threshold amount shall not be divided into several requirements for lessor amounts in order to use 8(a) sole source procedures for award to a single contractor. SBA does not, however, believe that it would be inappropriate for a procuring agency to divide a large contract into smaller sole source contracts where different Program Participants would be awarded the smaller contracts. Such an action would be consistent with the developmental purposes of the 8(a) program and with the statutory requirement that SBA equitably distribute 8(a) awards.

Under the prior rule, contracting agencies were obligated to let contracts competitively among 8(a) concerns if the estimated value of the contract was more than $5 million for manufacturing work or more than $3 million for all other types of work. Where the anticipated price of the contracts was less than this threshold, the contracting agency was permitted to use a sole source even when the negotiated contract amount exceeded the threshold. A requirement of good faith on the part of the contracting agencies was implicit in the prior rule. The new rule makes the good faith requirement explicit, and requires that the ultimate price arrived at through negotiations not be significantly higher than the competitive threshold amount.

Economic Disadvantage Threshold for Individuals Who Are Principals or Owners of Concerns in the Developmental Stage

This rule also amends § 124.111(a)(2) to establish a $750,000 net worth economic disadvantage threshold for Program Participants in either the development or transitional stage. Previously, concerns in the developmental stage were subject to possible termination or graduation from the program if their principals had an includable net worth in excess of $500,000. This rule operated to penalize success in the program and to discourage entrepreneurship and risk-taking. Under the amended rules, concerns in the developmental stage have the same threshold as concerns in the transitional stage. SBA received no objections to this proposed elimination of a different net worth figure for firms in the developmental stage of program participation.

Streamlining Termination and Graduation

Sections 124.208(c) and 124.209(b) streamline the procedures governing graduation and termination of 8(a) Program Participants respectively. This rule eliminates the second letter of notification and the second 45 day response period provided in § 124.208(c) and § 124.209(b). SBA received no objections to this amendment, which will improve SBA's efficiency by eliminating an unneeded procedural step.

Making it Easier To Add SIC Codes to a Concern's Business Plan

Section 124.302 eases the restrictions on adding SIC codes once a concern is admitted to the 8(a) program, and shortens the time it takes SBA to respond to a request for a change in SIC code designations from 45 days to 30 days. Henceforth, a concern need not show that the new SIC Codes will be a logical extension of the old ones; just that there is a sound business reason for them. These amendments will make it easier for 8(a) concerns to maintain a diversified portfolio of products and

services. No comments were received regarding these provisions, and they remain unchanged in the final rule.

Easing Ownership Restrictions on Former Program Participants

Section 124.103 is amended to permit a former Program Participant (except those that have been terminated from 8(a) program participation pursuant to § 124.209) to have an equity ownership interest of up to 20 percent in a current 8(a) concern in the same or similar line of business. SBA believes that allowing such ownership, and thus easing the previous restriction imposed by SBA, will enhance the development of both current and former 8(a) Participants. SBA received forty-four comments in support of this provision. Two commenters, however, were concerned that this change would permit current 8(a) concerns to become ''fronts'' for former 8(a) concerns, and, thus, prolong their participation, albeit indirect, in the 8(a) program. SBA believes that there are enough safeguards in place to protect against abuse of this sort. The regulations require that management and control be in the hands of the disadvantaged owners of current 8(a) concerns. Failure to meet this requirement, which is confirmed yearly during the annual review process, is grounds for termination from the 8(a) program under § 124.209 and may cause termination of previously awarded 8(a) contracts under § 124.317. In addition, § 124.314 requires the current 8(a) concern itself (and not a subsidiary of or another concern affiliated with the 8(a) concern) to perform specified percentages of awarded 8(a) contracts. Thus, a current 8(a) participant could not shift performance of an 8(a) contract to the former 8(a) concern partial owner. Finally, one commenter recommended that SBA increase the allowable equity ownership interest by a former Program Participant to 35%. SBA believes that such an increase could give former Program Participants undue influence in current 8(a) Participants, and, thus, rejects it.

Streamlining Regulations by Removing References to Expired Authority

The final rule repeals § 124.304, (implementing statutory authority given SBA to grant Program Participants in the developmental stage of program participation a maximum of two exemptions to the requirements of the Walsh-Healey Act). It also repeals § 124.305 (implementing statutory authority given SBA to grant Program Participants exemptions from Miller Act bonding requirements). The rule reserves these sections. The former legislative authority expired on October 1, 1992, and the latter on October 1, 1994.

Establishing Joint Venture Rules for Small Disadvantaged Businesses

The final rule institutes criteria for joint ventures for small disadvantaged business (SDB) set-asides and for SDB evaluation preferences. The majority of such joint venture's earnings must accrue to the socially and economically disadvantaged individuals in the small disadvantaged business, and disadvantaged individuals must own at least 51% of the joint venture as a whole. Thus, as the examples make explicit, where a small disadvantaged concern which is 51% owned by one or more disadvantaged individuals enters a joint venture with a small concern which is 100% owned by nondisadvantaged individuals, the joint venture is not eligible even if the small disadvantaged concern earns 90% of the contract's proceeds, since 51% of 90% is only 45.9%.

SBA received seven comments pertaining to the section. For the most part, the commenters concurred with the provisions proposed by SBA. However, some commenters urged more restrictive provisions to protect against the possibility that a small disadvantaged business will ''front'' for a nondisadvantaged business. SBA has concluded that the present language, which requires that both a majority of the joint venture's proceeds and 51% of its ownership accrue directly to disadvantaged individuals, is sufficient protection against abuse.

Eliminating Quarterly Reporting Requirements

Section 124.501 adds a new paragraph (c) and redesignates current paragraph (c) as paragraph (d). The newly established § 124.501(c) requires the submission of annual audited financial statements only by larger 8(a) Program Participants, those with revenues in excess of $5 million. The requirement to submit such financial statements is not a change in SBA policy. The requirement for financial statements is currently contained in §§ 124.312 (b)(7) and (c)(10) (which have elsewhere been redesignated as paragraphs (b)(4) and (c)(7) in this final rule), and failure to comply with it is referenced as a basis for finding good cause to terminate a Program Participant in § 124.209(a)(6)(i). An earlier SBA Notice had established guidelines regarding these reporting requirements.

A majority of the comments concerning this provision of the proposed rule opposed it because of cost. Taking into account this concern, SBA has determined that it should reduce the overall reporting requirements imposed by SBA on Program Participants. Accordingly, this rule eliminates the quarterly reporting requirements previously imposed by §§ 124.312 (b)(7) and (c)(10), and the reference to a failure to submit quarterly financial statements as a basis for termination contained in § 124.209. This will lessen the paperwork burden imposed on Program Participants, and is consistent with the Agency's initiative to streamline the operation of the 8(a) program.

SBA is particularly sensitive to imposing administrative burdens on 8(a) participants. The rule as proposed was designed to make compliance as inexpensive as possible. Only Program Participants with annual gross income of $5 million or more need submit audited financial statements prepared by a licensed independent public accountant. Program Participants with a gross annual income of at least $1 million and less than $5 million need only submit reviewed financial statements prepared by a licensed independent public accountant. Program Participants with annual gross revenues of less than $1 million need merely submit an annual statement prepared by a licensed independent public accountant. The actual cost of this last type of report is negligible, and in many cases is prepared as part of tax preparation. In addition, the regulation authorizes the District Director to waive the requirement for an audited financial statement for the first year a concern is required to submit one, and authorizes the Associate Administrator for Minority Enterprise Development to waive the requirement in subsequent years. One of the grounds for waiver can be financial hardship. SBA believes that the benefits to program integrity which will result from clear and accurate financial accounting requirements is significant, and that the elimination of quarterly financial statements will reduce the overall administrative burden placed on 8(a) concerns.

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this rule does not have a significant economic impact on a substantial number of small entities within the meaning of Executive Order 12866 or the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. This rule is necessary to resolve several points regarding eligibility for SBA's Section

8(a) program, eliminate certain regulatory restrictions imposed on the amount of 8(a) contract dollars and the type of 8(a) contracts received by a given 8(a) Program Participant, and to ensure that the statutory requirement governing which 8(a) requirements must be competed among eligible 8(a) Program Participants not be circumvented. Whether a particular 8(a) concern is eligible for participation in, or once in, whether it, as opposed to another 8(a) concern, would be awarded a particular 8(a) contract can be affected by the rule.

As discussed above in the supplementary information, several commenters were concerned that the change in this rule relating to the application of the competitive threshold requirement in the IDIQ context would cause a reduction in the number of procurement requirements offered to the 8(a) program. SBA does not believe that any such possible reduction will be significant. In addition, also as discussed above, SBA believes that the potential for abuse that a failure to change the regulation would perpetuate outweighs any loss of contract dollars to the program. Therefore, it is not likely to have an annual economic effect of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this rule contains no new reporting or record keeping requirements. In fact, it eliminates a prior requirement imposed on Program Participants to submit quarterly financial statements to SBA.

For purposes of Executive Order 12612, SBA certifies that this rule has no federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

List of Subjects

13 CFR Part 121

Government procurement; Government property; Grant programs—business; Loan programs—business; Small businesses.

13 CFR Part 124

Government procurement; Hawaiian natives; Minority businesses; Reporting and recordkeeping requirements; Technical assistance; Tribally-owned concerns.

For the reasons set forth above, SBA hereby amends part 121 of title 13, Code of Federal Regulations, and subpart A, part 124 of title 13, Code of Federal Regulations (CFR), as follows:

PART 121—[AMENDED]

1. The authority citation for 13 CFR part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a) and 644(c); and Pub. L. 102–486, 106 Stat. 2776, 3133.

2. Section 121.401(b) is revised to read as follows:

§ 121.401 Affiliation.

* * * * *

(b) *Exclusion from affiliation coverage.* (1) Portfolio or client concerns owned in whole or substantial part by investment companies licensed, or development companies qualifying, under the Small Business Investment Act of 1958, as amended, or by Investment Companies registered under the Investment Company Act of 1940, as amended, are not considered affiliates of such investment companies or development companies.

(2) Business concerns owned and controlled by Indian Tribes, Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601, *et seq.*), or Native Hawaiian Organizations are not considered affiliates of such tribes, Alaska Regional or Village Corporations, or Native Hawaiian Organizations, or with other concerns owned by these entities solely because of their common ownership. However, affiliation with other concerns owned by these entities may be caused by circumstances other than common ownership under this section.

(3) Business concerns owned and controlled by a Community Development Corporation (CDC) authorized by 42 U.S.C. 9805 *et seq.* are not considered affiliates of such CDC or with other concerns owned by the CDC solely because of their common ownership. However, affiliation with other concerns owned by a CDC may be caused by circumstances other than common ownership under this section.

* * * * *

PART 124—[AMENDED]

Subpart A—Minority Small Business and Capital Ownership Development

3. The authority citation for part 124 is revised to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(j), 637(a), and 637(d), Pub. L. 99–661, sec. 1207, Pub. L. 100–656, Pub. L. 101–37, Pub. L. 101–574, and 42 U.S.C. 9815.

§ 124.7 [Amended]

4. Section 124.7(b) is amended by removing paragraph (b)(1) and by redesignating paragraph (b)(2) as paragraph (b).

5. Section 124.100 is amended by removing the terms ''Local buy item'' and ''National buy item'', and adding, in alphabetical order, the following new definitions of the terms ''Community Development Corporation or CDC'', and ''CDC-owned concern'':

§ 124.100 Definitions.

* * * * *

CDC-owned concern means any concern at least 51 percent owned by a Community Development Corporation as defined in this section.

* * * * *

Community Development Corporation or CDC means a nonprofit organization responsible to residents of the area it serves which has received financial assistance under 42 U.S.C. 9805 *et seq.*

* * * * *

6. Section 124.101 is amended by adding the following new sentence after the third sentence in paragraph (a), and by revising the first sentence in paragraph (b) to read as follows:

§ 124.101 The 8(a) program: General eligibility.

(a) * * * An applicant concern owned and controlled by a Community Development Corporation must meet the requirements set forth in § 124.114 and in §§ 124.102 through 124.109, as applicable. * * *

(b) In order to continue its participation in the 8(a) program, a Program Participant must continue to meet all eligibility requirements described in §§ 124.102 through 124.109, § 124.111(a), and § 124.112, § 124.113 or § 124.114, if applicable. * * *

* * * * *

7. Section 124.102(a) is revised to read as follows:

§ 124.102 Small business concern.

(a) In order to be approved for participation in the 8(a) program, an applicant concern must qualify as a small business concern as defined in part 121 of this title. The particular size standard to be applied will be based on the primary industry classification of the applicant concern. The size of a tribally-owned concern, a concern owned by a Native Hawaiian Organization, or a concern owned by a Community Development Corporation shall be additionally determined by reference to § 124.122, § 124.113 or § 124.114, respectively.

* * * * *

8. Section 124.103 is amended by revising the introductory text and the first sentence of paragraph (h) to read as follows:

§ 124.103 Ownership requirements.

Except for concerns owned by Indian tribes, Alaska Native Corporations, Native Hawaiian Organizations, or Community Development Corporations, as defined in § 124.110, in order to be eligible to participate in the 8(a) program, an applicant concern must be at least 51 percent unconditionally owned by an individual(s) who is a citizen of the United States (specifically excluding permanent resident alien(s)) and who is determined by SBA to be socially and economically disadvantaged. Special ownership requirements for concerns owned by Indian tribes and Alaska Native Corporations are set forth in § 124.112. Ownership requirements for Native Hawaiian Organizations are set forth in § 124.113. Ownership requirements for Community Development Corporations are set forth in § 124.114.

* * * * *

(h) A non-8(a) concern in the same or similar line of business is prohibited from having an equity ownership interest in an 8(a) concern which exceeds 10 percent, except that a former Program Participant (except those that have been terminated from 8(a) program participation pursuant to § 124.209) may have an equity ownership interest of up to 20 percent in a current 8(a) concern in the same or similar line of business. * * *

* * * * *

9. Section 124.104 is amended by revising the introductory text to read as follows:

§ 124.104 Control and management.

Except for concerns owned by Indian tribes, Alaska Native Corporations (ANCs), Native Hawaiian Organizations, or Community Development Corporations (CDCs), as defined in § 124.100, an applicant concern's management and daily business operations must be conducted by one or more owners of the applicant concern who have been determined to be socially and economically disadvantaged. (See § 124.112 for the requirements for tribally-owned entities and those owned by ANCs, § 124.113 for requirements for concerns owned by Native Hawaiian Organizations, and § 124.114 for requirements for CDC-owned concerns). In order for a disadvantaged individual to be found to control the concern, that individual must have managerial or technical experience and competency directly related to the primary industry in which the applicant concern is seeking certification.

* * * * *

10. Section 124.109 is amended by revising paragraph (d) to read as follows:

§ 124.109 Ineligible businesses.

* * * * *

(d) *Non-profit organizations.* A non-profit organization does not meet the general definition of a concern as set forth in part 121 and § 124.100 of these regulations and is, therefore, ineligible for 8(a) program participation. In addition, a business entity owned by a non-profit organization is not eligible for 8(a) program participation because such a concern does not meet the requirement of being owned and controlled by disadvantaged *individuals.* Nothing in this paragraph affects the eligibility of a for-profit concern owned and controlled by an Indian tribe, including an Alaskan Native Corporation, a Native Hawaiian Organization or a Community Development Corporation (*see* §§ 124.112, 124.113 and 124.114).

* * * * *

11. Section 124.111 is amended by revising paragraph (a)(2) to read as follows:

§ 124.111 Continued 8(a) program eligibility.

(a) * * *

(2) In order for a Program Participant to maintain continued 8(a) program eligibility, the net worth of an individual claiming to be socially and economically disadvantaged cannot exceed $750,000, as calculated pursuant to § 124.106(a)(2)(i). An individual whose personal net worth exceeds $750,000, as calculated pursuant to § 124.106(a)(2)(i), will not be considered economically disadvantaged.

* * * * *

12. A new § 124.114 is added to read as follows:

§ 124.114 Concerns owned by Community Development Corporations.

(a) Concerns owned at least 51% by Community Development Corporations (CDCs), as defined in § 124.100, are eligible for participation in the 8(a) program and other federal programs requiring SBA to determine social and economic disadvantage as a condition of eligibility. Such concerns must meet all eligibility criteria set forth in §§ 124.102 through 124.109 and § 124.111(a) of this part.

(b) A concern that is at least 51% owned by a CDC shall be deemed to be controlled by such CDC and eligible for participation in the 8(a) program, provided it meets all eligibility criteria set forth or referred to in this section and its management and daily business operations are conducted by one or more individuals determined to have managerial or technical experience and competency directly related to the primary industry in which the applicant concern is seeking certification.

(c) A concern owned by a CDC must qualify as a small business concern as defined for purposes of Government procurement in part 121 of this title. The particular size standard to be applied shall be based on the primary industry classification of the applicant concern. Ownership by the CDC will not, in and of itself, cause affiliation with the CDC or with other CDC-owned entities. However, affiliation with the CDC or other CDC-owned entities may be caused by circumstances other than common CDC ownership.

(d) No CDC shall own more than one current or former 8(a) Program Participant having the same primary industry classification.

(e) SBA does not deem an individual involved in the management or daily business operations of a CDC-owned concern to have used his or her individual eligibility within the meaning of § 124.108(c).

13. Section 124.208 is amended by removing paragraph (c)(2), by redesignating paragraphs (c)(3), (c)(4), (c)(5), and (c)(6) as paragraphs (c)(2), (c)(3), (c)(4), and (c)(5), and by revising the first sentence in newly redesignated paragraph (c)(2) to read as follows:

§ 124.208 Program graduation.

* * * * *

(c) * * *

(2) *Recommendation of the Division.* Following the 45 day response period, the Division Director will consider the facts of the proposed graduation, including all information submitted by the Participant. * * *

* * * * *

14. Section 124.209 is amended by removing paragraph (b)(2), by redesignating paragraphs (b)(3), (b)(4), (b)(5) and (b)(6) as paragraphs (b)(2), (b)(3), (b)(4) and (b)(5), by revising the first sentence of paragraph (a)(6)(i) and newly redesignated paragraph (b)(2), and by adding the following new sentence to the end of newly redesignated paragraph (b)(3) to read as follows:

§ 124.209 Program termination

(a) *General.* * * *

(6) * * *

(i) Failure by the concern to provide required financial statements to SBA

pursuant to §§ 124.312 (b)(4), 124.312(c)(7), and 124.501(c). * * *

* * * * *

(b) * * *

(2) *Recommendation of the Division.* Following the 45-day response period, the Division Director will have 15 days to consider the facts of the proposed termination, including all information submitted by the Participant. The Division Director may, if he/she deems it necessary, request additional information from the Participant. If the grounds for the proposed termination continue to exist, the Division Director shall recommend in writing to the AA/MSB&COD that the Participant be terminated.

(3) *Decision of the AA/MSB&COD.* * * * Unless appealed to OHA, the decision of the AA/MSB&COD to terminate a Program Participant shall be effective 45 days after its issuance.

* * * * *

15. Section 124.302 is amended by revising paragraph (c)(1)(i)(A) and (c)(2) to read as follows:

§ 124.302 Review and modification of business plan.

* * * * *

(c) *Changes in SIC code designations.* * * *

(1) * * *

(i)(A) A sound business explanation exists for obtaining the requested SIC code, including, for example, the acquisition of the capability to perform contracts in an industry, even if unrelated to the 8(a) concern's primary SIC code;

* * * * *

(2) SBA will make a decision on such request within 30 days from the date it receives the request.

* * * * *

§ 124.303 [Amended]

16. Section 124.303 is amended by removing paragraphs (c)(3) and (c)(4), and by redesignating paragraphs (c) (5) through (7) of paragraph (c) as paragraphs (c)(3) through (c)(5).

17. Section 124.303 is further amended by changing the reference in paragraph (d)(1) to ''paragraphs (c)(1), (c)(2), (c)(6) and (c)(7) of this section'' to a reference to ''paragraphs (c)(1), (c)(2), (c)(4) and (c)(5) of this section.''

§ 124.304 [Removed and Reserved]

18. Section 124.304 is removed and reserved.

§ 124.305 [Removed and Reserved]

19. Section 124.305 is removed and reserved.

20. Section 124.307 is amended by redesignating paragraphs (d) and (e) as paragraphs (e) and (f), and by adding the following new paragraph (d):

§ 124.307 Contractual assistance.

* * * * *

(d) While a Program Participant's projected level of 8(a) contract support is required as part of its business plan under § 124.302(b) as a planning and development tool, the level approved by SBA will not prevent contract awards above that level so long as SBA determines the concern to be competent and responsible to perform any such contracts and the Participant is in compliance with any applicable competitive business mix requirement, or approved remedial plan, imposed by § 124.312.

* * * * *

21. Section 124.308 is amended by revising paragraph (d), the first sentence of paragraph (f)(1), and paragraph (f)(2), to read as follows:

§ 124.308 Procedures for obtaining and accepting procurements for the 8(a) program.

* * * * *

(d) *Acceptance of the requirement.* Upon receipt of the procuring agency's offer of a procurement requirement, SBA will determine whether it will accept the requirement for the 8(a) program. SBA's decision whether to accept the requirement will be transmitted to the procuring agency in writing within 15 working days of receipt of the written offering letter, unless SBA requests, and the procuring agency grants, an extension. SBA is not required to accept any particular procurement offered to the 8(a) program.

(1) Where SBA decides to accept an offering of a sole source 8(a) procurement, SBA will accept the offer both on behalf of the program and in support of the approved business plan of a specific 8(a) Program Participant.

(2) Where SBA decides to accept an offering of a competitive 8(a) procurement, SBA will accept the offer for the 8(a) program generally.

(3) Except for requirements assigned a construction SIC code by the procuring agency contracting officer, all competitive 8(a) requirements accepted by SBA may be competed among all eligible 8(a) Program Participants nationally. The only geographic restrictions pertaining to 8(a) competitive requirements, other than those for construction requirements, would be those imposed by the solicitations themselves.

* * * * *

(f) *Open requirements.* * * *

(1) If the procurement is a construction requirement, SBA will examine the portfolio of 8(a) concerns for the SBA district office where the work is to be performed for selection of a qualified 8(a) concern. * * *

(2) If the procurement is anything other than a construction requirement, SBA may select any eligible, responsible Program Participant nationally to perform the contract.

* * * * *

§ 124.308 [Amended]

22. Section 124.308 is further amended by removing the words ''approved 8(a) business support level or the'' contained in paragraph (e)(1)(iii).

23. Section 124.311 is amended by revising paragraph (a)(2), by removing paragraph (b), by redesignating paragraphs (c), (d), (e), (f), (g), (h), and (i) as paragraphs (b), (c), (d), (e), (f), (g), and (h), respectively, by adding a sentence to the end of newly redesignated paragraph (d) introductory text, by removing newly redesignated (d)(1) and (d)(2), and by revising newly redesignated paragraphs (g)(3) and (g)(4), to read as follows:

§ 124.311 8(a) competition.

(a) * * *

(2) The anticipated award price of the contract, including options, will exceed $5,000,000 for contracts assigned manufacturing Standard Industrial Classification (SIC) codes and $3,000,000 for all other contracts.

(i) For *all* types of contracts, the applicable competitive threshold amounts will be applied to the procuring agency estimate of the total value of the contract, including all options.

(ii) Where a procuring agency good faith estimate of the total value of a proposed 8(a) contract is less than the applicable competitive threshold amount and the requirement is accepted as a sole source requirement on that basis, award may be made even though the ultimate price arrived at through negotiations exceeds the competitive threshold, provided that the ultimate price is not significantly greater than the competitive threshold amount.

Example. If the anticipated award price for a professional services requirement is determined to be $2.7 million and it is accepted as a sole source 8(a) requirement on that basis, a sole source award will be valid even if the contract price arrived at after negotiation is $3.1 million.

(iii) A proposed 8(a) requirement with an estimated value exceeding the applicable competitive threshold amount shall not be divided into several requirements for lesser amounts in order

to use 8(a) sole source procedures for award to a single contractor.

* * * * *

(d) *Sole source above thresholds.* * * * SBA will accept a contract opportunity above the applicable competitive threshold as a sole source 8(a) requirement only if there are not two eligible offerors in the United States capable of performing the requirement at a fair price.

* * * * *

(g) *Restricted Competition.* * * *

(3) *Construction competitions.* Where a construction requirement offered to the 8(a) program exceeds the $3 million competitive threshold, SBA will determine, based on its knowledge of the 8(a) portfolio, whether the competition should be limited only to those Program Participants located within the geographical boundaries of one or more SBA district offices, an entire SBA regional office, or adjacent SBA regional offices. Only those Participants located within the appropriate geographical boundaries are eligible to submit offers.

(4) *Competition for all non-construction requirements.* Except for construction requirements, all eligible Program Participants nationally may submit offers in response to any solicitation for a competitive 8(a) procurement requirement.

* * * * *

24. Section 124.311 is further amended by removing the Example following newly redesignated paragraph (e)(4)(iii), by adding the word ''and'' after the semi-colon ('';'') in newly redesignated paragraph (e)(5)(iii), by removing newly redesignated paragraph (e)(5)(iv) in its entirety, by redesignating paragraph (e)(5)(v) as paragraph (e)(5)(iv), and by revising newly redesignated paragraph (e)(5)(iv) to read as follows:

§ 124.311 8(a) competition.

* * * * *

(e) * * *

(5) * * *

(iv) If the firm is in the transitional stage of program participation, whether it has achieved its competitive business mix targets under § 124.312, or is in compliance with a remedial plan that does not include the denial of future 8(a) contracts.

* * * * *

§ 124.311 [Amended]

25. Section 124.311 is further amended by revising the reference in newly redesignated paragraph (e)(7) to ''paragraph (f)(5) of this section'' to a reference to ''paragraph (e)(5) of this section.''

26. Section 124.312 is amended by removing paragraphs (b)(4), (b)(5), and (b)(6), by redesignating paragraph (b)(7) as paragraph (b)(4), and by revising the first sentence of newly redesignated paragraph (b)(4) to read as follows:

§ 124.312 Competitive business mix.

* * * * *

(b) * * *

(4) *Reporting and verification of business activity.* Once admitted to the 8(a) program, a Program Participant must provide annual financial statements to SBA in accord with § 124.501(c). * * *

27. Section 124.312 is further amended by removing paragraphs (c)(2), (c)(3), and (c)(9), by redesignating paragraphs (c)(4), (c)(5), (c)(6), (c)(7), (c)(8), (c)(10), (c)(11), and (c)(12) as paragraphs (c)(2), (c)(3), (c)(4), (c)(5), (c)(6), (c)(7), (c)(8), and (c)(9), respectively, by revising the reference to ''paragraphs (c)(4) and (c)(5)'' in the last sentence of newly redesignated paragraph (c)(7) to a reference to ''paragraphs (c)(2) and (c)(3)'', and by revising the first sentence of newly redesignated paragraph (c)(7) to read as follows:

§ 124.312 Competitive business mix.

* * * * *

(c) * * *

(7) Reporting and verification of business activity. Program Participants during the transitional stage shall provide annual financial statements to SBA with a breakdown of 8(a) and non-8(a) revenue in accord with § 124.501(c). * * *

* * * * *

§ 124.312 [Amended]

28. Section 124.312 is further amended by changing the reference in paragraph (c)(1) to ''paragraph (c)(4) of this section'' to a reference to ''paragraph (c)(2) of this section'' and by changing the reference in the same paragraph to ''paragraph (c)(5) of this section'' to a reference to ''paragraph (c)(3) of this section''.

29. Section 124.312 is further amended by changing the reference in newly designated paragraph (c)(8) to ''paragraph (c)(12) of this section'' to a reference to ''paragraph (c)(9) of this section''.

30. Section 134.312 is further amended by changing the reference in newly designated paragraph (c)(9) to ''paragraphs (c)(4) and (c)(5) of this section'' to a reference to ''paragraphs (c)(2) and (c)(3) of this section''.

31. Section 124.321 is amended by adding a new paragraph (i) to read as follows:

§ 124.321 Joint venture agreements.

* * * * *

(i) *Joint ventures for Small Disadvantaged Business Set-Asides and Small Disadvantaged Business Evaluation Preferences.* Joint ventures are permitted for Small Disadvantaged Business (SDB) set-asides and SDB evaluation preferences, provided that the requirements set forth in this paragraph are met.

(1) For purposes of this paragraph, the term joint venture has the same meaning as that set forth in § 121.401(l) of this chapter. Two or more concerns that form an ongoing relationship to conduct business would not be considered ''joint venturers'' within the meaning of this paragraph, and would also not be eligible as an entity owned and controlled by one or more socially and economically disadvantaged individuals.

(2) A concern that is owned and controlled by one or more socially and economically disadvantaged individuals entering into a joint venture agreement with one or more other business concerns is considered to be affiliated for size purposes with such other concern(s). The combined annual receipts or employees of the concerns entering into the joint venture must meet the applicable size standard corresponding to the SIC code designated for the contract.

(3) The majority of the venture's earnings must accrue directly to the socially and economically disadvantaged individuals in the SDB concern(s) in the joint venture.

(4) The percentage ownership involvement in a joint venture by disadvantaged individuals must be at least 51 percent.

Example 1. Small business concern A is 100% owned by disadvantaged individuals. Small business concern B is 100% owned by nondisadvantaged individuals. The percentage involvement by concern A in a joint venture between A and B must be at least 51%.

Example 2. Small business concern C is 51% owned by disadvantaged individuals. Small business concern D is 100% owned by nondisadvantaged individuals. Any joint venture between C and D would be ineligible because the amount of ownership involvement in such a joint venture by disadvantaged individuals would be less than 51%. Even a 90% involvement by concern C in a joint venture with D would mean an overall ownership involvement by disadvantaged individuals of only 45.9% (51% of 90), and an overall ownership involvement by nondisadvantaged individuals of 54.1% (10+(49% of 90)).

32. Section 124.501 is amended by redesignating paragraph (c) as paragraph

(d) and by adding the following new paragraph (c):

§ 124.501 Miscellaneous reporting requirements.

* * * * *

(c) *Submission of financial statements.* (1) Program Participants with actual gross annual receipts of $5,000,000 or more must submit to SBA audited annual financial statements prepared by a licensed independent public accountant (as defined in part 107, appendix I, paragraph II. B) within 120 days after the close of the concern's fiscal year.

(i) Upon request by the Program Participant, SBA may waive the requirement for audited financial statements. Waivers under this paragraph may be granted by the appropriate District Director only for the first year that audited financial statements are required. Beyond such first year, only the AA/MSB&COD may waive this requirement for good cause shown by the Program Participant.

(ii) Circumstances where waivers of audited financial statements may be granted include, but are not limited to, the following:

(A) The concern has an unexpected increase in sales towards the end of its fiscal year that creates an unforeseen requirement for audited statements;

(B) The concern unexpectedly experiences severe financial difficulties which would make the cost of audited financial statements a particular burden; and

(C) The concern has been an 8(a) Program Participant less than 12 months.

(2) Program Participants with actual gross annual receipts of $1,000,000 to $4,999,999 shall submit to SBA reviewed annual financial statements prepared by a licensed independent public accountant (as defined in part 107, appendix I, paragraph II. B) within 90 days after the close of the concern's fiscal year.

(3) Program Participants with actual gross annual receipts of less than $1,000,000 shall submit to SBA an annual statement prepared in-house or a compilation statement prepared by a licensed independent public accountant (as defined in part 107, appendix I, paragraph II. B), verified as to accuracy by an authorized officer, partner, or sole proprietor of the 8(a) concern, by signature and date, within 90 days after the close of the concern's fiscal year.

(4) Any audited financial statements submitted to SBA pursuant to § 124.501(c) shall be prepared in accordance with Generally Accepted Accounting Principles and reflect the independent public accountant's opinion.

(5) While financial statements need not be submitted until 90 or 120 days after the close of an 8(a) concern's fiscal year, depending on the receipts of the concern, a concern seeking to be awarded an 8(a) contract between the close of its fiscal year and such 90 or 120-day time period must submit a final sales report signed by the CEO or President to SBA in order for SBA to determine/verify the concern's size and its compliance with competitive business mix targets. This report must show a breakdown of 8(a) and non-8(a) sales.

(6) Notwithstanding a concern's gross annual receipts, audited or reviewed annual and/or quarterly statements may be required whenever SBA determines it is necessary to obtain a more thorough verification of a concern's assets, liabilities, income and/or expenses, or to determine the concern's capacity to perform a specific 8(a) contract.

* * * * *

Dated: April 5, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–13722 Filed 6–6–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–CE–25–AD; Amendment 39–9248; AD 95–11-15]

Airworthiness Directives; Alexander Schleicher GmbH & Co. Model ASK 21 Gliders

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Alexander Schleicher GmbH & Co. (Alexander Schleicher) Model ASK 21 gliders. The required action requires replacing the parallel rocker with a part of improved design, and incorporating flight manual revisions. Two incidents of the parallel rocker breaking at the elevator connection on the affected gliders prompted this action. The actions specified by this AD are intended to prevent possible loss of elevator control that could result from a broken parallel rocker.

DATES: Effective July 14, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 14, 1995.

ADDRESSES: Service information that applies to this AD may be obtained from Alexander Schleicher GmbH & Company, D–36163, Popppenhausen-Wasserkuppe, Germany; or Eastern Sailplane, Heath Stage Route, Shelburne Falls, Massachusetts 01370; telephone (413) 625–6059. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Herman Belderok, Project Officer, Gliders, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426-6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Alexander Schleicher Model ASK 21 gliders was published in the **Federal Register** on January 18, 1995 (60 FR 3579). The action proposed to require replacing the parallel rocker at the automatic elevator connection with a part of improved design, and incorporating flight manual revisions. Accomplishment of the proposed action would be in accordance with Alexander Schleicher ASK 21 Technical Note No. 22, dated November 26, 1990.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

The compliance time of this AD is in calendar time instead of hours time-in-service (TIS). The average monthly usage of the affected gliders ranges throughout the fleet. For example, one owner may operate the glider 25 hours TIS in one week, while another operator may operate the glider 25 hours in one year. For this reason, the FAA has

determined that, in order to ensure that all of the affected gliders have parallel rockers of improved design installed, a calendar compliance time is used.

The FAA estimates that 35 gliders in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per glider to accomplish the required action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $45 per glider. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,675. This figure is based upon the assumption that no affected glider owner/operator has accomplished the required replacement.

Alexander Schleicher has informed the FAA that improved design parallel rockers have been distributed for all 35 affected gliders. Assuming that each of these parts is installed on one of the affected gliders, the required action will not impose any cost impact upon U.S. operators.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new AD to read as follows:

95–11–15 Alexander Schleicher: Amendment 39–9248; Docket No. 91–CE–25–AD.

Applicability: Model ASK 21 gliders (all serial numbers), certificated in any category.

Note 1: This AD applies to each glider identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For gliders that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (g) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any glider from the applicability of this AD.

Compliance: Required within the next 30 calendar days after the effective date of this AD, unless already accomplished.

To prevent possible loss of elevator control that could result from a broken parallel rocker, accomplish the following:

(a) Replace the parallel rocker with an improved and stronger part (part number 99.000.4940 with modification status 1) in accordance with the instructions in Alexander Schleicher ASK 21 Technical Note No. 22, dated November 26, 1991.

(b) Incorporate the flight manual revisions included with the technical note referenced above.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the glider to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) The replacement required by this AD shall be done in accordance with Alexander Schleicher ASK 21 Technical Note No. 22, dated November 26, 1990. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Alexander Schleicher GmbH & Company, D–36163, Popppenhausen-Wasserkuppe, Germany; or Eastern Sailplane, Heath Stage Route, Shelburne Falls, Massachusetts 01370. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment (39–9248) becomes effective on July 14, 1995.

Issued in Kansas City, Missouri, on May 22, 1995.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–12948 Filed 6–6–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 92–CE–13–AD; Amendment 39–9256; AD 95–12–06]

Airworthiness Directives; Jetstream Aircraft Limited (formerly British Aerospace, Regional Aircraft Limited) Jetstream Models 3101 and 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Jetstream Aircraft Limited (JAL) Jetstream Models 3101 and 3201 airplanes. The action requires modifying the shear fitting at the top of each escape hatch. A report of interference between the shear fitting on an escape hatch and a ceiling panel found while removing the escape hatch on one of the affected airplanes prompted this AD. The actions specified by this AD are intended to prevent the inability to utilize an escape hatch during an emergency situation because of interference.

DATES: Effective July 24, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 24, 1995.

ADDRESSES: Service information that applies to this AD may be obtained from Jetstream Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; telephone

(44–292) 79888; facsimile (44–292) 79703; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029; telephone (703) 406–1161; facsimile (703) 406–1469. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond A. Stoer, Program Officer, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; telephone (322) 513.3830; facsimile (322) 230.6899; or Mr. Sam Lovell, Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6934; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain JAL Models 3101 and 3201 airplanes was published in the **Federal Register** on February 10, 1995 (60 FR 7921). The action proposed to require modifying the shear fitting at the top of each escape hatch. Accomplishment of the proposed action would be in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream Service Bulletin 52–JM 7752, dated December 17, 1991.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

The FAA estimates that 120 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 3 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $60 an hour. Rework of existing parts costs approximately $165 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $41,400. This figure is based on the assumption that no affected owner/operator has accomplished the required modification. The FAA has no way of determining how many airplanes have incorporated this modification (reworked the existing parts), but anticipates that numerous operators have already reworked the existing parts. This would reduce the cost impact of this AD on U.S. operators.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

95–12–06 Jetstream Aircraft Limited: Amendment 39-9256; Docket No. 92–CE–13–AD.

Applicability: Jetstream Models 3101 and 3201 airplanes (serial numbers 757 through 912), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent occupant injury during an emergency situation because of the inability to remove an escape hatch, accomplish the following:

(a) For both Models 3101 and 3201 airplanes, modify the shear fitting at the top of the right-hand escape hatch in accordance with PART A of the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream Service Bulletin (SB) 52–JM 7752, dated December 17, 1991.

(b) For Model 3201 airplanes, modify the shear fitting at the top of the left-hand escape hatch in accordance with PART B of the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream SB 52–JM 7752, dated December 17, 1991.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office (ACO), FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels ACO.

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

(e) The modification required by this AD shall be done in accordance with Jetstream

Service Bulletin 52–JM 7752, dated December 17, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment (39–9256) becomes effective on July 24, 1995.

Issued in Kansas City, Missouri, on May 26, 1995.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–13623 Filed 6–6–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–NM–241–AD; Amendment 39–9253; AD 95–12–03]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, that requires installation of reinforcement plates at certain fuselage stations. This amendment is prompted by a report indicating that cracks were found in the frame strips at certain fuselage stations on a Model F28 Mark 0100 series airplane test article due to fatigue-related stress. The actions specified by this AD are intended to prevent such fatigue-related cracking, which could result in reduced structural integrity of the fuselage pressure vessel.

DATES: Effective July 7, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 7, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes was published in the **Federal Register** on March 3, 1995 (60 FR 11944). That action proposed to require installation of reinforcement plates at left and right fuselage stations 14911 and 17011.

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

The commenter supports the proposed rule.

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

The FAA estimates that 45 airplanes of U.S. registry will be affected by this AD, that it will take approximately 160 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $3,800 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $603,000, or $13,400 per airplane.

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

95–12–03 Fokker: Amendment 39–9253. Docket 94–NM–241–AD.

Applicability: Model F28 Mark 0100 series airplanes, serial numbers 11244 through 11371 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent cracking in the frame strips at fuselage stations 14911 and 17011, which could result in reduced structural integrity of the fuselage pressure vessel, accomplish the following:

(a) Prior to the accumulation of 24,000 total flight cycles, or within 6 months after the effective date of this AD, whichever occurs

later, install reinforcement plates at left and right fuselage stations 14911 and 17011, in accordance with Fokker Service Bulletin SBF100–53–072, dated March 12, 1993.

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this 0AD can be accomplished.

(d) The installation shall be done in accordance with Fokker Service Bulletin SBF100–53–072, dated March 12, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on July 7, 1995.

Issued in Renton, Washington, on May 26, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–13502 Filed 6–6–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–CE–26–AD; Amendment 39–9249; AD 95–11–16]

Airworthiness Directives; SOCATA Groupe AEROSPATIALE TBM 700 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain SOCATA Groupe AEROSPATIALE (Socata) TBM 700 airplanes. This action requires installing pneumatic deicers on the elevator horn leading edges. Ice accumulation on one of the affected airplanes during flight testing in icing conditions prompted the required action. The actions specified by this AD are intended to prevent ice accumulation on the elevator horn, which could lead to loss of control of the airplane.

DATES: Effective July 19, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 19, 1995.

ADDRESSES: Service information that applies to this AD may be obtained from the SOCATA Groupe AEROSPATIALE, Socata Product Support, Aeroport Tarbes-Ossun-Lourdes, B P 930, 65009 Tarbes Cedex, France; telephone 62.41.74.26; facsimile 62.41.74.32; or the Product Support Manager, U.S. AEROSPATIALE, 2701 Forum Drive, Grand Prairie, Texas 75053; telephone (214) 641–3614; facsimile (214) 641–3527. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond A. Stoer, Program Officer, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; telephone (322) 513.38.30; facsimile (322) 230.68.99; or Mr. Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut Street, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6934; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Socata TBM 700 airplanes was published in the **Federal Register** on January 20, 1995 (60 FR 4117). The action proposed to require installing pneumatic deicers on the elevator horn leading edges. Accomplishment of the proposed installation would be in accordance with Socata Technical Instruction of Modification No. OPT70 K020–30, dated February 1993.

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

Socata recommends that AD action is not justified because it believes all owners/operators of the affected airplanes have installed pneumatic deicers on the elevator horn leading edges. The FAA does not concur that AD action is not justified even if all owners/operators may have already complied. AD's are issued to assure that each affected airplane is in compliance with the action, and that those airplanes continue to be in compliance. Even if all owners/operators have complied with this action, the AD will ensure that these airplanes continue to have these pneumatic deicers installed and that any airplanes added to the U.S. registry will have pneumatic deicers installed. The AD is unchanged as a result of this comment.

No comments were received on the FAA's determination of the cost to the public.

After careful review of all available information including the comment discussed above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

The FAA estimates that 20 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 25 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $60 an hour. Parts cost $3,710 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $104,200. This figure is based upon the assumption that no affected airplane/operator has accomplished the required action. Socata has informed the FAA that it believes all affected airplane owners/operators have already accomplished the required installation. With this in mind, this action will impose no cost impact upon U.S. operators.

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory

Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new AD to read as follows:

95–11–16 SOCATA Groupe AEROSPATIALE: Amendment 39–9249; Docket No. 94–CE–26–AD.

Applicability: TBM 700 airplanes, serial numbers 1 to 49, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent ice accumulation on the elevator horn, which could lead to loss of control of the airplane, accomplish the following:

(a) Install pneumatic deicers on the elevator horn leading edges in accordance with Socata Technical Instruction of Modification No. OPT70 K020–30, dated February 1993. This installation is referenced in Socata TBM Service Bulletin SB 70–020–30, dated February 1993.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office (ACO), FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels ACO.

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

(d) The installation required by this AD shall be done in accordance with Socata Technical Instruction of Modification No. OPT70 K020–30, dated February 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from SOCATA Groupe AEROSPATIALE, Socata Product Support, Aeroport Tarbes-Ossun-Lourdes, B P 930, 65009 Tarbes Cedex, France; or the Product Support Manager, U.S. AEROSPATIALE, 2701 Forum Drive, Grand Prairie, Texas 75053. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment (39–9249) becomes effective on July 19, 1995.

Issued in Kansas City, Missouri, on May 23, 1995.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–13126 Filed 6–6–95; 8:45 am]

BILLING CODE 4910–13–U

RAILROAD RETIREMENT BOARD

20 CFR Part 200

RIN 3220–AB12

General Administration

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) amends its regulations to explain when the Board will provide custom tailored information to a member of the public and to set forth the charges for such special services. In addition, the Board amends its regulations to explain when custom tailored information will be provided without charging for that service.

EFFECTIVE DATE: June 7, 1995.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Michael C. Litt, Bureau of Law, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4929, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: OMB Circular A–25 establishes Federal policy regarding fees to be assessed for special benefits. In the case of the Railroad Retirement Board those benefits would be the provision of custom tailored or non-routine information services. The regulation requires payment of the Board's actual costs, as defined in the regulation, for the provision of such services. Consistent with OMB Circular A–25, the regulation provides that if it is determined that the identity of the specific beneficiary is obscure and that provision of the information can be considered primarily as benefiting broadly the general public, then the Board may determine in a particular case not to charge for the service. However, consistent with the authority contained in section 12(d) of the Railroad Unemployment Insurance Act (which is incorporated into the Railroad Retirement Act by section 7(b)(3) of that Act), the regulation provides that charges may be assessed in any specific case. This regulation does not cover information which is required to be disclosed by statute or regulation such as information required to be disclosed under the Freedom of Information Act.

On March 2, 1995, the Board published this rule as a proposed rule (60 FR 11639), inviting comments on or before May 1, 1995. One comment was received. The commentor suggested three amendments to the proposed regulation: (1) Railroad employers should be allowed to seek custom-tailored information without charge as such services are paid by railroad employers through employer taxes which pay for the administrative expenses of the Board; (2) if fees are charged, the Board should be required to provide the estimated cost within a specified period; and (3) the limit of $1,000.00 for waiver of fees without approval of the three-member Board is too low. In response thereto: (1) The Board believes that, although the costs of administration of the agency as a whole are borne by the railroad industry, it is more equitable to shift the costs for providing information to those elements of that industry which use the service in question than to have the entire industry pay for those services indirectly through employment taxes;

(2) while the Board believes that an estimate should be provided within a reasonable period of time the Board does not believe that the regulation should contain a specific time limit in view of the wide ranging types of requests that could be made; and (3) the cap of $1,000.00 for waiver of fees without approval of the three-member Board reflects the desire of the Board itself to maintain close control over expenditures by the agency. Accordingly, the Board has not amended the text of the proposed rule.

The Board, in conjunction with the Office of Management and Budget, has determined that this is not a significant regulatory action for purposes of Executive Order 12866. Therefore, no regulatory impact analysis is required. There are no information collections associated with this rule.

List of Subjects in 20 CFR Part 200

Railroad employees, Railroad retirement, Railroad unemployment insurance.

For the reasons set out in the preamble, title 20, chapter II, part 200 of the Code of Federal Regulations is amended as follows:

PART 200—GENERAL ADMINISTRATION

1. The authority citation for part 200 continues to read as follows:

Authority: 45 U.S.C. 231f(b)(5) and 45 U.S.C. 362; § 200.4 also issued under 5 U.S.C. 552; § 200.5 also issued under 5 U.S.C. 552a; § 200.6 also issued under 5 U.S.C. 552b; and § 200.7 also issued under 31 U.S.C. 3717.

2. Section 200.4 is amended by adding paragraphs (o) and (p) to read as follows:

§ 200.4 Availability of information to public.

* * * * *

(o) *Custom tailored information services; Fees charged.* This paragraph and paragraph (p) of this section set forth the policy of the Railroad Retirement Board with respect to the assessment of a fee for providing custom tailored information where requested. Except as provided in paragraphs (o)(4)(vii) and (p) of this section, a fee shall be charged for providing custom tailored information.

(1) *Definition: Custom tailored information.* Custom tailored information is information not otherwise required to be disclosed under this part but which can be created or extracted and manipulated, reformatted, or otherwise prepared to the specifications of the requester from existing records. For example, the Board needs to program computers to provide data in a particular format or to compile selected items from records, provide statistical data, ratios, proportions, percentages, etc. If this data is not already compiled and available, the end product would be the result of custom tailored information services.

(2) *Providing custom tailored information.* The Board is not required to provide custom tailored information. It will do so only when the appropriate fees have been paid as provided in paragraph (o)(4) of this section and when the request for such information will not divert staff and equipment from the Board's primary responsibilities.

(3) *Requesting custom tailored information.* Information may be requested in person, by telephone, or by mail. Any request should reasonably describe the information wanted and may be sent to the Director of Administration, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

(4) *Fee schedule.* Requests for custom tailored information are chargeable according to the following schedule:

(i) *Manual searching for records.* Full cost of the time of the employees who perform the service, even if records cannot be found, management and supervisory costs, plus the full costs of any machine time and materials the employee uses. Consulting and other indirect costs will be assessed as appropriate.

(ii) *Photocopying or reproducing records on magnetic tapes or computer diskettes.* The charge for making photocopies of any size document shall be $.10 per copy per page. The charge for reproducing records on magnetic tapes or computer diskettes is the full cost of the operator's time plus the full cost of the machine time and the materials used.

(iii) *Use of electronic data processing equipment to obtain records.* Full cost for the service, including computer search time and computer runs and printouts, and the time of computer programmers and operators and of other employees.

(iv) *Certification or authentication.* Full cost of certification and authentication.

(v) *Providing other special services.* Full cost of the time of the employee who performs the service, management and supervisory costs, plus the full costs of any machine time and materials the employee uses. Consulting and other indirect costs will be assessed as appropriate.

(vi) *Special forwarding arrangements.* Full cost of special arrangements for forwarding material requested.

(vii) *Statutory supersession.* Where a Federal statute prohibits the assessment of a charge for a service or addresses an aspect of that charge, the statute shall take precedence over this paragraph (o).

(p) *Assessment of a fee with respect to the provision of custom tailored information where the identification of the beneficiary is obscure and where provision of the information can be seen as benefiting the public generally.* When the identification of a specific beneficiary with respect to the provision of custom tailored information is obscure, the service can be considered primarily as benefiting broadly the general public, and the estimated cost of providing the information is less than $1,000.00, the Director of Administration shall determine whether or not a fee is to be charged. In any such case where the cost is $1,000.00 or more, the request shall be referred by the Director of Administration to the three-member Board for a determination whether or not a fee is to be assessed.

Dated: May 30, 1995.

By Authority of the Board.

For the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 95–13845 Filed 6–6–95; 8:45 am]

BILLING CODE 7905–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Dexamethasone Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Phoenix Pharmaceutical, Inc. The ANADA provides for use of dexamethasone injection in cattle for the treatment of primary bovine ketosis and in dogs, cats, cattle, and horses as an anti-inflammatory agent.

EFFECTIVE DATE: June 7, 1995.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1643.

SUPPLEMENTARY INFORMATION: Phoenix Pharmaceutical, Inc., 4621 Easton Rd.,

P.O. Box 6457 Farleigh Station, St. Joseph, MO 64506–0457, has filed ANADA 200–108, which provides for intravenous or intramuscular use of Dexamethasone Solution (2 milligrams (mg) of dexamethasone per milliliter (mL)) in cattle for the treatment of primary bovine ketosis and in dogs, cats, cattle, and horses as an anti-inflammatory agent.

Phoenix Pharmaceutical, Inc.'s, ANADA 200–108 for Dexamethasone Solution (2 mg/mL) is approved as a generic copy of Schering-Plough Animal Health Corp.'s NADA 12–559 for Azium® (dexamethasone solution). The ANADA is approved as of April 13, 1995, and the regulations are amended in 21 CFR 522.540(a)(2) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen 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.

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

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 522.540 is amended by revising paragraph (a)(2) to read as follows:

§ 522.540 Dexamethasone injection.

(a) * * *

(2) *Sponsor.* See Nos. 000061 and 057319 in § 510.600(c) of this chapter.

* * * * *

Dated: May 23, 1995.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 95–13830 Filed 6–6–95; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Gentamicin Sulfate Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Sanofi Animal Health, Inc. The ANADA provides for use of gentamicin sultate injection in day-old chickens for the prevention of early mortality caused by *Escherichia coli, Salmonella typhimurium,* and *Pseudomonas aeruginosa* susceptible to gentamicin sulfate.

EFFECTIVE DATE: June 7, 1995.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1643.

SUPPLEMENTARY INFORMATION: Sanofi Animal Health, Inc., 7101 College Blvd., Overland Park, KS 66210, has filed ANADA 200–147, which provides for use of gentamicin sulfate injection in day-old chickens for the prevention of early mortality caused by *E. coli, S. typhimurium,* and *P. aeruginosa* susceptible to gentamicin sulfate.

Sanofi Animal Health, Inc.'s, ANADA 200–147 for gentamicin sulfate injection (100 milligrams of gentamicin per milliliter (mg/mL) solution) is approved as a generic copy of Schering-Plough Animal Health's NADA 101–862 for Garasol (50 and 100 mg of gentamicin/mL solution) injection. The ANADA is approved as of April 10, 1995, and the regulations are amended in § 522.1044 (21 CFR 522.1044) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In addition, the regulation failed to reflect that Schering-Plough's NADA 101–862 was approved for use of 100 mg of gentamicin/mL as well as 50 mg of gentamicin/mL injection. At this time, § 522.1044 is amended to indicate that both concentrations of the drug are approved for use in day-old chickens.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen 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.

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

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 522.1044 is amended by revising paragraphs (a) and (b)(1) and by adding new paragraph (b)(4) to read as follows:

§ 522.1044 Gentamicin sulfate injection.

(a) *Specifications.* Each milliliter of sterile aqueous solution contains gentamicin sulfate equivalent to either 5, 50, or 100 milligrams of gentamicin.

(b) *Sponsors.* (1) See No. 000061 in § 510.600(c) of this chapter for use of 5 milligrams-per-milliliter solution in swine as in paragraph (d)(4) of this section, for use of 50 milligrams-per-solution in dogs, cats, and chickens as in paragraph (d)(1) and (d)(3) of this section, for use of 100 milligrams-per-

milliliter solution in chickens as in paragraph (d)(3) of this section.

* * * * *

(4) See No. 050604 for use of 100 milligrams-per-milliliter solution in chickens as in paragraph (d)(3) of this section.

* * * * *

Dated: May 22, 1995.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 95–13828 Filed 6–6–95; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Part 1220

[Docket No. 95N–0120]

Regulations Under the Tea Importation Act; Tea Standards

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing the establishment of tea standards for the year beginning May 1, 1995, and ending April 30, 1996. The tea standards are provided for under the Tea Importation Act (the Act). The Act prohibits the importation of a tea that is inferior to the annual tea standard. Under the Act, the importation of a tea may be withheld until FDA examines the tea and is sure that it complies with the annual standard.

DATES: Effective May 1, 1995; written comments by July 7, 1995.

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

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5099.

SUPPLEMENTARY INFORMATION: Because of the unique nature of the decisionmaking process for establishing annual standards for tea, the procedural protections that are part of this process, and the short period within which standards must be set, FDA has never, since the enactment in 1897 of the Act (21 U.S.C. 41), used notice and comment rulemaking for tea standards.

Each final rule setting the standards is based on the recommendations of the Board of Tea Experts (the board), which is comprised of tea experts who are representative of the tea trade. The board selects standards each year according to the provisions of the Act. The board bases its selection on tea samples submitted by members of the tea trade to the board. Relying primarily on organoleptic examination, the board selects one tea to represent the standard for each major type of tea imported into the United States. In choosing a standard, the board tries to select one at least equal in quality to that of the previous year. The Act prohibits the importation of a tea that is inferior to the annual tea standard. Under the Act, the importation of a tea may be withheld until FDA examines the tea and is sure that it complies with the annual standard.

The annual meeting of the board is open to the public and is announced in advance in the **Federal Register**. At the annual meeting any interested person may present data, information, or views orally or in writing regarding new standards.

The annual tea standards are prepared and submitted to the Secretary of Health and Human Services by the board (21 CFR 1220.41).

Should a tea importer be dissatisfied with an FDA tea examiner's rejection of a shipment of tea, the importer can refer its complaint to the U.S. Board of Tea Appeals and then to the U.S. Court of Appeals. FDA is unaware of any complaints or arguments having ever occurred concerning a designated standard, despite the many years since the enactment of the Act.

FDA concludes that notice and comment rulemaking to set tea standards is impracticable, contrary to the public interest, and unnecessary by virtue of the factors discussed above, i.e., the unique, longstanding procedures that apply to establishing a standard, the fact that standards are based principally on organoleptic examinations by tea experts, the public participation opportunities already provided, and the timeframes required for issuing annual standards. Hence, the agency is not following notice and comment rulemaking procedures in establishing the final tea standards for 1995.

Environmental Impact

The agency has determined under 21 CFR 25.24(b)(1) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the tea standards, used by buyers for the U.S. market, protect consumers, importers, and sellers from acceptance of teas that are inferior in purity, quality, and fitness for consumption, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

Interested persons may, on or before July 7, 1995, submit to the Dockets Management Branch (address above) written comments regarding this regulation. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Any changes in this regulation justified by such comments will be the subject of a further amendment.

List of Subjects in 21 CFR Part 1220

Administrative practice and procedure, Customs duties and inspection, Imports, Public health, Tea.

Therefore, under the authority delegated to the Secretary of Health and Human Services by the Tea Importation Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 1220 is amended as follows:

PART 1220—REGULATIONS UNDER THE TEA IMPORTATION ACT

1. The authority citation for 21 CFR part 1220 continues to read as follows:

Authority: 21 U.S.C. 41–50; 19 U.S.C. 1311.

2. Section 1220.40 is amended by revising paragraph (a) to read as follows:

§ 1220.40 Tea standards.

(a) Samples for standards of the following teas, prepared, identified, and submitted by the Board of Tea Experts on February 28, 1995, are hereby fixed and established as the standards of purity, quality, and fitness for consumption under the Tea Importation Act for the year beginning May 1, 1995, and ending April 30, 1996:

(1) Black Tea (for all teas except those from the People's Republic of China (China), Taiwan (Formosa), Iran, Japan, Russia, Turkey, and Argentina).

(2) Black Tea (for Argentina teas).

(3) Black Tea (for teas from the People's Republic of China (China), Taiwan (Formosa), Iran, Japan, Russia, and Turkey).

(4) Green Tea (of all origins).

(5) Formosa Oolong.

(6) Canton Oolong (for all Canton types from the People's Republic of China (China) and Taiwan (Formosa)).

(7) Scented Black Tea.

(8) Spiced Tea.

These standards apply to tea shipped from abroad on or after May 1, 1995.

* * * * *

Dated: May 31, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–13885 Filed 6–6–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF STATE

22 CFR Part 21

[Pub. Not. 2210]

Office of the Legal Adviser; Indemnification of Department of State Employees

AGENCY: Department of State.

ACTION: Final rule and statement of policy.

SUMMARY: This statement announces a Department of State policy to permit payment of Department funds to indemnify Department employees who suffer adverse money judgments as a result of acts within the scope of their employment and to settle personal damages claims involving such acts, as determined by the Under Secretary for Management or his or her designee. This rule is similar to regulations adopted by other Federal agencies, including the Department of Justice (28 CFR part 50), the Department of the Treasury (31 CFR part 3) and the Agency for International Development (22 CFR part 207).

EFFECTIVE DATE: June 7, 1995.

FOR FURTHER INFORMATION CONTACT: Jean Bailly, Attorney-Adviser, Office of the Assistant Legal Adviser for Legislation and Management, U.S. Department of State, (202) 647–5154.

SUPPLEMENTARY INFORMATION: Lawsuits against federal employees in their individual capacities have proliferated since the 1971 Supreme Court decision in *Bivens* v. *Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388. These suits personally attack officials at all levels of government and target many federal activities, particularly law enforcement. The Federal Liability Reform and Tort Compensation Act of 1988, Public Law 100–694, permits substitution of the Government in many personal liability tort suits against officials. However, substitution is not possible in some cases, notably claims arising under the Constitution and claims arising under foreign law. Although the Department has had few such cases, the risk of personal liability and the burden of defending suits for money damages is clearly present for Department employees. An adverse judgment in such a case has detrimental consequences to the employee, both monetary and otherwise. Fear of personal liability also has potentially adverse consequences for State Department operations, decisionmaking, and policy determinations. The prospect of personal liability, and even the uncertainty as to what conduct may result in a lawsuit against an employee personally, may tend to intimidate employees and stifle initiative and decisive action.

The Department believes a policy with respect to indemnification in such cases will serve to minimize this impediment to Department operations and would accord Department employees the same protection now enjoyed by most state and local government employees as well as those of most corporate employers. This policy is supported by the general principle that an agency has the authority to expend appropriated funds to further the mission of the agency and the objectives underlying the appropriation. Pursuant to this principle, the Department of State believes that indemnification is related both to the Department's mission and to the objectives underlying its general appropriations.

The indemnification policy will permit, but does not require, the Department to indemnify a Department employee who faces an adverse verdict, judgment or other monetary award, provided that the actions giving rise to the judgment were taken within the scope of employment and that such indemnification is in the interest of the United States, as determined by the Under Secretary for Management or his or her designee.

Absent exceptional circumstances, the Department will not agree either to indemnify or to settle a case before entry of an adverse judgment. This approach is intended to discourage the filing of lawsuits against federal employees in their individual capacities solely in order to pressure the Government into settlement. In the usual case, the Department will not settle a case before trial and judgment merely because a dispositive motion filed on behalf of the employee has been denied.

Personal services contractors are considered employees for purposes of this policy. This policy is applicable to any actions pending against Department employees as of its effective date.

In addition to the general indemnification provisions contained in these proposed regulations, the Department will follow its more specific indemnification policy with respect to damages awarded against Department health care personnel for malpractice claims within the scope of 22 U.S.C. 2702. The Department anticipates publishing regulations relating to this policy of indemnification.

Paperwork Reduction Act

This regulation is not subject to the Paperwork Reduction Act because it deals solely with internal Department rules governing personnel.

Cost/Regulatory Analysis

Because this rule relates solely to agency management and personnel, it is not subject to the notice and delayed effective date provisions of the Administrative Procedure Act (5 U.S.C. 553). It is likewise exempt from the procedures of E.O. 12866 (Regulatory Planning and Review). Because no notice of proposed rulemaking is required for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601–612) do not apply.

List of Subjects in 22 CFR Part 21

Administrative practice and procedure, Government employees, Tort claims.

Accordingly, 22 CFR is hereby amended by adding a new part 21 as follows:

PART 21—INDEMNIFICATION OF EMPLOYEES

Authority: 5 U.S.C. 301; 22 U.S.C. 2658.

§ 21.1. Policy.

(a) The Department of State may indemnify an employee for any verdict, judgment, or other monetary award which is rendered against such employee, provided that the conduct giving rise to the verdict, judgment, or award was taken within the scope of employment and that such indemnification is in the interest of the United States, as determined as a matter of discretion by the Under Secretary for Management or his or her designee.

(b) The Department of State may settle or compromise a personal damages claim against an employee by the payment of available funds at any time, provided the alleged conduct giving rise to the personal damages claim was taken within the scope of employment and that such settlement or compromise is in the interest of the United States, as determined as a matter of discretion by the Under Secretary for Management or his or her designee.

(c) The Director General of the Foreign Service and Director of Personnel (''Director General'') shall be the designee of the Under Secretary for Management with respect to determinations under paragraphs (a) and (b) of this section in cases which involve:

(1) Foreign courts or foreign administrative bodies and

(2) Requests of less than five thousand dollars.

(d) Absent exceptional circumstances as determined by the Under Secretary for Management or his or her designee, the Department will not entertain a request either to agree to indemnify or to settle a personal damages claim before entry of an adverse verdict, judgment, or award.

(e) When an employee in the United States becomes aware that an action has been filed against the employee in his or her personal capacity as a result of conduct taken within the scope of his or her employment, the employee shall immediately notify the Department through the Executive Director of the Office of the Legal Adviser that such an action is pending. Employees overseas shall notify their Administrative Counselor who shall then notify the Assistant Legal Adviser for Special Functional Problems. Employees may be authorized to receive legal representation by the Department of Justice in accordance with 28 CFR 50.15.

(f) The employee may thereafter request indemnification to satisfy a verdict, judgment, or award entered against the employee. The employee shall submit a written request, with appropriate documentation including copies of the verdict, judgment, award, or settlement proposal if on appeal, to the Legal Adviser. Except as provided in paragraph (g) of this section, the Legal Adviser and the Director General shall then, in coordination with the Bureau of Finance and Management Policy, forward the request with their recommendation to the Under Secretary for Management for decision. The Legal Adviser may seek the views of the Department of Justice, as appropriate, in preparing this recommendation.

(g) Cases in which the Director General is the designee under paragraph (c) of this section may be forwarded by the Assistant Legal Adviser for Special Functional Problems, along with the views of the employee and the bureau or post as appropriate, to the Director General for decision.

(h) Personal services contractors of the Department are considered employees for purposes of the policy set forth in this part.

(i) Any payment under this part either to indemnify a Department of State employee or to settle a personal damages claim shall be contingent upon the availability of appropriated funds.

(j) In addition to the indemnification provisions contained in the regulations in this part, the Department will also follow any specific policies or regulations adopted with respect to damages awarded against Department health care personnel for malpractice claims within the scope of 22 U.S.C. 2702.

Dated: May 5, 1995.

Richard M. Moose,

Under Secretary for Management.

[FR Doc. 95–13838 Filed 6–6–95; 8:45 am]

BILLING CODE 4710–08–M

UNITED STATES INFORMATION AGENCY

22 CFR Part 502

[Rulemaking No. 202]

Educational, Scientific, and Cultural Material; World-Wide Free Flow (Export-Import) of Audio-Visual Materials

AGENCY: United States Information Agency.

ACTION: Final rule.

SUMMARY: The Agency is adopting a final rule amending existing regulations governing the United States Information Agency's administration of the Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific and Cultural Character, of 1948, by permitting the issuance of serial certifications in certain circumstances. The amendment reinstates into the regulations a provision omitted in a previous revision of the regulations, and allows for certification of time sensitive materials in serial format, thus facilitating the free flow of eligible materials.

EFFECTIVE DATE: June 7, 1995.

FOR FURTHER INFORMATION CONTACT: Neila Sheahan, Assistant General Counsel, Office of the General Counsel, Room 700, United States Information Agency, 301 4th Street SW., Washington, DC 20547, (202) 619–5030.

SUPPLEMENTARY INFORMATION: The United States Information Agency implements and administers the Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific and Cultural Character (''Beirut Agreement''), enacted by the Third General Session of the United Nations Educational, Cultural and Scientific Organization (UNESCO), in Beirut, Lebanon in 1948, 17 U.S.T. 1578. In order to reconcile the terms of the Beirut Agreement with recent judicial decisions and statutory requirements, the Agency published revisions to the regulations covering implementation of the Agreement, at 59 FR 18963 on April 21, 1994. Those regulations made changes in the substantive criteria by which the Agency evaluates the character of audio visual material for certification, and renumbered the regulations. The regulations, however, omitted the provision for serial certifications, a practice followed informally from 1963 and formally incorporated into Agency regulations in 1984, at 22 CFR 502.6(b)(6). The provision for serial certifications was not challenged by judicial decisions; nor was its alteration or elimination required by statute.

On April 18, 1995 the Agency published in 60 FR 19385 a proposed rule to reinstate the provision for serial certification. It allows for the certification of otherwise eligible materials that (1) are produced in series form (e.g. weekly, bi-weekly, monthly), (2) are extremely time sensitive; and therefore the normal processing of

certification decisions thereon would result in unreasonable delays and monetary loss to the producer, and (3) samples are provided and the educational character of the future programs can be generally described before certification and can be verified by a post-certification review of the items or through descriptive material such as a script of the narration. The Agency received one comment on the proposed amendment to the existing regulations, which agreed that the amendment was necessary to facilitate the free flow of eligible information to interested audiences.

Regulatory Analysis and Notices

In accordance with 5 U.S.C. 605(5), the Agency certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of section 1(b) of Executive Order 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

No additional burden under the Paperwork Reduction Act, 44 U.S.C. Chapter 35, will result from the promulgation of this rule.

List of Subjects in 22 CFR Part 502

Audiovisual material, Education, Exports, Imports, Trade Agreement.

For the reasons set out in the preamble, 22 CFR part 502 is amended as follows:

PART 502—WORLD-WIDE FREE FLOW OF AUDIO-VISUAL MATERIALS

1. The authority citation for part 502 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 2051, 22 U.S.C. 1431 *et seq*; Pub. L. 102–138, E.O. 11311, 31 FR 13413, 3 CFR 1966–1970 comp., page 593.

2. Section 502.2 is amended by adding, in alphabetical order, a definition for ''serial certification'' to read as follows:

§ 502.2 Definitions.

* * * * *

Serial certification—means certification by the Agency of materials produced in series form and which, for time-sensitive reasons, cannot be reviewed prior to production; but samples are provided on application, and the materials are subject to post-certification review.

* * * * *

3. Section 502.3 is amended by adding new paragraphs (d) and (e) to read as follows:

§ 502.3 Certification and authentication criteria.

* * * * *

(d) The Agency may certify or authenticate materials which have not been produced at the time of application upon an affirmative determination that:

(1) The materials will be issued serially,

(2) Representative samples of the serial material have been provided at the time of application,

(3) Future titles and release dates have been provided to the Agency at the time of application,

(4) The applicant has affirmed that:

(i) Future released materials in the series will conform to the substantive criteria for certification delineated at paragraphs (a) through (c) of this section;

(ii) Such materials will be similar to the representative samples provided to the Agency on application; and

(iii) The applicant will provide the Agency with copies of the items themselves or descriptive materials for post-certification review.

(e) If the Agency determines through a post-certification review that the materials do not comply with the substantive criteria for certification delineated at paragraphs (a) through (c) of this section, the applicant will no longer be eligible for serial certifications. Ineligibility for serial certifications will not affect an applicant's eligibility for certification of materials reviewed prior to production.

Dated: June 1, 1995.

Les Jin,

General Counsel.

[FR Doc. 95–13959 Filed 6–6–95; 8:45 am]

BILLING CODE 8230–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1236

RIN 3095–AA51

Management of Vital Records

AGENCY: National Archives and Records Administration.

ACTION: Final rule.

SUMMARY: This regulation revises NARA regulations on Federal agencies' management of vital records in order to place the vital records program in the context of agency emergency management responsibilities. The vital records program is intended to ensure continuity of agency operations and protect rights of citizens and the Government. The regulation affects all Federal agencies.

EFFECTIVE DATE: This rule is effective June 7, 1995.

FOR FURTHER INFORMATION CONTACT: Mary Ann Hadyka or Nancy Allard at 301–713–6730.

SUPPLEMENTARY INFORMATION: NARA published a notice of proposed rulemaking on May 31, 1994 (59 FR 28033) for a 60-day comment period. The proposed rule expanded the vital records program to incorporate contingency planning and records disaster mitigation and recovery. Twenty written comments were received. It was clear that the extension of the regulation on vital records to a broader context was perceived by the agencies to be confusing, redundant, and burdensome. Consequently, NARA has revised the regulation to limit its application to vital records responsibilities, in the context of the larger emergency management program. Additional information will be provided in a forthcoming NARA management guide. The guide will provide more detail on vital records program planning, identifying vital records, training agency staff, and assessing records damaged in an emergency or disaster to determine what steps, if any, should be taken to recover the information in them. Its provisions will be advisory, rather than mandatory.

Following is a section-by-section discussion of the major issues raised in the written comments.

Section-by-Section Analysis

Section 1236.10 Purpose

One agency thought that vital records should be presented as part of the disaster recovery program, rather than the reverse. Another agency recommended that the rule clarify the relationship between contingency planning, vital records, and records disaster mitigation and recovery. This section has been modified to reflect the revised scope of the regulation.

Section 1236.12 Authority

NARA reconsidered the authorities cited for this regulation and deleted 44 U.S.C. 3105 because that section of the law relates to unauthorized disposal. It supports the records disposition regulations at 36 CFR 1228 and has no direct relationship to regulations on vital records.

Section 1236.14 Definitions

One agency noted that the definition of contingency planning actually described risk analysis. Another agency recommended that the definition of emergency operating records be modified to clearly cover records

needed to operate during and after an emergency in addition to records containing procedures for operating during an emergency. That agency also suggested that the definition of records disaster mitigation and recovery was too broad and recommended that it be clearly limited to emergency situations. The definitions of contingency planning and emergency operating records have been revised. In response to a third agency recommendation, the definition of off-site was added. NARA changed rights-and-interests records to legal and financial rights records because the latter term is more precise. The definitions of emergency coordinator, hazard, and vital records manager, were deleted because they are not used in the revised regulation.

Sections 1236.20 through 1236.24

These sections, originally proposed to cover contingency planning, have been deleted. Contingency planning for emergencies is adequately covered in FEMA issuances such as the ''Federal Response Planning Guide, Continuity of Operations (COOP) Planning Guidance (FRPG 01–94).''

Section 1236.30 Vital Records Program

Six agencies questioned one or more of the elements of the vital records program described in this section, including issuance of a separate directive for the program, establishing a separate position for the vital records manager, providing training, and conducting annual reviews. NARA did not intend this section to require separate directives, full-time positions, elaborate training, or burdensome reviews. Management of vital records should be the responsibility of the agency records manager. It is one of many records management functions that should be addressed in agency records management directives, training, and program reviews. This section was modified to include only the basic requirements relating specifically to vital records.

Section 1236.32 Identifying, Using and Protecting Vital Records

This section has been divided into three sections, now designated § 1236.22, § 1236.24, and § 1236.26. One agency recommended that the inventory of vital records be integrated into the records scheduling process. NARA did not intend that this inventory necessarily duplicate inventorying for scheduling. Section 1236.22 clarifies that point, and further explanation will be provided in the forthcoming guide. Another agency suggested that common vital records be so designated in the General Records Schedules. NARA declines to accept this suggestion because many vital records common to many agencies are permanent and therefore not in the General Records Schedules (GRS). Many other vital records are unique to individual agencies. As vital records are identified in the course of contingency planning, NARA believes it inappropriate to mandate that specific series in the GRS be treated as vital records.

One agency recommended that this section more clearly address electronic records and security backup copies. In particular, the agency asked if electronic records could be regarded as the vital record copy, even if it is not an exact duplicate. In § 1236.22, NARA modified the regulation to clarify that it is the informational content, not the form, of the records that must be considered. Also, § 1236.26 indicates that copies of electronic records created for security purposes are adequate for protecting vital information, even if the copies include records not containing vital information. Additional guidance on electronic records will be provided in the forthcoming guide.

Two agencies raised questions about copies of vital records, and one recommended a risk analysis to determine whether duplication is necessary. Section 1236.24 clarifies that agencies determine when copies are needed.

Several agencies questioned the restriction on use of Federal Records Centers (FRC's) to copies of legal and financial rights records. We have modified the rule at § 1236.26(c) to allow agencies to store emergency operating records at FRC's under certain conditions.

One agency pointed out that not all vital record copies are cycled, and two agencies stated that the disposition of the copies may not be the same as the originals. This rule was clarified on these points.

Sections 1236.40 and 1236.42 Records Disaster Mitigation and Recovery Program

Three agencies found § 1236.40, Records protection, confusing in relation to the scope of the records protection plan. Three agencies raised questions about the scope of § 1236.42, Elements of a records disaster mitigation and recovery program. One recommended that the program be integrated with information security plans and contingency of operations plans. Another objected to the requirement that agencies test records recovery programs for all offices. The third asked if a plan was required for each series or for records in each medium. NARA reconsidered the propriety of including this level of detail about the broader emergency management program in its regulations on vital records and deleted the entire section. NARA concluded that the proposed regulation was confusing to agencies, duplicative of requirements imposed by FEMA on emergency management and by GSA on computer security, and unnecessarily burdensome.

The Administrative Procedures Act (5 U.S.C. 553(d)) provides that the effective date of a final rule may be less than 30 days after publication in the **Federal Register** when the rule relieves a restriction. This rule will allow agencies to store their emergency operating vital records in the Federal Records Centers. Previously, only legal and financial rights vital records could be transferred to a records center. Accordingly, we are making this final rule effective immediately.

This rule is not a significant regulatory action for purposes of Executive Order 12866 of September 30, 1993, and has not been reviewed under the Order by the Office of Management and Budget. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small entities.

List of Subjects in 36 CFR 1236

Archives and records.

For the reasons set forth in the preamble, 36 CFR chapter XII is amended by revising part 1236 to read as follows:

PART 1236—MANAGEMENT OF VITAL RECORDS

Subpart A—General

Sec.
1236.10 Purpose.
1236.12 Authority.
1236.14 Definitions.

Subpart B—Vital Records

1236.20 Vital records program objectives.
1236.22 Identification of vital records.
1236.24 Use of vital records and copies of vital records.
1236.26 Protection of vital records.
1236.28 Disposition of original vital records.

Authority: 44 U.S.C. 2104(a), 2904(a), 3101; E. O. 12656, 53 FR 47491, 3 CFR, 1988 Comp., p. 585.

Subpart A—General

§ 1236.10 Purpose.

This part prescribes policies and procedures for establishing a program for the identification and protection of vital records, those records needed by

agencies for continuity of operations before, during, and after emergencies, and those records needed to protect the legal and financial rights of the Government and persons affected by Government activities. The records may be maintained on a variety of media including paper, magnetic tape or disk, photographic film, and microfilm. The management of vital records is part of an agency's continuity of operations plan designed to meet emergency management responsibilities.

§ 1236.12 Authority.

Heads of agencies are responsible for the vital records program under the following authorities:

(a) To make and preserve records containing adequate and proper documentation of the agency's organization, functions, policies, procedures, decisions, and essential transactions, and to furnish information to protect the legal and financial rights of the Government and of persons directly affected by the agency's activities (44 U.S.C. 3101).

(b) To perform national security emergency preparedness functions and activities (Executive Order 12656).

§ 1236.14 Definitions.

Basic records management terms are defined in 36 CFR 1220.14. As used in part 1236:

Contingency planning means instituting policies and procedures to mitigate the effects of potential emergencies or disasters on an agency's operations and records. Contingency planning is part of the continuity of operations planning required under Federal Preparedness Circulars and other guidance issued by the Federal Emergency Management Agency (FEMA) and Executive Order 12656.

Cycle means the periodic removal of obsolete copies of vital records and their replacement with copies of current vital records. This may occur daily, weekly, quarterly, annually or at other designated intervals.

Disaster means an unexpected occurrence inflicting widespread destruction and distress and having long-term adverse effects on agency operations. Each agency defines what a long-term adverse effect is in relation to its most critical program activities.

Emergency means a situation or an occurrence of a serious nature, developing suddenly and unexpectedly, and demanding immediate action. This is generally of short duration, for example, an interruption of normal agency operations for a week or less. It may involve electrical failure or minor flooding caused by broken pipes.

Emergency operating records are that type of vital records essential to the continued functioning or reconstitution of an organization during and after an emergency. Included are emergency plans and directive(s), orders of succession, delegations of authority, staffing assignments, selected program records needed to continue the most critical agency operations, as well as related policy or procedural records that assist agency staff in conducting operations under emergency conditions and for resuming normal operations after an emergency.

Legal and financial rights records are that type of vital records essential to protect the legal and financial rights of the Government and of the individuals directly affected by its activities. Examples include accounts receivable records, social security records, payroll records, retirement records, and insurance records. These records were formerly defined as ''rights-and-interests'' records.

National security emergency means any occurrence, including natural disaster, military attack, technological emergency, or other emergency, that seriously degrades or threatens the national security of the United States, as defined in Executive Order 12656.

Off-site storage means a facility other than an agency's normal place of business where vital records are stored for protection. This is to ensure that the vital records are not subject to damage or destruction from an emergency or disaster affecting an agency's normal place of business.

Vital records mean essential agency records that are needed to meet operational responsibilities under national security emergencies or other emergency or disaster conditions (emergency operating records) or to protect the legal and financial rights of the Government and those affected by Government activities (legal and financial rights records).

Vital records program means the policies, plans, and procedures developed and implemented and the resources needed to identify, use, and protect the essential records needed to meet operational responsibilities under national security emergencies or other emergency or disaster conditions or to protect the Government's rights or those of its citizens. This is a program element of an agency's emergency management function.

Subpart B—Vital Records

§ 1236.20 Vital records program objectives.

The vital records program is conducted to identify and protect those records that specify how an agency will operate in case of emergency or disaster, those records vital to the continued operations of the agency during and after an emergency or disaster, and records needed to protect the legal and financial rights of the Government and of the persons affected by its actions. An agency identifies vital records in the course of contingency planning activities carried out in the context of the emergency management function. In carrying out the vital records program agencies shall:

(a) Specify agency staff responsibilities;

(b) Ensure that all concerned staff are appropriately informed about vital records;

(c) Ensure that the designation of vital records is current and complete; and

(d) Ensure that vital records and copies of vital records are adequately protected, accessible, and immediately usable.

§ 1236.22 Identification of vital records.

Vital records include emergency plans and related records that specify how an agency is to respond to an emergency as well as those records that would be needed to continue operations and protect legal and financial rights. Agencies should consider the informational content of records series and electronic records systems when identifying vital records. Only the most recent and complete source of the vital information needs to be treated as vital records.

§ 1236.24 Use of vital records and copies of vital records.

Agencies shall ensure that retrieval procedures for vital records require only routine effort to locate needed information, especially since individuals unfamiliar with the records may need to use them during an emergency or disaster. Agencies also shall ensure that all equipment needed to read vital records or copies of vital records will be available in case of emergency or disaster. For electronic records systems, agencies also shall ensure that system documentation adequate to operate the system and access the records will be available in case of emergency or disaster.

§ 1236.26 Protection of vital records.

Agencies shall take appropriate measures to ensure the survival of the vital records or copies of vital records in

case of emergency or disaster. In the case of electronic records, this requirement is met if the information needed in the event of emergency or disaster is available in a copy made for general security purposes, even when the copy contains other information.

(a) *Duplication.* Computer backup tapes created in the normal course of system maintenance or other electronic copies that may be routinely created in the normal course of business may be used as the vital record copy. For hard copy records, agencies may choose to make microform copies. Standards for the creation, preservation and use of microforms are found in 36 CFR part 1230, Micrographic Records Management. The Computer Security Act of 1987 (40 U.S.C. 759, Pub. L. 100–235), OMB Circular A–130, and 36 CFR part 1234, Electronic Records Management, and 41 CFR part 201, subchapter B, Management and Use of Information and Records, specify protective measures and standards for electronic records.

(b) *Storage.* When agencies choose duplication as a protection method, the copy of the vital record stored off-site is normally a duplicate of the original record. Designating and using duplicate copies of original records as vital records facilitates destruction or deletion of obsolete duplicates when replaced by updated copies, whereas original vital records must be retained for the period specified in the agency records disposition schedule. The agency may store the original records off-site if protection of original signatures is necessary, or if it does not need to keep the original record at its normal place of business.

(c) *Storage considerations.* Agencies need to consider several factors when deciding where to store copies of vital records. Copies of emergency operating vital records need to be accessible in a very short period of time for use in the event of an emergency or disaster. Copies of legal and financial rights records may not be needed as quickly. In deciding where to store vital records copies, agencies shall treat records that have the properties of both categories, that is, emergency operating and legal and financial rights records, as emergency operating records.

(1) Under certain circumstances, Federal records centers (FRC's) may store copies of emergency operating vital records. FRC's will store small volumes of such records, but may not be able to provide storage for large collections or ones requiring constant recycling of the vital records, except under reimbursable agreement. Prior to preparing the records for shipment, the agency must contact the FRC to determine if the center can accommodate the storage requirements and return copies in an acceptable period of time.

(2) The off-site copy of legal and financial rights vital records may be stored at an off-site agency location or, in accordance with § 1228.156 of this chapter, at an FRC.

(3) When using an FRC for storing vital records that are duplicate copies of original records, the agency must specify on the SF 135, Records Transmittal and Receipt, that they are vital records (duplicate copies) and the medium on which they are maintained. The agency shall also periodically cycle (update) them by removing obsolete items and replacing them with the most recent version, when necessary.

(4) Agencies that transfer permanent, original vital records maintained on electronic or microform media to the custody of the National Archives may designate such records as their off-site copy. That designation may remain in effect until the information in such transferred records is superseded or becomes obsolete.

§ 1236.28 Disposition of original vital records.

The disposition of original vital records is governed by records schedules approved by NARA (see part 1228, Disposition of Federal Records). Original records that are not scheduled may not be destroyed or deleted.

Dated: May 30, 1995.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 95–13951 Filed 6–6–95; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50615A; FRL–4916–3]

RIN 2070–AB27

Organotin Lithium Compound; Revocation of Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Revocation of final rule.

SUMMARY: EPA is revoking a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for the chemical substance described generically as an organotin lithium compound which was the subject of premanufacture notice (PMN) P–93–1119. EPA initially published this SNUR using direct final rulemaking procedures. EPA received adverse comments on this rule. Therefore, the Agency is revoking this rule, as required under the expedited SNUR rulemaking process. In a separate notice of proposed rulemaking in today's issue of the **Federal Register**, EPA is proposing a SNUR for this substance with a 30–day comment period.

EFFECTIVE DATE: This action is effective on June 7, 1995.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 27, 1994 (59 FR 27474), EPA issued several direct final SNURs including a SNUR for the substance described generically as organotin lithium compound, PMN P–93–1119. As described in 40 CFR 721.160, EPA is revoking the rule issued for P–93–1119 under direct final rulemaking procedures because the Agency received adverse comments. Pursuant to § 721.160(c)(3)(ii), EPA is proposing a revised SNUR for this chemical substance elsewhere in today's issue of the **Federal Register**. For details regarding EPA's expedited process for issuing SNURs, interested parties are directed to 40 CFR part 721, subpart D. The record for the direct final SNUR which is being revoked was established at OPPTS–50615. That record includes information considered by the Agency in developing the rule and includes the adverse comments to which the Agency is responding with this notice of revocation. The docket control number for the revocation is OPPTS–50615A. For more information, refer to the proposal published elsewhere in today's issue of the **Federal Register**. The relevant portions of the original docket for the direct final SNUR are being incorporated under OPPTS–50615B, which is established for the proposed rule.

A public version of the record without any confidential business information is available in the TSCA Nonconfidential Information Center (NCIC) from 12 noon to 4 p.m., Monday through Friday, except legal holidays. The TSCA NCIC is located in Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Reporting and recordkeeping requirements, Significant new uses.

Dated: May 19, 1995.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§ 721.9668 [Removed]

2. By removing § 721.9668.

[FR Doc. 95–13963 Filed 6–6–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base (100-year) flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW, Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of the final determinations of modified base (100-year) flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

The modified base (100-year) flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base (100-year) flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base (100-year) flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

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

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

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

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California: Orange (FEMA Docket No. 7125).	City of Brea	December 1, 1994, December 8, 1994, *Brea Progress*.	The Honorable Glenn Parker, Mayor, City of Brea, No. 1 Civic Center Circle, Brea, California 92621.	November 8, 1994	060214
California: Riverside (FEMA Docket No. 7125).	City of Corona ..	December 1, 1994, December 8, 1994, *Press Enterprise*.	The Honorable Bill Miller, Mayor, City of Corona, 815 West Sixth Street, Corona, California 91720.	November 9, 1994	060250
California: Solano (FEMA Docket No. 7131).	City of Fairfield .	January 4, 1995, January 11, 1995, *Daily Republic*.	The Honorable Chuck Hammond, Mayor, City of Fairfield, 1000 Webster Street, Fairfield, California 94533–4883.	December 5, 1994	060370
California: Sacramento (FEMA Docket No. 7131).	City of Folsom ..	January 4, 1995, January 11, 1995, *Folsom Telegraph*.	The Honorable Bob Holderness, Mayor, City of Folsom, 50 Natoma Street, Folsom, California 95630.	November 18, 1994	060263
California: Los Angeles (FEMA Docket No. 7125).	Unincorporated areas.	December 23, 1994, December 30, 1994, *Daily Commerce*.	The Honorable Yvonne Burke, Chairperson, Los Angeles County, Board of Supervisors, 500 West Temple Street, Los Angeles, California 90012.	November 18, 1994	065043
California: Riverside (FEMA Docket No. 7125).	City of Norco	December 1, 1994, December 8, 1994, *Press Enterprise*.	The Honorable Bill Vaughn, Mayor, City of Norco, P.O. Box 428, Norco, California 91760.	November 9, 1994	060256
California: Shasta (FEMA Docket No. 7121).	Unincorporated areas.	November 17, 1994, November 24, 1994, *Record-Searchlight*.	The Honorable Francie Sullivan, Chairperson, Shasta County, Board of Supervisors, 1815 Yuba Street, Redding, California 96001.	October 28, 1994	060358
California: Solano (FEMA Docket No. 7131).	Unincorporated areas.	January 4, 1995, January 11, 1995, *Daily Republic*.	The Honorable William Carroll, Chairman, Solano County, Board of Supervisors, 580 Texas Street, Fairfield, California 94533–6378.	December 5, 1994	060631
Colorado: Douglas (FEMA Docket No. 7125).	Town of Castle Rock.	December 14, 1994, December 21, 1994, *Douglas County News Press*.	The Honorable Mark Williams, Mayor, Town of Castle Rock, 680 North Wilcox Street, Castle Rock, Colorado 80104.	November 21, 1994	080050
Colorado: Douglas (FEMA Docket No. 7125).	Unincorporated areas.	December 21, 1994, December 28, 1994, *Douglas County News*.	The Honorable M. Michael Cooke, Chairperson, Douglas County, Board of Commissioners, 101 Third Street, Castle Rock, Colorado 80104.	November 18, 1994	080049
Colorado: Weld (FEMA Docket No. 7125).	City of Greeley ..	December 21, 1994, December 28, 1994, *Greeley Daily Tribune*.	The Honorable Willie Morton, Mayor, City of Greeley, City Hall, 1000 Tenth Street, Greeley, Colorado 80631.	November 23, 1994	080184
Colorado: La Plata (FEMA Docket No. 7131).	Unincorporated areas.	January 6, 1995, January 13, 1995, *Durango Herald*.	The Honorable Frank Joswick, Chairperson, La Plata County, Board of Commissioners, 1060 East Second Avenue, Durango, Colorado 81301.	November 29, 1994	080097
Colorado: Douglas (FEMA Docket No. 7125).	Town of Larkspur.	December 21, 1994, December 28, 1994, *Douglas County News Press*.	The Honorable Florence Burnch, Mayor, Town of Larkspur, P.O. Box 310, Larkspur, Colorado 80118.	November 18, 1994	080309
Colorado: Weld (FEMA Docket No. 7125).	Unincorporated areas.	December 21, 1994, December 28, 1994, *Greeley Daily Tribune*.	The Honorable W.H. Webster, Chairperson, Weld County, Board of Commissioners, P.O. Box 758, Greeley, Colorado 80632.	November 23, 1994	080266
Kansas: Johnson (FEMA Docket No. 7125).	City of Overland Park.	December 21, 1994, December 28, 1994, *Johnson County Sun*.	The Honorable Ed Eilert, Mayor, City of Overland Park, City Hall, 8500 Santa Fe Drive, Overland Park, Kansas 66212.	December 5, 1994	200174
New Mexico: Bernalillo (FEMA Docket No. 7121).	City of Albuquerque.	November 18, 1984, November 25, 1994, *Albuquerque Tribune*.	The Honorable Martin Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103.	October 27, 1994	350002
New Mexico: Bernalillo (FEMA Docket No. 7125).	City of Albuquerque.	December 23, 1994, December 30, 1994, *Albuquerque Tribune*.	The Honorable Martin Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103.	November 15, 1994	350002
Oklahoma: Cleveland (FEMA Docket No. 7121).	City of Norman .	November 16, 1994, November 23, 1994, *Norman Transcript*.	The Honorable Bill Nations, Mayor, City of Norman, 201 West Gray Street, Building A, Norman, Oklahoma 73069.	November 2, 1994	400046

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Oklahoma: Oklahoma (FEMA Docket No. 7121).	City of Oklahoma City.	November 16, 1994, November 23, 1994, *Journal Record*.	The Honorable Ronald J. Norick, Mayor, City of Oklahoma City, 200 North Walker Avenue, Oklahoma City, Oklahoma 73102.	October 28, 1994	405378
Texas: Tarrant County (FEMA Docket No. 7125).	City of Arlington	December 15, 1994, December 22, 1994, *Fort Worth Star Telegram*.	The Honorable Richard Greene, Mayor, City of Arlington, P.O. Box 231, Arlington, Texas 76004–0231.	November 30, 1994	485454
Texas: Dallas (FEMA Docket No. 7121).	City of Carrollton	November 17, 1994, November 24, 1994, *Metrocrest News*.	The Honorable Milburn Gravely, Mayor, City of Carrollton, P.O. Box 110535, Carrollton, Texas 75011–0535.	October 31, 1994	480167
Texas: Dallas (FEMA Docket No. 7131).	City of Carrollton	January 5, 1995, January 12, 1995, *Metrocrest News*.	The Honorable Milburn Gravely, Mayor, City of Carrollton, P.O. Box 110535, Carrollton, Texas 75011–0535.	December 13, 1994	480167
Texas: Tarrant (FEMA Docket No. 7131).	City of Colleyville.	January 4, 1995, January 11, 1995, *Fort Worth Star Telegram*.	The Honorable Cheryl Seigel, Mayor, City of Colleyville, P.O. Box 165, Colleyville, Texas 76034.	December 13, 1994	480590
Texas: Collin (FEMA Docket No. 7121).	Unincorporated areas.	November 17, 1994, November 24, 1994, *Courier Gazette*.	The Honorable Ron Harris, County Judge, Collin County, 210 South McDonald Street, McKinney, Texas 75069.	October 31, 1994	480130
Texas: El Paso (FEMA Docket No. 7131).	City of El Paso ..	January 3, 1995, January 10, 1995, *El Paso Times*.	The Honorable William S. Tilney, Mayor, City of El Paso, Two Civic Center Plaza, El Paso, Texas 79901.	December 12, 1994	480214
Texas: Dallas (FEMA Docket No. 7125).	City of Grand Prairie.	December 15, 1994, December 22, 1994, *Grand Prairie Daily News*.	The Honorable Charles England, Mayor, City of Grand Prairie, 317 College Street, Grand Prairie, Texas 75053.	November 30, 1994	485472
Texas: Tarrant (FEMA Docket No. 7131).	City of Grapevine.	January 4, 1995, January 11, 1995, *Fort Worth Star Telegram*.	The Honorable William D. Tate, Mayor, City of Grapvine, 413 South Main Street, Grapevine, Texas 76051.	December 13, 1994	480598
Texas: Harris (FEMA Docket No. 7125).	Unincorporated areas.	December 9, 1994, December 16, 1994, *The Houston Post*.	The Honorable Jon Lindsay, Harris County Judge, 1001 Preston, Suite 911, Houston, Texas 77002.	November 30, 1994	480287
Texas: Collin (FEMA Docket No. 7121).	City of McKinney	November 17, 1994, November 24, 1994, *Courier Gazette*.	The Honorable John Gay, Mayor, City of McKinney, P.O. Box 517, McKinney, Texas 75069.	October 31, 1994	480135
Texas: Collin (FEMA Docket No. 7131).	City of Plano	January 4, 1995, January 11, 1995, *Dallas Morning News*.	The Honorable James N. Muns, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086–0358.	November 29, 1994	480140

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: May 31, 1995.

Frank H. Thomas,

Deputy Associate Director for Mitigation.

[FR Doc. 95–13908 Filed 6–6–95; 8:45 am]

BILLING CODE 6718–03–P

44 CFR Part 65

[Docket No. FEMA–7143]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director, Mitigation Directorate, reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW, Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The modified base (100-year) flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed

conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base (100-year) flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

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

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

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

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California: Orange ..	City of Irvine	April 20, 1995, April 27, 1995, *Irvine World News.*	The Honorable Michael Ward, Mayor, City of Irvine, P.O. Box 19575, Irvine, California 92713.	March 30, 1995 ..	060222
California: Kern	Unincorporated areas.	April 19, 1995, April 26, 1995, *Bakersfield Californian.*	The Honorable Ken Peterson, Chairman, Kern County Board of Supervisors, 1115 Truston Avenue, Fifth Floor, Bakersfield, California 93301.	March 15, 1995 ..	060075
California: Orange ..	City of Lake Forest.	April 19, 1995, April 26, 1995, *Saddle Back Valley News.*	The Honorable Richard Dixon, Mayor, City of Lake Forest, 23778 Mercury Road, Lake Forest, California 92630.	March 30, 1995 ..	060759
California: Kern	City of Tehachapi.	April 19, 1995, April 26, 1995, *Tehachapi News.*	The Honorable Philip Smith, Mayor, City of Tehachapi, P.O. Box 668, Tehachapi, California 93581.	March 15, 1995 ..	060084
Colorado: Douglas .	Town of Castle Rock.	April 19, 1995, April 26, 1995, *Douglas County News Press.*	The Honorable Mark Williams, Mayor, Town of Castle Rock, 680 North Wilcox Street, Castle Rock, Colorado 80104.	March 20, 1995 ..	080050
Colorado: Douglas .	Unincorporated areas.	April 19, 1995, April 26, 1995, *Douglas County News Press.*	The Honorable Robert A. Christenson, Chairperson, Douglas County Commissioners, 101 Third Street, Castle Rock, Colorado 80104.	March 20, 1995 ..	080049
Hawaii: Honolulu	City and County of Honolulu.	April 18, 1995, April 25, 1995, *Honolulu, Advertiser.*	The Honorable Jeremy Harris, Mayor, City and County of Honolulu, 530 South King Street, Room 300, Honolulu, Hawaii 96813.	March 21, 1995 ..	150001
Iowa: Tama	City of Tama	April 20, 1995, April 27, 1995, *Tama News Herald.*	The Honorable Richard Gibson, Mayor, City of Tama, 305 Siegel Street, Tama, Iowa 52339.	March 20, 1995 ..	190262
Missouri: St. Louis .	City of Arnold	April 19, 1995, April 26, 1995, *The Press Journal.*	The Honorable Marion Becker, Mayor, City of Arnold, 2101 Jeffco Boulevard, Arnold, Missouri 63010.	March 24, 1995 ..	290188
Missouri: St. Louis .	City of Maryland Heights.	April 19, 1995, April 26, 1995, *St. Louis Post-Dispatch.*	The Honorable Michael O'Brien, Mayor, City of Maryland Heights, 212 Millwell Drive, Maryland Heights, Missouri 63043.	March 22, 1995 ..	290889
Texas: Tarrant	City of Azle	April 20, 1995, April 27, 1995, *Azle News.*	The Honorable C. Y. Rone, Mayor, City of Azle, 613 Southeast Parkway, Azle, Texas 76020–3694.	March 29, 1995 ..	480584

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Texas: Bexar	Unincorporated areas.	April 4, 1995, April 11, 1995, *San Antonio Express News.*	The Honorable Cyndi Taylor Krier, Bexar County Judge, Bexar County Courthouse, First Floor, San Antonio, Texas 78205–3036.	March 13, 1995	480035
Texas: Dallas	City of Dallas	April 12, 1995, April 19, 1995, *The Dallas Morning News.*	The Honorable Steve Bartlett, Mayor, City of Dallas, 1500 Marilla, Room 5E, Dallas, Texas 75201.	March 20, 1995	480171
Texas: Hardin	Unincorporated areas.	April 19, 1995, April 26, 1995, *Hardin County News.*	The Honorable Tom Mayfield, Hardin County Judge, Hardin County Courthouse, P.O. Box 760, Kountze, Texas 77625.	March 29, 1995	480284
Texas: Collin	City of McKinney	April 4, 1995, April 11, 1995, *McKinney Courier Gazette.*	The Honorable John Gay, Mayor, City of McKinney, P.O. Box 517, McKinney, Texas 75069.	March 13, 1995	480135
Texas: Tarrant	City of North Richland Hills.	April 20, 1995, April 27, 1995, *Mid-Cities News.*	The Honorable Tommy Brown, Mayor, City of North Richland Hills, 7301 North East Loop 820, North Richland Hills, Texas 76180.	March 28, 1995	480607
Texas: Collin	City of Plano	April 19, 1995, April 26, 1995, *Plano Star Courier.*	The Honorable James N. Muns, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086–0358.	March 30, 1995	480140
Texas: Bexar	Town of Shavano Park.	April 4, 1995, April 11, 1995, *San Antonio Express News.*	The Honorable Thomas Peyton, Mayor, Town of Shavano Park, City Hall, 99 Saddletree Road, Shavano Park, Texas 78231.	March 13, 1995	480047

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: May 31, 1995.

Frank H. Thomas,

Deputy Associate Director for Mitigation.

[FR Doc. 95–13907 Filed 6–6–95; 8:45 am]

BILLING CODE 6718–03–P

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (100-year) flood elevations and modified base (100-year) flood elevations are made final for the communities listed below. The base (100-year) flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR Part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

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

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended to read as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

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

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
ARIZONA	
Flagstaff (city), Coconino County (FEMA Docket No. 7126)	
Fanning Drive Wash:	
Just upstream of Interstate Highway 40 (west side)	*6,784
Approximately 100 feet downstream of Industrial Drive	*6,800
Approximately 300 feet downstream of U.S. Highway 89	*6,824
At Fanning Drive	*6,834
Penstock Avenue Wash:	
Approximately 2,000 feet downstream of Atchison, Topeka, and Santa Fe Railroad spur	*6,767
At Railhead Avenue	*6,785
Approximately 340 feet upstream of Commerce Avenue	*6,810
Maps are available for inspection at City Hall, City of Flagstaff, City Clerk's Office, Flagstaff, Arizona.	
Coconino County (unincorporated areas) (FEMA Docket No. 7126)	
Fanning Drive Wash:	
Approximately 90 feet downstream of Atchison, Topeka, and Santa Fe Railroad	*6,806
Approximately 3,600 feet upstream of Atchison, Topeka, and Santa Fe Railroad	*6,824
Maps are available for inspection at Coconino County Community Development, Planning and Zoning, 219 East Cherry Street, Flagstaff, Arizona.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maricopa County (incorporated areas) (FEMA Docket No. 7126)	
Rainbow Wash:	
At confluence with Gila River	*717
Approximately 12,000 feet upstream of confluence with Gila River	*790
Approximately 20,000 feet upstream of confluence with Gila River	*837
Just upstream of State Route 85	*907
Approximately 19,400 feet upstream of State Route 85	*991
Rainbow Wash Tributary:	
At confluence with Rainbow Wash	*892
Approximately 8,000 feet upstream of confluence with Rainbow Wash	*924
Luke Wash:	
At confluence with Gila River	*784
At Narramore Road	*829
Just downstream of Southern Pacific Railroad	*857
Minor Tributary to Luke Wash:	
Approximately 2,050 feet upstream of confluence with Luke Wash	*826
Approximately 6,700 feet upstream of confluence with Luke Wash	*858
East Main Tributary to Luke Wash:	
At Telegraph Pass Road	*823
Just downstream of Southern Pacific Railroad	*854
East Subtributary to Luke Wash:	
At Telegraph Pass Road	*823
Approximately 3,500 feet upstream of Telegraph Pass Road	*837
Sand Tank Wash:	
At North Indian Road	*662
At South Indian Road	*717
At Interstate 8	*768
Bender Wash:	
At confluence with Sand Tank Wash	*720
At South Main Street	*749
At Interstate 8	*779
Unnamed Wash No. 1 (Tributary to Bender Wash):	
At confluence with Bender Wash	*746
At Interstate 8	*834
Approximately 2,600 feet upstream of Interstate 8	*852
Unnamed Wash No. 2 (Tributary to Bender Wash):	
At confluence with Unnamed Wash No. 1	*746
At Business Route 8	*801
Approximately 5,600 feet upstream of Business Route 8	*839
Scott Avenue Wash:	
At Watermelon Road	*677
At Southern Pacific Railroad	*739
At Interstate 8	*755
Star Wash:	
Approximately 8,700 feet upstream of confluence with Jackrabbit Wash	*1,410
Approximately 5,100 feet upstream of confluence with Tank Wash	*1,485
At confluence with Tributary D	*1,549
Approximately 1,400 feet upstream of Haul Road	*1,606
Tributary A:	
Approximately 5,800 feet upstream of confluence with Star Wash	*1,534
At confluence with Tributary B	*1,551
Tributary B:	
At confluence with Tributary A	*1,551
Approximately 200 feet upstream of Haul Road	*1,593

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Tributary C:	
At confluence with Star Wash	*1,579
Approximately 4,100 feet upstream of confluence with Star Wash	*1,610
Tributary D:	
At confluence with Star Wash	*1,539
Approximately 4,500 feet upstream of confluence with Tributary E	*1,600
Tank Wash:	
Approximately 3,300 feet upstream of confluence with Star Wash	*1,470
Approximately 20,000 feet upstream of confluence with Star Wash	*1,560
Approximately 4,900 feet upstream of confluence with South Branch Tank Wash	*1,650
South Branch Tank Wash:	
Approximately 1,000 feet upstream of confluence with Tank Wash	*1,626
Approximately 4,600 feet upstream of confluence with Tank Wash	*1,649
Powerline Wash:	
Approximately 4,800 feet upstream of confluence with Star Wash	*1,443
Approximately 27,700 feet upstream of confluence with Star Wash	*1,570
Approximately 55,000 feet upstream of confluence with Star Wash	*1,741
Daggs Wash:	
Approximately 900 feet upstream of confluence with Hassayampa River	*1,255
Just upstream of Central Arizona Project Canal	*1,382
Approximately 35,700 feet upstream of confluence with Hassayampa River	*1,482
Approximately 50,000 feet upstream of confluence with Hassayampa River	*1,564
Just upstream of Peakview Road	*1,672
West Breakout Wash:	
At downstream confluence with Daggs Wash	*1,610
At upstream confluence with Daggs Wash	*1,655
East Split Flow:	
At downstream confluence with Daggs Wash	*1,610
At upstream confluence with Daggs Wash	*1,628
Apache Wash:	
Approximately 12,700 feet downstream of confluence with Paradise Wash	*1,660
At confluence with Paradise Wash	*1,736
At New River Road	*1,886
Approximately 2,500 feet upstream of confluence with Apache Wash West Fork	*2,022
Apache Wash-Split Flow:	
At downstream confluence with Apache Wash	*1,786
At upstream confluence with Apache Wash	*1,811
West Fork Apache Wash:	
At confluence with Apache Wash	*1,992
Approximately 3,000 feet above confluence with Apache Wash	*2,044
Paradise Wash:	
At confluence with Apache Wash	*1,736
At confluence with Ranieri Tank Wash	*1,832
Approximately 7,100 feet upstream of New River Road	*2,015
West Fork Paradise Wash:	
At confluence with Paradise Wash	*1,794

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 5,100 feet upstream of Carefree Highway	*1,851
Ranieri Tank Wash:	
At confluence with Paradise Wash	*1,832
Approximately 3,850 feet upstream of unnamed road	*1,892
Desert Hills Wash:	
At confluence with Apache Wash	*1,740
At Carefree Highway	*1,780
Approximately 50 feet upstream of 20th Street	*1,898
Desert Hills Wash Tributary:	
At confluence with Desert Hills Wash	*1,885
Approximately 50 feet upstream of LaSalle Road	*1,902
East Fork Desert Lake Wash:	
At confluence with Desert Lake Wash	*1,781
Approximately 1,100 feet upstream of 10th Street	*1,797
Desert Lake Wash:	
At confluence with Desert Hills Wash	*1,775
Approximately 1,200 feet upstream of Gavin Road	*1,796
Mesquite Tank Wash:	
Approximately 900 feet downstream of Cave Buttes Recreational Area boundary limits	*1,657
Approximately 7,700 feet upstream of Cave Buttes Recreational Area boundary limits	*1,722
Beardsley Canal Wash:	
Approximately 4,900 feet downstream of Northern Avenue	*1,200
At Olive Avenue	*1,275
Approximately 2,600 feet upstream of Peoria Avenue Extended	*1,322
Cholla Wash:	
At confluence with Beardsley Canal Wash	*1,249
At Olive Avenue	*1,299
Approximately 17,600 feet upstream of Olive Avenue	*1,843
North Fork Cholla Wash:	
At confluence with Cholla Wash	*1,675
Approximately 2,770 feet upstream of confluence with Cholla Wash	*1,950
Waterfall Wash:	
At confluence with Beardsley Canal	*1,278
Approximately 18,800 feet upstream of confluence with Beardsley Canal	*1,646
White Tank No. 3 Wash:	
Approximately 9,400 feet downstream of Northern Avenue Extended	*1,198
Approximately 7,300 feet upstream of Northern Avenue Extended	*1,444
Bedrock Wash:	
Approximately 4,700 feet downstream of confluence with North Fork Bedrock Wash	*1,199
Approximately 6,900 feet upstream of confluence with North Fork Bedrock Wash	*1,466
North Fork Bedrock Wash:	
At confluence with Bedrock Wash	*1,239
Approximately 9,200 feet upstream of confluence with Bedrock Wash	*1,442
Jackrabbit Trail Wash:	
Approximately 3,650 feet downstream of Interstate 10 eastbound off ramp	*1,041
At Indian School Road	*1,156
At Medlock Drive	*1,186
Tuthill Dike Wash:	
Approximately 4,800 feet downstream of Interstate 10	*1,144
At Indian School Road Extended	*1,214

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 2,700 feet upstream of Camelback Road Extended	*1,286
Bulldozer Wash:	
At confluence with Tuthill Dike Wash	*1,095
Approximately 13,800 feet upstream of confluence with Tuthill Dike Wash	*1,678
Caterpillar Wash:	
At confluence with Tuthill Dike Wash	*1,191
Approximately 11,750 feet upstream of confluence with Tuthill Dike Wash	*1,402
Tractor Wash:	
At confluence with Tuthill Dike Wash	*1,213
Approximately 3,400 feet upstream of Camelback Road Extended	*1,452
Caterpillar Dike Wash:	
At confluence with Tuthill Dike Wash	*1,285
Approximately 2,700 feet upstream of Caterpillar Proving Grounds Road	*1,296
White Granite Wash:	
Approximately 2,000 feet downstream of Caterpillar Proving Grounds Road	*1,348
Approximately 5,600 feet upstream of Caterpillar Proving Grounds Road	*1,512
North Fork White Granite Wash:	
At confluence with White Granite Wash	*1,399
Approximately 3,500 feet upstream of confluence with White Granite Wash	*1,510
91st Avenue Wash:	
Approximately 600 feet downstream of McDowell Road	*1,057
At Indian School Road	*1,135
Approximately 4,700 feet upstream of Camelback Road	*1,166
Perryville Road Wash:	
Approximately 2,500 feet downstream of the intersection of Camelback Road and Perryville Road	*1,121
Approximately 900 feet upstream of Northern Avenue	*1,229
Bullard Wash:	
Approximately 900 feet downstream of Lower Buckeye Road	*944
At McDowell Road	*944
Approximately 23,900 feet upstream of McDowell Road	*1,063
Lower El Mirage Wash:	
At confluence with Agua Fria River	*1,096
Approximately 1,550 feet upstream of Dysart Road	*1,147
Lower El Mirage Wash Tributary:	
At confluence with Lower El Mirage Wash	*1,119
At Greenway Road	*1,166
At the intersection of Greenway Road and Litchfield Road	*1,182
Litchfield Wash:	
Approximately 5,700 feet downstream of Litchfield Road	*1,064
At Litchfield Road	*1,077
Interstate 10:	
At confluence with Jackrabbit Trail Wash	*1,071
Just downstream of Tuthill Dike	*1,089
In the City of Avondale, maps are available for inspection at 1211 South Fourth Street	
In the Town of Buckeye, maps are available for inspection at 100 North Apache	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
In the Town of Carefree, maps are available for inspection at 100 Easy Street	
In the Town of Cave Creek, maps are available for inspection at 37622 North Cave Creek Road	
In the City of Chandler, maps are available for inspection at 200 East Commonwealth Avenue	
In the City of El Mirage, maps are available for inspection at 14405 North Palm Street	
In the Town of Gila Bend, maps are available for inspection at 644 West Pima Street	
In the Town of Gilbert, maps are available for inspection at 1025 South Gilbert Road	
In the City of Glendale, maps are available for inspection at 5850 West Glendale Avenue, Third Floor	
In the City of Goodyear, maps are available for inspection at 119 North Litchfield Road	
In the Town of Guadalupe, maps are available for inspection at 9050 South Avenida del Yaqui	
In the City of Litchfield Park, maps are available for inspection at 214 West Indian School Road	
In Maricopa County, maps are available for inspection at 301 West Jefferson Street, Tenth Floor	
In the Town of Paradise Valley, maps are available for inspection at 6517 East Lincoln Drive	
In the City of Phoenix, maps are available for inspection at 200 West Washington Street, Fifth Floor	
In the City of Scottsdale, maps are available for inspection at 3939 North Civic Center Boulevard	
In the City of Surprise, maps are available for inspection at 12425 West Bell Road, Building D–100	
In the City of Tempe, maps are available for inspection at 31 East Fifth Street	
CALIFORNIA	
Anderson (city), Shasta County (FEMA Docket No. 7106)	
Tormey Drain:	
Approximately 370 feet upstream of Davey Way	*401
Approximately 200 feet downstream of Rupert Road	*408
Approximately 450 feet upstream of Stingy Lane	*411
Approximately 700 feet northeast of the intersection of Balls Ferry Road and Stingy Lane	#1
Approximately 1,400 feet southeast of the intersection of Julie Lane and Travelled Way	#1
Approximately 2,200 feet southeast of the intersection of Julie Lane and Travelled Way	#3
At the intersection of Sharon Avenue and North Street	#1
Approximately 900 feet north of the intersection of East Street and Mill Street	#1

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps are available for inspection at City Hall, City of Anderson, 1887 Howard Street, Anderson, California.	
El Dorado County (unincorporated areas) (FEMA Docket No. 7126)	
New York Creek:	
Approximately 500 feet downstream of Green Valley Road	*583
Approximately 100 feet upstream of Green Valley Road	*594
Approximately 650 feet upstream of Timberline Ridge Drive	*600
Approximately 3,000 feet upstream of Timberline Ridge Drive	*651
Approximately 2,000 feet downstream of St. Andrews Drive	*707
Approximately 100 feet upstream of St. Andrews Drive	*730
Approximately 1,150 feet downstream of Harvard Way	*747
Approximately 150 feet upstream of Harvard Way	*770
Governor Drive Tributary:	
Approximately 550 feet downstream of Tam O'Shanter Drive	*720
Approximately 80 feet downstream of El Dorado Hills Boulevard	*735
Approximately 400 feet upstream of El Dorado Hills Boulevard	*745
Approximately 50 feet upstream of Merrium Lane	*761
Maps are available for inspection at the Department of Transportation, El Dorado County, 2850 Fairlane County, Placerville, California.	
Shasta County (unincorporated areas) (FEMA Docket No. 7106)	
Tormey Drain:	
Just upstream of Dodson Lane	*405
Approximately 1,300 feet upstream of Dodson Lane	*405
Approximately 1,600 feet northwest of the intersection of Brenda and Shelly Lanes	#1
Approximately 3,000 feet northwest of the intersection of Balls Ferry Road and Shelly Lane	#1
Approximately 2,600 feet northwest of the intersection of Brenda and Shelly Lanes	#3
Maps are available for inspection at the Department of Public Works, 7855 Placer Street, Redding, California.	
Sonoma County (unincorporated areas) (FEMA Docket No. 7126)	
Russian River:	
Approximately 9,500 feet upstream of State Highway 128	*181
Approximately 12,700 feet upstream of State Highway 128	*184
Approximately 17,000 feet upstream of State Highway 128	*188
Approximately 6,800 feet downstream of Geyersville Road	*199
Approximately 5,400 feet downstream of Geyersville Road	*202

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps are available for inspection at Sonoma County Permits & Resource Management, 575 Administration Way, Room 114A, Santa Rosa, California.	
HAWAII	
Honolulu (city and county) (FEMA Docket No. 7126)	
Kapakahi Stream:	
Approximately 3,860 feet downstream of Farrington Highway	*2
Approximately 320 feet downstream of Farrington Highway	*10
Approximately 900 feet upstream of Farrington Highway	*15
Makaha Stream:	
Just upstream of Farrington Highway	*13
Approximately 3,700 feet upstream of Farrington Highway	*83
Approximately 600 feet upstream of Huipu Drive	*237
Wailani Canal:	
Approximately 90 feet downstream of Waipio Access Road	*2
Approximately 900 feet upstream of Waipio Access Road	*2
Approximately 3,100 feet upstream of Waipio Access Road	*5
Maps are available for inspection at the Department of Land Utilization, Information Center, Honolulu Municipal Building, First Floor, 650 South King Street, Honolulu, Hawaii.	
Kauai County (unincorporated areas) (FEMA Docket No. 7103)	
Kalama Stream:	
Approximately 2,500 feet upstream of Puuopae Road	*327
Approximately 4,770 feet upstream of Puuopae Road	*350
Approximately 7,300 feet upstream of Puuopae Road	*400
Hanamaulu Stream:	
Approximately 1,100 feet upstream of confluence with Hanamaulu Bay	*11
Approximately 80 feet upstream of Access Road	*35
Approximately 120 feet downstream of Kuhio Highway	*89
Approximately 1,200 feet upstream of Kuhio Highway	*116
Hanamaulu Stream Tributary:	
At confluence with Hanamaulu Stream	*106
Approximately 500 feet upstream of Maalo Road	*106
Waikomo Stream:	
At confluence with Omao Stream	*223
Just upstream of Maluhia Road	*217
Just upstream of Cane Road	*220
Approximately 1,000 feet upstream of Wailaau Road	*223
Waikomo Stream Tributary:	
At confluence with Waikomo Stream	*221
Approximately 50 feet downstream of Wailaau Road	*221
Maps are available for inspection at the Department of Public Works, Engineering Division, 3021 Umi Street, Lihue, Kauai, Hawaii.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Kauai County (unincorporated areas) (FEMA Docket No. 7126)	
Pacific Ocean:	
In the vicinity of the intersection of Kaumualii Highway and Akekeke Road	*10–14
In the vicinity of the intersection of Kaumualii Highway and Aukuu Road	*8–12
In the vicinity of Kikiaola Harbor	*10–11
In the vicinity of the intersection of Pokole Road and Laau Road	*9–13
In the vicinity of the intersection of Kaalani Road and Kuiloko Road and Port Allen Airport	*5–14
At Hanapepe Bay, in the vicinity of the mouth of Hanapepe River	*9–13
At Kukuiula Bay, in the vicinity of the intersection of Lawai Road and Alania Road	*13–16
At Nahumaalo Point, near the mouth of Waikomo Stream	*16–17
In the vicinity of the intersection of Hoone Road with Nalo Road and Maa Road	*16–19
At Keoniloa Bay	*10
Maps are available for inspection at the Kauai County Department of Public Works, 3021 Umi Street, Lihue, Hawaii.	
KANSAS	
Dodge City (city), Ford County (FEMA Docket No. 7126)	
Arkansas River:	
Approximately 7,000 feet downstream of South Second Avenue	*2,474
Approximately 4,000 feet downstream of South Second Avenue	*2,478
Approximately 600 feet downstream of South Second Avenue	*2,482
Approximately 150 feet downstream of the Atchison, Topeka, and Santa Fe Railroad	*2,486
Approximately 100 feet downstream of 14th Avenue	*2,488
Chilton Creek:	
Approximately 100 feet downstream of Wyatt Earp Boulevard	*2,489
Approximately 175 feet downstream of West Ash Street	*2,514
Approximately 175 feet downstream of Comanche Street	*2,536
Approximately 1,200 feet upstream of Comanche Street	*2,550
Approximately 2,450 feet upstream of Comanche Street	*2,562
Maps are available for inspection at the City Engineer's Office, City of Dodge City, 705 First Avenue, Dodge City, Kansas.	
Ford County (unincorporated areas) (FEMA Docket No. 7126)	
Arkansas River:	
Approximately 160 feet downstream of an unimproved road	*2,456
Approximately 700 feet downstream of South East Bypass Bridge	*2,467
Approximately 900 feet upstream of 14th Avenue	*2,490

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 6,550 feet upstream of 14th Avenue	*2,495
Approximately 7,860 feet upstream of 14th Avenue	*2,497
Maps are available for inspection at the Ford County Engineer's Office, 100 Gunsmoke, Dodge City, Kansas.	
MISSOURI	
Branson (city), Taney County (FEMA Docket No. 7132)	
Roark Creek:	
At confluence with White River (Lake Taneycomo)	*714
Approximately 700 feet upstream of U.S. Highway 65	*720
Approximately 8,200 feet upstream of U.S. Highway 65	*749
Approximately 3,800 feet downstream of Shepherd of the Hills Expressway	*772
Approximately 3,400 feet upstream of Shepherd of the Hills Expressway	*801
Cooper Creek:	
Approximately 2,000 feet downstream of Fall Creek Road	*727
Approximately 200 feet upstream of Fall Creek Road	*764
Approximately 2,700 feet upstream of Fall Creek Road	*804
Maps are available for inspection at City Hall, City of Branson, 110 West Maddux, Branson, Missouri.	
NEW MEXICO	
Las Cruces (City) and Dona Ana County (Unincorporated Areas) (FEMA Docket No. 7122)	
Flow Path 3 (Alameda Main Arroyo):	
Upstream of U.S. Government Dam	*4,107
Approximately 170 feet upstream of Road Runner Parkway	*4,136
Just upstream of confluence of North Fork (Tributary 2) Alameda Arroyo	*4,218
Just upstream of Jornada Road South	*4,226
Approximately 2,070 feet upstream of Jornada Road South	*4,250
South Fork (Tributary 1) Alameda Arroyo:	
At confluence with Flow Path 3 (Alameda Main Arroyo)	*4,184
Just upstream of Jornada Road South	*4,234
Approximately 2,360 feet upstream of Jornada Road South	*4,268
North Fork (Tributary 2) Alameda Arroyo:	
At confluence with Flow Path 3 (Alameda Main Arroyo)	*4,218
Just downstream of an unnamed road located approximately 480 feet upstream of confluence with Flow Path 3 (Alameda Main Arroyo)	*4,224
Just downstream of an unnamed road located just upstream of confluence of North Fork (Tributary 3) Alameda Arroyo	*4,249

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
At the upstream Limit of Detailed Study located approximately 2,550 feet upstream of confluence with North Fork (Tributary 3) Alameda Arroyo	*4,290
North Fork (Tributary 3) Alameda Arroyo:	
At confluence with North Fork (Tributary 2) Alameda Arroyo	*4,248
Just downstream of Jornada Road South	*4,254
Approximately 2,270 feet upstream of Jornada Road South	*4,288
Flow Path 8 (North Fork Las Cruces Arroyo):	
Upstream of U.S. Government Dam	*4,107
Just downstream of Road Runner Parkway	*4,144
Just upstream of Paseo De Onate Road	*4,182
Approximately 1,570 feet upstream of Paseo De Onate Road	*4,203
Flow Path 9 (South Fork Las Cruces Arroyo):	
Upstream of U.S. Government Dam	*4,107
Upstream of Road Runner Parkway	*4,148
Just upstream of unnamed road	*4,207
Little Dam Arroyo:	
Approximately 950 feet downstream of Foothills Road	*4,125
Approximately 150 feet upstream of Foothills Road	*4,156
Approximately 80 feet upstream of Paseo De Onate Road	*4,209
Approximately 3,700 feet upstream of Paseo De Onate Road	*4,268
North Fork Moreno Arroyo:	
Approximately 1,320 feet upstream of El Camino Real	*3,928
Just downstream of Moreno Road	*3,976
Just upstream of northbound Interstate Highway 25	*4,026
Approximately 75 feet upstream of Del Rey Boulevard	*4,072
Approximately 5,510 feet upstream of Del Rey Boulevard	*4,217
Approximately 8,780 feet upstream of Del Rey Boulevard	*4,286
Ponding area located upstream of El Camino Real (Zone AH)	*3,914
Zone AO located approximately 1,300 feet upstream of El Camino Real	#3
South Fork Moreno Arroyo:	
Approximately 1,300 feet upstream of El Camino Real	*3,929
Approximately 30 feet upstream of Kennedy Road	*3,972
Just upstream of Elks Road	*4,013
At Del Rey Boulevard	*4,073
Approximately 4,430 feet upstream of Del Rey Boulevard	*4,185
Approximately 7,450 feet upstream of Del Rey Boulevard	*4,268
South Fork Moreno Arroyo Split Flow at Interstate 25:	
At Del Rey Boulevard	*4,072
Maps are available for inspection at the City Engineer's Office, City of Las Cruces, 200 North Church Street, Las Cruces, New Mexico.	
Maps are available for inspection at the Office of Flood Commission, Dona Ana County, 108 West Amador, Las Cruces, New Mexico.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
TEXAS	
Kaufman County (unincorporated areas) (FEMA Docket No. 7122)	
Kings Creek (Upper Reach):	
At Highway 34	*443
At confluence of Harding Branch	*450
At Airport Road	*451
At College Mound Road	*458
At Fransis Street	*486
Hardin Branch:	
At Airport Road	*451
Maps are available for inspection at the Kaufman County Courthouse, 3950 South Huston Street, Kaufman, Texas.	
UTAH	
Riverdale (city), Weber County (FEMA Docket No. 7122)	
Weber River:	
Approximately 5,800 feet downstream of Riverdale Road	*4,327
Approximately 3,350 feet downstream of Riverdale Road	*4,337
Just upstream of Riverdale Road	*4,351
Approximately 4,000 feet upstream of Riverdale Road	*4,363
At confluence of Weber Canal	*4,371
Approximately 2,400 feet upstream of Weber Canal	*4,385
Approximately 3,500 feet upstream of Weber Canal	*4,388
Maps are available for inspection at the Building and Zoning Office, 4600 South Weber River Drive, Riverdale, Utah.	
Weber County (unincorporated areas) (FEMA Docket No. 7122)	
Weber River:	
Approximately 200 feet upstream of confluence with Burch Creek	*4,332
Approximately 1,300 feet upstream of confluence with Burch Creek	*4,336
Approximately 2,400 feet upstream of confluence with Weber Canal	*4,385
Approximately 3,500 feet upstream of confluence with Weber Canal	*4,388
Approximately 4,000 feet upstream of confluence with Weber Canal	*4,394
Maps are available for inspection at the County Planning Commission, 2510 Washington Boulevard, Odgen, Utah.	

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: May 31, 1995.

Frank H. Thomas,

Deputy Associate Director for Mitigation.

[FR Doc. 95–13909 Filed 6–6–95; 8:45 am]

BILLING CODE 6718–03–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[DA 95–1053]

General Information

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission is modifying a section of the Commission's Rules that implements the Freedom of Information Act (FOIA) fee schedule. This modification pertains to the charge for recovery of the full, allowable direct costs of searching for and reviewing records requested under the FOIA and § 0.460(e) or § 0.461 of the Commission's rules, unless such fees are restricted or waived in accordance with § 0.470. The fees are being revised to correspond to modifications in the rate of pay approved by Congress.

EFFECTIVE DATE: July 7, 1995.

FOR FURTHER INFORMATION CONTACT: Judy Boley, Freedom of Information Act Officer, Records Management Branch, Room 234, Federal Communications Commission, 1919 M Street NW., Washington, DC 20554, (202) 418–0210.

SUPPLEMENTARY INFORMATION: The FCC is modifying 47 CFR 0.467(a) of the Commission's Rules. This rule pertains to the charges for searching and reviewing records requested under the Freedom of Information (FOIA). The FOIA requires federal agencies to establish a schedule of fees for the processing of requests for agency records in accordance with fee guidance issued by the Office of Management and Budget (OMB). In 1987, OMB issued its Uniform Freedom of Information Act Fee Schedule and Guidelines. However, because the FOIA requires that each agency's fees be based upon its direct costs of providing FOIA services, OMB did not provide a unitary, government-wide schedule of fees. The Commission based its FOIA fee schedule on the grade level of the employee who processes the request. Thus, the fee schedule was computed at a Step 5 of each grade level based on the General Schedule effected January 1995. The instant revisions correspond to modifications in the rate of pay recently approved by Congress.

Regulatory Procedures

This proposed rule has been reviewed under Executive Order No. 12866 and has been determined not to be a ''significant rule'' since it will not have an annual effect on the economy of $100 million or more.

In addition, it has been determined that this proposed rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 47 CFR Part 0

Freedom of information.

Federal Communications Commission.

Richard D. Lee,

Deputy Managing Director.

Amendatory Text

Part 0 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 0—COMMISSION ORGANIZATION

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

Authority; 47 U.S.C. 155, 225, unless otherwise noted.

2. Section 0.467 is amended by revising the table in paragraph (a)(1) and its note, and paragraph (a)(2) to read as follows:

§ 0.467 Search and review fees.

(a)(1) * * *

Grade	Hourly fee
GS—1	8.27
GS—2	9.01
GS—3	10.15
GS—4	11.40
GS—5	12.76
GS—6	14.21
GS—7	15.79
GS—8	17.49
GS—9	19.33
GS—10	21.28
GS—11	23.37
GS—12	28.01
GS—13	33.32
GS—14	39.36
GS—15	46.31

Note: These fees will be modified periodically to correspond with modifications in the rate of pay approved by Congress.

(2) The fees in paragraph (a)(1) of this section were computed at Step 5 of each grade level based on the General Schedule effective January 1995 and include 19 percent for personnel benefits.

* * * * *

[FR Doc. 95–13875 Filed 6–6–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF ENERGY

48 CFR Parts 915, 931, 942, 951, 952, and 970

RIN 1991–AB12

Independent Research and Development and Bid and Proposal Costs Policy

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) amends its Acquisition Regulation to effect changes to Independent Research and Development (IR&D) and Bid and Proposal Costs (B&P); and reflect Federal Acquisition Regulation (FAR) changes to the Cost Accounting Standards (CAS). Additionally, there are technical changes updating references, correcting editorial errors, and clarifying language.

EFFECTIVE DATE: June 7, 1995.

FOR FURTHER INFORMATION CONTACT: Terrence D. Sheppard (202) 586–8174, Business and Financial Policy Division (HR–51), Office of Procurement and Assistance Management, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C., 20585.

SUPPLEMENTARY INFORMATION:

I. Background
II. Procedural Requirements
A. Review Under Executive Order 12866
B. Review Under Executive Order 12778
C. Review Under the Regulatory Flexibility Act
D. Review Under the Paperwork Reduction Act
E. Review Under the National Environmental Policy Act
F. Review Under Executive Order 12612

I. Background

DOE published a notice of proposed rulemaking in the **Federal Register** on October 31, 1994. The public comment period closed December 30, 1994. No public comments were received. However, those portions of the proposed rule which addressed reimbursement of contractor travel costs (sections 970.3102–17(c)(7), 970.5204–13(e)(35), and 970.5204–14(e)(33)) have been withdrawn from this final rule, because section 2191 of the Federal Acquisition Streamlining Act of 1994, Pub. L. 103–355, repealed the statutory basis for the policy. A detailed list of changes follows:

1. The authority citation for Parts 915, 931, 942, 951, and 952 is restated.

2. Subsection 915.805–5 is amended to delete the requirement in paragraph (c)(1) that a copy of the audit request be sent to the DOE Inspector General (IG). Pursuant to interagency agreements, the

DOE contract audit agency is the Defense Contract Audit Agency (DCAA); the Department of Health and Human Services (HHS) has audit cognizance for most educational institutions.

3. Subparagraph 915.970–8(d)(1) is revised to add a reference to the relocation of the CAS to FAR Appendix B (Federal Acquisition Circular (FAC) 90–12, August 31, 1992).

4. Subsection 931.205–18 is revised to add the acronyms ''IR&D'' and ''B&P'' to the title. The DEAR reference to the FAR is changed from (c)(3) to (c)(2), because the FAR amendment (FAC 90–13, September 24, 1992) deleted FAR (c)(3). Paragraph (c)(4) is deleted in its entirety, except for a portion of the first sentence of (c)(4) which was moved to (c)(2). Also, FAC 90–13 replaced the requirement for separate advance agreements with temporary limits (for a 3-year period) on allowable IR&D/B&P costs. DOE has chosen not to institute the temporary limits, but rather to allow for full recovery, immediately. Thus, the text was amended to reflect the DOE policy that generally IR&D costs are allowable if reasonable, allocable, and they have a potential benefit or relationship to the DOE program. B&P costs are generally allowable if they are reasonable and allocable.

5. Section 942.003, paragraph (a) is revised to delete references to the Department of Defense (DOD) services; the services no longer have individual plant residencies. This revision reflects the current DOD structure for contract administration.

6. Section 942.101 is amended by deleting the reference to the Air Force Contract Management Division (AFCMD) and the DOE IG in paragraphs (a)(2) and (c), respectively. The AFCMD no longer exists and the Office of Procurement and Assistance Management now negotiates the interagency agreements with DCAA and HHS. Paragraph (a)(3) is redesignated as (a)(2) to accommodate the deletion of AFCMD.

7. Subsection 942.705–1 is revised at paragraph (a)(3) by deleting the statement that a listing of business units, for which DOE has final indirect cost rate negotiation responsibility, is published in the DOE Order System. The listing is no longer published in the DOE Order System. The revised paragraph (b)(1) clarifies the proscription that contractors shall neither be required nor directed to submit final indirect cost rate proposals to the auditor.

8. Subsection 942.705–3 is revised to correct the statement that negotiated rates are ''centrally maintained'' when, in fact, they are only ''distributed'' by the Office of Policy.

9. Subsection 942.705–4 is revised to correct the statement that negotiated rates are maintained by the Office of Policy, when, in fact, they are only distributed by the Office.

10. Subsection 942.705–5 is revised to correct the statement that negotiated rates are maintained by the Office of Policy, when, in fact, they are only distributed by the Office.

11. Subpart 942.10 is removed as a result of concomitant changes to the IR&D/B&P advance agreements (see item 4, foregoing). There is no longer a requirement to negotiate advance agreements; thus, the coverage is removed in its entirety.

12. Subsection 942.7003–6 is revised to add the word ''Administration'' to the title of FAR Part 30, which was changed as a result of FAC 90–12, August 31, 1992. Additionally, the reference to Public Law 91–379, which established the CAS, is deleted due to the subsequent incorporation of the CAS in FAR Appendix B and their application to civilian agencies pursuant to Public Law 100–679.

13. Subsection 942.7004 is revised at paragraph (a) to incorporate the results of the interagency agreements between the Office of Procurement and Assistance Management and DCAA and HHS. References to the DOE IG are deleted. Paragraphs (b), (c), and (d) are deleted as they describe internal operating procedures that, in large part, are no longer valid.

14. Subsection 951.7000 is revised to delete the reference to outdated General Services Administration (GSA) Bulletin A–95. The reference to the Federal Property Management Regulations (FPMRs) is sufficient.

15. Subsection 951.7001 is revised to delete the reference to outdated GSA Bulletin A–95 in the introductory paragraph. Paragraphs (a), (b), and (c) are deleted as they duplicate information contained in clause 952.251–70.

16. Subsection 952.251–70 is amended to correct a referenced citation at paragraph (a) from ''Property Management Regulation (FPMR), Temporary Regulation A–30'' to ''Travel Regulation (FTR), Part 301–15, Travel Management Programs.''

17. The authority citation for Part 970 is restated.

18. Subsection 970.3001–1 is revised to reflect the relocation of the CAS, within the FAR, from Part 30 to Appendix B.

19. Subsection 970.3001–2 is revised to correct the cross reference from ''970.3102–10'' to ''970.3102–3.''

20. Subsection 970.3102–17 is amended by revising paragraph (c)(2)(i) and adding a new paragraph (c)(6). In (c)(2)(i), line 1, the letter ''s'' is deleted from the word ''Regulations'' to reflect the new title. New subparagraph (c)(6) is added to reflect changes in FAR 31.205–46, ''Travel costs'' as a result of FAC 90–7 which provided for downward adjustments to the maximum per diem rates when no lodging costs are incurred or on partial travel days.

21. Subsection 970.7104–33 is revised to reflect the relocation of the Cost Accounting Standards, within the FAR, from Part 30 to Appendix B.

II. Procedural Requirements

A. 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, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. 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 regulation: specifies clearly any preemptive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE certifies that today's rule meets the requirements of sections 2(a) and (b) of Executive Order 12778.

C. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Public Law 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities,

and, therefore, no regulatory flexibility analysis has been prepared.

D. Review Under the Paperwork Reduction Act

No new information or recordkeeping requirements are imposed by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

E. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule falls into a class of actions which would not individually or cumulatively have significant impact on the human environment, as determined by DOE's regulations (10 CFR Part 1021, Subpart D) implementing the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this rule is categorically excluded from NEPA review because the amendments to the DEAR do not change the environmental effect of the rule being amended (categorical exclusion A5). Therefore, this rule does not require an environmental impact statement or environmental assessment pursuant to NEPA.

F. Review Under Executive Order 12612

Executive Order 12612 (52 FR 41685, October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the National Government and the States, or in the distribution of power and responsibilities among the various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires the preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. This rule revises certain policy and procedural requirements. States which contract with DOE will be subject to this rule. However, DOE has determined that this rule will not have a substantial direct effect on the institutional interests or traditional functions of the States.

List of Subjects in 48 CFR Parts 915, 931, 942, 951, 952, and 970

Government procurement.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below.

PART 915—CONTRACTING BY NEGOTIATION

1. The authority citation for Parts 915, 931, 942, and 951 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

2. Subsection 915.805–5 is amended by revising paragraph (c)(1) to read as set forth below:

915.805–5 Field pricing support.

* * * * *

(c)(1) When an audit is required pursuant to 915.805–70, ''Audit as an aid in proposal analysis,'' the request for audit shall be sent directly to the Federal audit office assigned cognizance of the offeror or prospective contractor. When the cognizant agency is other than the Defense Contract Audit Agency or the Department of Health and Human Services, and an appropriate interagency agreement has not been established, the need for audit assistance shall be coordinated with the Office of Policy, within the Headquarters procurement organization.

* * * * *

3. Section 915.970–8(d) is amended by revising paragraph (d)(1) introductory text to read as set forth below:

915.970–8 Weighted guidelines application considerations.

* * * * *

(d) *Capital investment (facilities).* (1) This element relates to the consideration to be given in the profit objective in recognition of the investment risk associated with the facilities employed by the contractor. Measurement of the amount of facilities capital employed is discussed in (FAR Appendix B) 48 CFR 9904.414. Five to twenty percent of the net book value of facilities capital allocated to the contract is the normal range of weight for this profit factor. The key factors that the negotiating official shall consider in evaluating this factor are:

* * * * *

PART 931—CONTRACT COST PRINCIPLES AND PROCEDURES

4. Subsection 931.205–18 is revised to read as follows:

931.205–18 Independent research and development (IR&D) and bid and proposal (B&P) costs.

(c)(2) IR&D costs are recoverable under DOE contracts to the extent they are reasonable, allocable, not otherwise unallowable, and have potential benefit or relationship to the DOE program. The term ''DOE program'' encompasses the DOE total mission and its objectives. B&P costs are recoverable under DOE contracts to the extent they are reasonable, allocable, and not otherwise unallowable.

PART 942—CONTRACT ADMINISTRATION

5. Section 942.003 is amended by revising paragraph (a) as set forth below:

942.003 Organizational structure.

(a) The Department of Defense has initiated a formal system of independent organizations responsible for performance of post-award management functions. A field structure of Contract Administration Offices (CAO) responsible for contract management and administration of contracts for major defense contractors has been established. DOD has organized plant residencies of contract management specialists for specific DOD contractors and their various business units. The Defense Logistics Agency performs contract management functions both at onsite residencies of contractors and on a mobile basis from centrally located management areas for other defense contractors. A complete listing of the DOD contract administration service components is contained in the Defense Directory cited in (FAR) 48 CFR 42.102.

* * * * *

6. Section 942.101 is amended by removing paragraph (a)(2); redesignating paragraph (a)(3) as (a)(2); and revising paragraph (c) to read as follows:

942.101 Policy.

* * * * *

(c) The Department of Energy has executed memoranda of understanding with the Defense Contract Audit Agency and the Office of Audit of the Department of Health and Human Services to provide audit support service to the DOE in support of its procurement mission. Procedures for acquiring these services are discussed in 942.70.

7. Subsection 942.705–1 is revised to read as follows:

942.705–1 Contracting officer determination procedure.

(a)(3) The Department of Energy shall use the contracting officer determination procedure for all business units for which it shall be required to negotiate final indirect cost rates. A listing of such business units is maintained by the Office of Policy, within the Headquarters procurement organization.

(b)(1) Pursuant to (FAR) 48 CFR 52.216–7, Allowable Cost and Payment,

contractors shall be requested to submit their final indirect cost rate proposals reflecting actual cost experience during the covered periods to the cognizant contracting officers responsible for negotiating their final indirect rates. The DOE negotiating official shall request all needed audit service in accordance with the procedures in 942.70, Audit Services.

8. Subsection 942.705–3 is revised to read as follows:

942.705–3 Educational institutions.

(a)(2) The negotiated rates established for the institutions cited in OMB Circular No. A–88 are distributed, to the Cognizant DOE Office (CDO) assigned lead office responsibility for all DOE indirect cost matters relating to a particular contractor, by the Office of Policy, within the Headquarters procurement organization.

9. Subsection 942.705–4 is revised to read as follows:

942.705–4 State and local governments.

A list of cognizant agencies for State/local government organizations is periodically published in the **Federal Register** by the Office of Management and Budget (OMB). The responsible agencies are notified of such assignments. The current negotiated rates for State/local government activities are distributed to each CDO by the Office of Policy, within the Headquarters procurement organization.

10. Subsection 942.705–5 is revised to read as follows:

942.705–5 Nonprofit organizations other than educational and state and local governments.

OMB Circular A–122 establishes the rules for assigning cognizant agencies for the negotiation and approval of indirect cost rates. The Federal agency with the largest dollar value of awards (contracts plus Federal financial assistance dollars) will be designated as the cognizant agency. There is no published listing of assigned agencies. The Office of Policy, within the Headquarters procurement organization, distributes to each CDO the rates established by the cognizant agency.

Subpart 942.10 [Removed]

11. Subpart 942.10 (including 942.1004 and 942.1008) is removed.

12. Subsection 942.7003–6 is revised to read as follows:

942.7003–6 CAS disclosure statements.

The audit activity is available and, in accordance with (FAR) 48 CFR part 30, Cost Accounting Standards Administration, is responsible for making recommendations to the contracting officer as to whether the CAS disclosure statement, submitted by the contractor as a condition of the contract, adequately describes the actual or proposed cost accounting practices and is in compliance with the Cost Accounting Standards required under the terms of the contract. The contracting officer shall request the auditor to review all Disclosure Statements submitted by a contractor or potential contractor.

13. Section 942.7004 is revised to read as follows:

942.7004 Procedures.

The Department of Energy Headquarters procurement organization has established formal interagency arrangements with the Defense Contract Audit Agency (DCAA) and the Department of Health and Human Services, Office of Inspector General. Audits are available to contracting officers pursuant to terms of these arrangements. DCAA, as the DOE cognizant auditor, is responsible for performing audits, when requested, for all DOE prime contractors and DOE Management and Operating contractors' subcontractors, except where another agency has cognizance of a contractor. HHS, for example, has contract audit cognizance for most educational institutions.

PART 951—USE OF GOVERNMENT SOURCES BY CONTRACTORS

14. Section 951.7000 is revised to read as follows:

951.7000 Scope of subpart.

The General Services Administration (GSA) and, in some cases, the Department of Defense (DOD) Military Traffic Management Command negotiate agreements with commercial organizations to provide certain discounts to contractors traveling under Government cost-reimbursable contracts. In the case of discount air fares and hotel/motel room rates, the GSA has established agreements with certain airlines and thousands of hotels/motels to extend discounts which were previously only available to Federal employees on official travel status. DOD has negotiated agreements with car rental companies for special rates with unlimited mileage which were also to be used by only Federal employees on official Government business. GSA Federal Property Management Regulations (FPMRs) make these three travel discounts available to Government cost-reimbursable contractors at the option of the vendor.

15. Section 951.7001 is revised to read as follows:

§ 951.7001 General policy.

Contracting officers will encourage DOE cost-reimbursable contractors (CRCs) to use Government travel discounts to the maximum extent practicable in accordance with contractual terms and conditions. Vendors providing the service may require that Government contractor employees furnish a letter of identification signed by the authorizing contracting officer. Contracting officers shall provide CRCs with a ''Standard Letter of Identification'' when appropriate to do so. An example of a ''Standard Letter of Identification'' is at 952.251–70(e).

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

16. The authority citation for part 952 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c); 42 U.S.C. 13524.

16a. Subsection 952.251–70 is amended by revising paragraph (a) of the clause to read as follows:

952.251–70 Contractor employee travel discounts.

* * * * *

(a) *Contracted airlines.* Airlines participating in travel discounts are listed in the Federal Travel Directory (FTD), published monthly by the General Services Administration (GSA). Regulations governing the use of contracted airlines are contained in the Federal Travel Regulation (FTR), 41 CFR Part 301–15, Travel Management Programs. It stipulates that cost-reimbursable contractor employees may obtain discount air fares by use of a Government Transportation Request (GTR), Standard Form 1169, cash or personal credit cards. When the GTR is used, contracting officers may issue a blanket GTR for a period of not less than two weeks nor more than one month. In unusual circumstances, such as prolonged or international travel, the contracting officer may extend the period for which a blanket GTR is effective to a maximum of three months. Contractors will ensure that their employees traveling under GTR provide the GTR number to the contracted airlines for entry on individual tickets and on month-end billings to the contractor.

* * * * *

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

17. The authority citation for part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Public Law 95–91 (42 U.S.C. 7254).

18. Subsection 970.3001–1 is revised to read as follows:

970.3001–1 Applicability.

The provisions of (FAR) 48 CFR part 30 and (FAR Appendix B) 48 CFR 9904.414 shall be followed for management and operating contracts.

19. Subsection 970.3001–2 is revised to read as follows:

970.3001–2 Limitations.

Cost of money as an element of the cost of facilities capital (CAS 414) and as an element of the cost of capital assets under construction (CAS 417) is not recognized as an allowable cost under contracts subject to 48 CFR part 970 (See 970.3102–3).

20. Subsection 970.3102–17 is amended by revising paragraph (c)(2)(i) and by adding paragraph (c)(6) to read as follows:

970.3102–17 Travel costs.

* * * * *

(c) * * *

(2) * * *

(i) Federal Travel Regulation prescribed by the General Services Administration, for travel in the conterminous 48 United States.

* * * * *

(6)(i) The maximum per diem rates referenced in paragraph (c)(2) of this section generally would not constitute a reasonable daily charge:

(A) When no lodging costs are incurred; and/or

(B) On partial travel days (e.g., same day of departure and return).

(ii) Appropriate downward adjustments from the maximum per diem rates would normally be required under these circumstances. While these adjustments need not be calculated pursuant to the Federal Travel Regulation, Joint Travel Regulations, or Standardized Regulations, they must result in a reasonable charge.

21. Subsection 970.7104–33 is revised to read as follows:

970.7104–33 Cost Accounting Standards.

The provisions of (FAR) 48 CFR 30 and (FAR Appendix B) 48 CFR 9904.414 shall apply to purchases by management and operating contractors.

[FR Doc. 95–13436 Filed 6–6–95; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 1–21, Notice 13]

RIN 2127–AE99

Federal Motor Vehicle Safety Standards Theft Protection

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

ACTION: Final rule.

SUMMARY: This rule makes a temporary change in the requirement of Standard No. 114, *Theft Prevention,* that vehicles with automatic transmissions be equipped with a transmission lock that prevents key removal unless the transmission is locked in park or becomes locked in park as a direct result of removing the key. The purpose of this requirement is to prevent rollaway crashes caused by unattended children pulling the transmission lever out of park. Due to apparent confusion concerning the scope of the requirement and the effect of that confusion on transmission designs, the requirement will be changed until September 1, 1996. Until that time, the transmission lock will only be required to prevent key removal when the transmission is fully engaged in a detent position other than park (e.g., reverse, neutral, drive). After that date, the requirements will revert to their previous form, prohibiting key removal in all positions other than park.

This rule also corrects, by technical amendment, an error in the language of the provision that permits transmission lock override devices to facilitate towing disabled vehicles. The existing language inadvertently requires steering lock-up even for vehicles whose override devices are operated by the vehicle key. Requiring steering column lock-up on automatic transmission locks with a key operated override device would not provide added protection against theft since the key that would operate the device would also unlock the steering. The technical amendment excludes these vehicles from the steering lock-up requirement.

DATES: This rule is effective July 7, 1995. Petitions for reconsideration of this rule must be received no later than July 7, 1995.

ADDRESSES: Petitions for reconsideration should refer to the docket number and notice number and be submitted in writing to: Administrator, National Highway Traffic Safety Administration, Room 5220, 400 Seventh Street, SW., Washington DC, 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Jere Medlin, Office of Vehicle Safety Standards, NRM–15, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC, 20590. Telephone: (202) 366–5276.

SUPPLEMENTARY INFORMATION:

The Mazda Petition

Background

On May 30, 1990, NHTSA amended Federal Motor Vehicle Safety Standard No. 114, *Theft Protection,* to protect against injuries to children caused by the rollaway of unattended automatic transmission vehicles in which children were able to shift the transmission. 55 FR 21868. The amendment required automatic transmission vehicles with a ''park'' position to have a key-locking system that prevents removal of the key unless the transmission is locked in ''park'' or becomes locked in ''park'' as the direct result of removing the key. The amendment was intended to ensure that the automatic transmissions of unattended parked vehicles cannot be shifted by a child. The amendment became effective on September 1, 1992.

On June 21, 1990, NHTSA denied a petition for rulemaking from Mr. W. A. Barr. Mr. Barr had requested that the agency amend the standard to require manufacturers to design transmissions that assure that the parking pawl (a ''tooth'' that fits into a transmission gear to prevent it from turning) engages when the driver puts the shift lever in park. He believed that transmission designs of Ford and other manufacturers generate a ''back pressure'' on the shift lever that pushes the lever out of park and toward reverse. To counter that force, the driver has to pull the shift lever ''sideways'' into a slot to assure that the lever does not spontaneously move out of park and into reverse. Mr. Barr considered these designs defective because they place the responsibility for assuring that the shift lever is ''locked'' in park on the driver. He referred to the situation in which the driver does not properly place the shift lever in park as ''mispositioning.''

In its denial of Mr. Barr's petition, NHTSA stated ''[w]ithout data suggesting current Federal motor vehicle safety standards are allowing or not addressing an unreasonable safety risk, the agency will not commence [rulemaking].'' The agency also stated ''the agency's review of available data on incidents of inadvertent vehicle movement indicated that the potential for this problem is relatively small.'' In

justifying the denial, the agency made no mention of the previous month's amendment. That amendment addressed his concern to a limited extent, i.e., it prevented key removal when the transmission is not locked in park for whatever reason, including mispositioning.

In a November 20, 1992 letter to Ford, NHTSA declined to adopt a request by that company to interpret Standard No. 114 as prohibiting key removal only when the transmission shift lever is in one of the available gear positioning detents other than park, i.e., reverse, neutral, drive, first, or second, and thus not when the lever is at points between those detents. The agency stated that

> Key removal must be prevented in all circumstances save those specified in S4.2.1. Neither the transmission nor the transmission shift lever is locked in ''park'' when the lever is between the gear selector positioning detents.

After issuing the interpretation letter, NHTSA conducted compliance testing for Standard No. 114 and discovered apparent noncompliance with the transmission-locking requirement in vehicles of several manufacturers. NHTSA sent letters of notification of apparent noncompliance to Ford, Honda, GM, Suzuki, Hyundai, and Mazda. In its letter to Mazda, the agency enclosed a copy of the November 1992 interpretation letter it had sent to Ford.

On February 2, 1993, Mazda submitted a petition for rulemaking requesting that the agency amend the provision added by the May 1990 final rule by revising the compliance test procedure so that it would provide for testing for the possibility of key removal only when the transmission lever was in any of the detent positions. Mazda said that the procedure was needed to clarify the requirement to make the compliance test procedure ''objective.''

In its petition, Mazda characterized the agency's November 1992 interpretation as permitting ''intentional mispositioning'' of the transmission shift lever during compliance testing. Mazda argued that the rulemaking record did not indicate that the agency ever contemplated guarding against what that company terms ''intentional mispositioning'' of the transmission shift lever. Mazda argued that during its design and development of the vehicles which were the subject of the agency's testing, it never understood ''intentional mispositioning'' to be a reasonable and legitimate compliance test condition under Standard No. 114. Mazda also argued that, by not specifying what that company termed as an objective test procedure for determining compliance, the standard fails to satisfy the requirement of 49 U.S.C. 30111(a) that standards ''be stated in objective terms.''

On March 14, 1994, in response to Mazda's petition, NHTSA issued a Notice of Proposed Rulemaking (NPRM) proposing to amend Standard No. 114 to prevent key removal only when the shift lever is fully placed in any designated shift position other than park. In issuing the notice, NHTSA rejected Mazda's ''lack of objective test procedure'' argument because the requirements were clear on their face, but found reason to reexamine the rule on other grounds.

In the NPRM, the agency tentatively concluded that the safety implications of the proposal were nonexistent or minuscule. For those noncomplying vehicles that required a deliberate effort to defeat the transmission shift lock, there would be no safety consequences from the adoption of the proposal, since there was no reason to believe that drivers would make such a deliberate effort. For those noncomplying vehicles that would allow the driver to inadvertently move the shift lever into what appeared to be the park position and remove the key when the lever is not actually in park—referred to as a ''misshift''—the agency tentatively concluded that the safety impacts would be ''minuscule.'' This is because two rare events (the driver inadvertently moving the shift lever to a position just short of park *and* a child subsequently playing with the shift lever) would have to coincide for a rollaway accident to occur.

The NPRM proposed a compliance test procedure that would define whether the vehicle was ''fully placed'' in the various shift positions and whether it was ''locked in 'park'.'' For the shift lever to be regarded as ''fully placed'' in one of the detent positions, the NPRM provided that position would have to be displayed on the transmission gear selection indicator and the vehicle would have to respond in a certain way to confirm that the transmission was actually in the indicated detent position. ''Fully placed in park'' was defined as being when the vehicle does not roll away (''rollaway'' being defined as moving more than 100 mm) on a 10 percent grade after the parking brake is released. ''Fully placed in neutral'' was defined as being when activation of the accelerator pedal does not cause the car to move. ''Fully placed in a forward or reverse drive position'' was defined as being when the vehicle can be driven under its own power.

Summary of Comments to Notice of Proposed Rulemaking

Industry commenters supported the proposed change to the transmission locking requirements, without explaining their reasons for doing so. Mazda stated only that the proposed requirements were sufficiently objective. Chrysler agreed that the less stringent transmission lock requirements in the NPRM provide greater flexibility for the manufacturers, but found it ''difficult to imagine mechanical systems'' designed to prevent key removal only at detent positions. However, Chrysler did ''not object'' to the rulemaking.

The industry commenters all shared two objections to the proposed rule. The first resulted from the NPRM's substitution of the word ''or'' for ''and'' in S4.2.1(a). The existing requirement in that paragraph states ''. . . shall prevent removal of the key unless the transmission *or* transmission shift lever is locked in 'park'. . .'' (emphasis added). Ford, GM, and Chrysler objected to the NPRM's change in the conjunctive language of S4.2.1(a)(1) from ''or'' to ''and'' because it requires lockup of *both* the transmission and the shift lever, rather than only one or the other. Ford believed that this change was inadvertent because NPRM's preamble did not reflect a desire to require manufacturers to change current designs. Instead, it indicated an intent to provide manufacturers with greater flexibility. Ford stated that locking both the transmission and the shift lever would require design changes. GM stated that the added requirement was unnecessary and implied that it was impractical, because shifting into park may initially only position the parking pawl on the top of a tooth of the planetary carrier, and that further vehicle movement may be necessary to permit pawl engagement in a slot between the teeth. Chrysler believed locking either the transmission or the shift lever is adequate to protect against injuries.

Ford, GM, and Chrysler also urged the agency to increase the amount of vehicle movement (100 mm) that is permitted in the compliance procedure before the vehicle is considered to have experienced ''rollaway.'' Ford stated that a small percentage of ''light truck type vehicles with large tires'' may travel slightly more than 100 mm, and suggested increasing the distance to 150 mm. Chrysler also suggested 150 mm as an appropriate distance.

GM objected even more strongly to the 100 mm rollaway definition. GM commented that the compliance test

procedure for rollaway is unnecessarily stringent and impracticable. Because of the many different combinations of axle ratios, transmission and suspension designs, and tire sizes that have to be accommodated, GM suggests deleting the distance limit altogether. Rather than selecting an ''arbitrary'' distance, GM stated ''park'' should be defined as being when the vehicle becomes stationary within five seconds of releasing the parking brake. GM recommended that, if NHTSA insists on using a distance, the distance be increased from 100 mm to at least 400 mm. GM stated that this is necessary to account for extreme situations, such as vehicles with tires greater than 30 inches in diameter, which GM calculates may require up to 40 degrees of rotation to fully engage the parking pawl and eliminate gear lash. Without explaining why, GM also stated that a 10 percent grade was unnecessarily steep and suggested a 2–3 percent grade instead.

A number of lawyers and a consumer safety advocacy group commented that changing the standard as proposed in the NPRM would be detrimental to motor vehicle safety. Many of them offered examples of specific crashes that they believed would be permitted under the relaxed standard. Some of these crashes may be attributable to misshifting.

Mr. Robert Palmer, a Missouri attorney, stated that he handled a ''string of cases'' in the 1980's in which he said Ford's defective transmission locks allowed the driver to ''place the vehicle in what he thought was 'Park' and then the vehicle would move into 'Reverse'.'' These are misshift situations. He appeared to believe that NHTSA is rescinding the transmission lock requirement altogether, and objected because it is saving ''countless'' lives.

Mr. Victor Fleming, an Arkansas lawyer, wrote about another misshift accident. He believed that the standard fails to address the issue of ''unsuspecting adults'' causing rollaway accidents. He also appeared to believe that NHTSA is rescinding the transmission lock requirement.

Mr. Kenneth Obenski, president of a firm that investigates accidents for insurers and litigants, stated that 0.5 percent of the accidents that his firm has investigated involved vehicles parked but inadequately secured by drivers. Some of these accidents may be caused by misshifts.

Mr. John Stilson, a consulting safety and automotive engineer, is engaged as an expert on behalf of a woman injured after her Mazda rolled over her. The accident apparently involved a misshift situation, although it is unclear whether the vehicle was equipped with a transmission lock.

Mr. Ralph Hoar, of Ralph Hoar and Associates, asserted that NHTSA files reveal ''numerous recalls by many manufacturers for shift indicator misalignment or problems with the shift mechanism that would mislead the operator into believing that they had selected the intended gear.'' He concluded that, if vehicle operators are being misled about the transmission position, it follows that the transmission may be between gears. An operator who can remove the key in such a situation would be falsely led to believe that the vehicle is secured. He states that this history of recalls and complaints indicates it is not in the interest of safety to allow misshifts.

Advocates for Highway and Auto Safety's (Advocates) main argument was that the agency has no idea of the magnitude of the safety benefits that it is eliminating in this rulemaking. Advocates stated that NHTSA has not produced any data to support the NPRM's conclusion that the chance of misshifting is small, or that the chance of misshifting coupled with horseplay on the part of children is remote. Advocates quoted the 1990 final rule as asserting that the existing requirement provides ''absolute assurance'' of transmission lock after key removal. Advocates asserted that ''[t]he agency is obligated to determine the extent of the probable exposure, and the degree of risk, to which children will be newly exposed prior to amending the rule * * *''

Advocates noted that the 1990 Final Regulatory Evaluation (FRE) acknowledged a ''special obligation'' to reduce crashes involving children, and expressed the opinion that this may make it worth maintaining the existing rule and requiring the involuntary redesign of some vehicle transmissions.

A related argument of Advocates was that the magnitude of the safety problem is likely much larger than NHTSA's estimates because the number of noncompliant vehicles exceeds NHTSA's figures. Advocates stated that the 1990 FRE predicated its estimate of 50–100 child injuries prevented per year on the assumption that only 4 percent, or 470,000, of the 1987 vehicles were not in compliance. Advocates stated that 40 percent more, or 668,000 vehicles in 1993 permit misshifts. Advocates argued that this increased exposure will be repeated annually and even increased if more manufacturers decide to start producing transmission locks that permit misshifting. Advocates estimated that the NPRM, if adopted, might result in an additional 50–100 child injuries annually.

Advocates also faulted NHTSA for not providing any information on the number of different kinds of transmissions that would have to be redesigned, or the costs of doing so. It stated that if transmission redesign were enormously burdensome, manufacturers would not have improved from approximately 69 percent compliance in mid-1990 to the 1993 level of well over 90 percent compliance in just two years. Advocates concluded that NHTSA has provided no economic argument to support the NPRM.

Finally, Advocates asserted that NHTSA conducted this rulemaking merely to bring the manufacturers into compliance and to avoid the costs of redesigning defective transmissions. It suggested that NHTSA address noncompliances using existing procedures and not allow misinterpretations of its standards to cause it to ''roll back'' safety protection. Advocates stated that the current standard is clear, as outlined in NHTSA's interpretation letter to Ford, and that the NPRM represents an improper use of rulemaking authority.

Agency Analysis of Issues and Adoption of Final Rule

After carefully considering the public comments, NHTSA has decided to temporarily, instead of permanently, reduce the stringency of the transmission locking requirement. Simply replacing the existing requirement with the proposed one is not appropriate. Vehicles manufactured before September 1, 1996 will be subject to a requirement along the lines of the proposal. Vehicles manufactured on or after that date will be subject to the slightly more stringent requirement originally adopted by the agency in May 1990. The rationale for this decision is set forth in greater detail below.

The agency concludes that a change in the locking requirement is necessary because of the consequences of confusion in the industry about the original requirement. The confusion was apparently engendered in part by an event that occurred shortly after the issuance of the May 1990 final rule, i.e., the agency's June 1990 denial of a petition for rulemaking by Mr. W.A. Barr concerning misshifting of transmissions. The industry apparently read these nearly contemporaneous decisions together to indicate that the agency had not intended to address any aspect of the misshift problem in the May 1990 rulemaking on Standard No. 114.

While the agency issued an interpretation in November 1992 clarifying the reach of the May 1990 final rule, that interpretation did not eliminate the practical consequences of the industry's confusion, since the manufacturers could not immediately comply with it. The agency's efforts to address those consequences led it to grant Mazda's petition for rulemaking and to take the more fundamental step of reexamining the rationale for the agency's adoption of the requirement. That reexamination led to the agency's issuing the March 1994 NPRM proposing a more limited requirement to address rollaway incidents, on the ground that the misshift aspect of the rollaway problem might be too small to address at all. Final adoption of the proposal would have eliminated the practical consequences of the confusion.

The agency is changing the transmission locking requirement on only a temporary basis because a relatively short-term change is sufficient to eliminate consequences of confusion within the industry over the extent of the original requirement. Nearly all manufacturers have told NHTSA in response to noncompliance investigation letters that they are now in compliance with the more stringent requirements. Considering the relatively minor nature and expense of the necessary design changes, the agency concludes that the relatively few remaining vehicles that do not satisfy the more stringent requirement can be modified to do so by September 1, 1996.

An additional consideration leading the agency to make the change a temporary one is that while it believes the difference in safety benefits between the existing requirement and the less stringent temporary one is small, eliminating even the small possibility of misshift-induced rollaway is justified because the likely beneficiaries are children, which the agency has historically taken special care to protect.

NHTSA observes that the rollaway accidents at issue that could arise from misshifting are a part of the problem the agency was intending to address in the earlier rulemaking, i.e., crashes resulting from the rollaway of parked vehicles with automatic transmissions as a result of children moving the shift mechanism out of the ''park'' position. Apart from the issue of dealing with the legacy of the industry's confusion, there is no reason to single out this part of the problem for special treatment. Indeed, this part of the problem is addressed by the same basic countermeasure as the rest of the problem, i.e., a transmission shift lever lock.

NHTSA believes that the brief duration of less stringent transmission lock requirement will minimize the possibility of any adverse safety impacts from this rulemaking. As already noted, nearly all manufacturers are now in compliance with the more stringent requirements. The duration of the more limited requirement is so short that it would not be worthwhile for vehicle manufacturers to redesign transmissions to allow misshifting for only a year. The agency believes that manufacturers will respond to this notice by quickly redesigning any remaining transmissions that do not comply with the future requirements.

NHTSA believes that its decision to adopt the less stringent requirement on a temporary, short-term basis renders moot all or most of the commenters' concerns about a possible loss of safety benefits. As indicated above, some commenters argued that the agency lacked any basis for saying that the safety risks associated with misshifts was such a small part of the rollaway problem. They further argued that NHTSA had underestimated the noncompliant portion of the vehicle population being produced annually. They also suggested that the noncompliant vehicle population might increase. The agency notes that those concerns were expressed in response to the proposed permanent change in the requirement.

NHTSA notes further that its analysis of the original May 1990 final rule indicated that installation of the required technology in its estimate of the number of the cars and light trucks not voluntarily equipped by the standard's effective date would prevent an estimated 50 to 100 child-injuring rollaway accidents annually. While the agency cannot provide a precise estimate of the extent to which these benefits could have been reduced by permanently adopting the proposed more limited requirement, NHTSA believes that it would have been small. This is because any such reduced child injury prevention benefits would occur only in the rare combination of events described above, and only for the few vehicles still in noncompliance with the existing requirement. Regarding Advocates' comment that the agency does not have enough information on the costs and benefits of this rule, NHTSA notes that it has provided estimates within the limits of available data.

In response to Advocates' charge that the agency underestimated the noncompliant portion of the fleet, thereby also underestimating the benefits in 1990 (and the costs of this rule), the agency notes that its analysis would not have changed markedly had it used Advocates' higher estimate. Most of the benefits projected in the 1990 rule are already being achieved since they are associated with the addition of a transmission lock. Transmission locks have been added to all cars equipped with automatic transmissions. Thus, benefits are being obtained even from those vehicles that do not satisfy the more stringent requirements. Moreover, as stated above, any potential degradation of safety is marginal because their current transmission locks allow misshifting events only under very rare circumstances.

In summary, the agency believes that twin goals of addressing the legacy of the industry's confusion and securing the benefits of the existing requirement can be most reasonably achieved by allowing vehicles manufactured before September 1, 1996 to meet the more limited requirements proposed in the March 1994 NPRM and requiring vehicles manufactured on or after that date to meet the slightly more stringent requirement originally adopted by the agency in May 1990.

NHTSA believes that there are essentially no costs associated with this final rule. The only relevant costs are those associated with the May 1990 final rule which will be temporarily suspended and then reinstated on September 1, 1996. The basic cost is related to the addition of a transmission shift lever lock. Such a lock is needed to meet either the more limited, temporary requirement or the more stringent, permanent requirement. For vehicles which currently meet only the more limited requirement, some minor design changes will be needed in the lock to meet the more stringent requirement when it again becomes effective. By providing over one year of leadtime before the broader requirement must be met, those residual costs of the May 1990 final rule will be minimized.

The agency agrees with the industry commenters that the change of the conjunctive ''or'' to ''and'' in S4.2.1(a) was not necessary and that locking either the transmission shift lever or the transmission itself, will have the same practical effect. Therefore, the regulatory text has been corrected to make it clear that locking of either the transmission or the shift lever is sufficient, provided this action prevents vehicle rollaway.

NHTSA also agrees that the NPRM's ''rollaway'' definition of more than 100 mm of vehicle movement is unnecessarily restrictive. However, it cannot agree to allow an unspecified amount of movement, or up to 400 mm

of movement, as GM suggests. GM's 400 mm figure is a worst-case estimate of how far certain trucks might roll. This larger amount of movement would be more likely to create the possibility of trapping children and adults under the car than would lesser amounts of movement. It is unclear to this agency why GM products cannot satisfy the 150 mm criterion suggested by Ford and Chrysler. Therefore, to account for some amount of ''play'' in U-joints, the amount of gear lash in transmissions, transfer cases, and differentials, plus the fact that a vehicle may have to roll slightly to completely engage the parking pawl, NHTSA has increased the amount of permissible roll to 150 mm.

NHTSA does not agree with GM's comment that the 10 percent grade specification in the test procedure is unnecessarily steep, and has retained the specification in the final rule. The agency notes that the grade level differential associated with the transmission grade holding ability in S7.7 of the parking brake test in Standard No. 105, *Hydraulic Brake Systems,* is 10 percent. That test requires the vehicle to hold on a 20 percent grade with the parking brake and on a 30 percent grade with the automatic transmission in ''park'' and with the parking brake on. NHTSA notes that the vehicle-on-grade test specified in this rule is not intended to verify the performance of the holding capability already required of vehicles in Standard No. 105, but to verify that the transmission is operating in a vehicle holding mode.

The GM Petition

In response to comments about the need to move disabled vehicles, the agency amended Standard No. 114 on March 26, 1991 to permit a key-operated override device which would allow the transmission to be moved from park after key removal. The final rule did not require steering lock-up to occur as a result of using the override device. In response to petitions for reconsideration, on January 17, 1992, the agency again amended the rule to permit override devices operated by means other than the key. In allowing keyless override devices, the preamble stated that the agency would require that steering lock-up occur as a result of using keyless override devices. The lock-up would act as a theft deterrent. The preamble concluded ''the agency emphasizes that the amendment permits a keyless emergency override only if theft protection is ensured by a steering lock'' (58 FR 12467). However, while the preamble discussed steering lockup only for keyless override devices, the regulatory language of S4.2.2 required steering lockup for any override device, including those operated by a key.

On March 22, 1994, NHTSA received a petition for rulemaking from Mr. Gerald Gannon of GM's legal staff, suggesting that the words ''provided that steering is prevented when the key is removed'' were misplaced in the regulatory text. He correctly assumed that NHTSA did not intend to require steering lockup for override devices operated by a key. Indeed, moving these words as GM suggests produces the intended result.

There is adequate cause to amend the rule, pursuant to the GM petition, using only a technical amendment. The preamble of the 1990 rule, which addresses steering locks for keyless override devices only, supports the suggestion that an error was made in the regulatory text of the January 1992 final rule. The focus of that preamble indicates that key-operated override devices were not intended to be covered by the restriction. Moreover, it is illogical from an anti-theft perspective to require steering lockup in a vehicle when the transmission lock override device itself is operated by the key that would unlock the steering anyway. Thus, with evidence in the record that the word placement was in error and with the existing requirement being illogical, a technical amendment is appropriate. Notice and comment procedures are not necessary.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impacts of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This action has been determined to be not ''significant'' under either. As explained above, the amendments would impose no new requirements but would temporarily provide additional flexibility to manufacturers, with respect to transmission shift lock designs, with no measurable impact on safety or costs. No manufacturer of vehicles that satisfy the preexisting requirements is likely to redesign its transmissions in response to this rule.

The cost of making the minor changes to the few transmission locks that are still being produced not in compliance with the existing rule is likely to be a small but undeterminable fraction of the cost of adding transmission locks. NHTSA notes that these costs are attributable to and were already counted in the 1990 rule. As stated earlier, the portion of the fleet that currently does not satisfy the more stringent requirements is likely to be much smaller than the 668,000 vehicles that the NPRM estimated, based on manufacturer responses to NHTSA's investigation. NHTSA cannot quantify how much smaller the portion is now because it has not conducted any recent compliance testing. Due to the probable minimal cost of compliance per vehicle and the small number of vehicles affected, NHTSA believes that the remaining costs of the 1990 rule are insignificant.

Since this final rule does not increase costs or provide any cost savings, a full regulatory evaluation is not warranted.

Regulatory Flexibility Act

NHTSA has also considered the effects of this regulatory action under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. The vehicle manufacturers affected by the requirements typically do not qualify as small businesses. Further, since no price changes should be associated with this rule, small businesses, small organizations and small governmental entities will not be affected in their capacity as purchasers of new vehicles.

Executive Order 12612 (Federalism)

The agency has analyzed this rule in accordance with the principles and criteria set forth in Executive Order 12612. NHTSA has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

This rule does not impose any retroactive burdens. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. § 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

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

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

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

Authority: 49 U.S.C. 322, 30111, 30162; delegation of authority at 49 CFR 1.50.

2. Section 571.114 is amended by revising S1, S4.2.1, and S4.2.2, and adding new paragraphs S5 through S5.3, to read as follows:

§ 571.114 Standard No. 114; Theft protection.

S1 *Purpose and Scope.* This standard specifies requirements primarily for theft protection to reduce the incidence of crashes resulting from unauthorized operation of a motor vehicle. It also specifies requirements to reduce the incidence of crashes resulting from the rollaway of parked vehicles with automatic transmissions as a result of children moving the shift mechanism out of the ''park'' position.

* * * * *

S4.2.1(a)(1) Except as provided in S4.2.2(a) and (b), the key-locking system required by S4.2 in each vehicle which is manufactured prior to September 1, 1996, and which has an automatic transmission with a ''park'' position shall, when tested under the test procedures in S5(a), prevent removal of the key:

(i) Whenever the shift lever or other shifting mechanism is fully placed in any designated shift position other than ''park,'' unless the transmission or transmission shift mechanism become locked in ''park'' as the direct result of removing the key; and

(ii) Whenever the shift lever or other shifting mechanism is fully placed in the park position, unless the transmission or transmission shift mechanism are locked in park or become locked in ''park'' as the direct result of removing the key.

(2) Except as provided in S4.2.2(a) and (b), the key-locking system required by S4.2 in each vehicle which is manufactured on or after September 1, 1996, and which has an automatic transmission with a ''park'' position shall, when tested under the procedures in S5(b), prevent removal of the key unless the transmission or transmission shift lever is locked in ''park'' or becomes locked in ''park'' as the direct result of removing the key.

(3) Each vehicle shall not move more than 150 mm on a 10 percent grade when the transmission or transmission shift lever is locked in ''park.''

S4.2.2(a) Notwithstanding S4.2.1, provided that steering is prevented upon the key's removal, each vehicle specified therein may permit key removal when electrical failure of this system (including battery discharge) occurs or may have a device which, when activated, permits key removal. The means for activating any such device shall be covered by a non-transparent surface which, when installed, prevents sight of and activation of the device. The covering surface shall be removable only by use of a screwdriver or other tool.

(b) Notwithstanding S4.2.1, each vehicle specified therein may have a device which, when activated, permits moving the transmission shift lever from ''park'' after the removal of the key. The device shall either be operable:

(1) By the key, as defined in S3; or

(2) By another means, provided that steering is prevented when the key is removed from the ignition, and provided that the means for activating the device is covered by a non-transparent surface which, when installed, prevents sight of and activation of the device. The covering surface shall be removable only by use of a screwdriver or other tool.

* * * * *

S5. *Compliance Test Procedure for vehicles with automatic transmissions.*

S5.1 *Test Conditions.*

(a) The vehicle shall be tested at curb weight plus 91 kg (including the driver).

(b) Except where specified otherwise, the test surface shall be level.

S5.2 *Test procedure for vehicles manufactured before September 1, 1996.*

(a) Drive the vehicle forward and stop with the service brakes. Apply the parking brake (if present). Try to remove the ignition key from each possible key position.

(b) Repeat the procedure in S5.2(a) with the transmission shift mechanism in each forward drive shift detent position.

(c) Drive the vehicle backward and stop with the service brakes. Apply the parking brake. Try to remove the ignition key from each possible key position.

(d) Move the transmission shift mechanism to the ''neutral'' detent position. Try to remove the ignition key from each possible key position.

(e) Drive the vehicle forward up a 10 percent grade and stop it with the service brakes. Apply the parking brake. Move the shift mechanism to the ''park'' position. Apply the service brakes. Release the parking brake. Release the service brakes. Remove the key. Verify that the transmission shift mechanism or transmission is locked in ''park.'' Verify that vehicle movement was less than or equal to 150 mm after release of the service brakes.

S5.3 *Test procedure for vehicles manufactured on or after September 1, 1996.*

(a) Move the transmission shift mechanism to any position where it will remain without assistance, including a position between the detent positions, except for the ''park'' position. Try to remove the key from each possible key position in each such shift position.

(b) Drive the vehicle forward up a 10 percent grade and stop it with the service brakes. Apply the parking brake (if present). Move the shift mechanism to the ''park'' position. Apply the service brakes. Release the parking brake. Release the service brakes. Remove the key. Verify that the transmission shift mechanism or transmission is locked in ''park.'' Verify that vehicle movement was less than or equal to 150 mm after release of the service brakes.

Issued on June 1, 1995.

Ricardo Martinez,

Administrator.

[FR Doc. 95–13867 Filed 6–6–95; 8:45 am]

BILLING CODE 4910–59–P

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1023

[Ex Parte No. MC–100 (Sub-No. 6)]

Single State Insurance Registration

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission is revising the receipt provisions of its regulations pertaining to registration by motor carriers with states. Pursuant to a court remand, the Commission has reexamined provisions permitting motor carriers to make copies of registration receipts. Under the revised rules, states will issue official copies of receipts, and motor carrier copying will be prohibited.

EFFECTIVE DATE: July 7, 1995.

FOR FURTHER INFORMATION CONTACT: Kenneth H. Schwartz, (202) 927–5299 or Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: In a decision in *Single State Insurance Registration,* 9 I.C.C.2d 610 (1993), Notice published at 58 FR 28932 on

May 18, 1993, the Commission adopted final regulations that replaced a multi-state motor vehicle and operating authority registration system with a simplified, single-state, insurance-based registration system. The Commission acted in accordance with Congressional revisions to 49 U.S.C. 11506—Registration of Motor Carriers by a State, which required the Commission to prescribe amendments to the regulations that had governed the registration system under the old law.

On judicial review, in *Nat'l Ass'n of Regulatory Util. Comm'rs* v. *ICC*, 41 F.3d 721 (D.C. Cir. 1994), the court found that the Commission had improperly balanced conflicting policy goals in adopting regulations giving motor carriers the authority to copy the registration receipts required by law to be kept in each motor vehicle. The court remanded such provisions to the Commission for further consideration. The Commission requested comments in light of the court's decision.

Upon consideration of the court's opinion and the comments received from the trucking and insurance industries, state regulatory agencies, and other interested parties, the Commission is revising the receipt provisions of the regulations. Under the revised rules, states will issue official copies of registration receipts, and motor carriers will be required to maintain an official copy in each reported motor vehicle. Motor carrier copying of receipts will be prohibited.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Interstate Commerce Commission Building, 1201 Constitution Avenue NW., Room 2229, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 927–5721.]

Regulatory Flexibility Certification

Pursuant to 5 U.S.C. 605(b), we conclude that our action in this proceeding will not have a significant economic impact on a substantial number of small entities. No new regulatory requirements are imposed, directly or indirectly, on such entities. As before, all motor carriers registering with participating states will be required to distribute copies of registration receipts to their vehicles; but, under the revised regulations, motor carriers are relieved of the burden of reproducing the receipt copies. The economic impact on small entities, if any, should be positive but is not likely to be significant within the meaning of the Regulatory Flexibility Act.

Environmental and Energy Considerations

We conclude that this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1023

Insurance, Motor carriers, Surety bonds.

For the reasons set forth in the preamble, title 49, chapter X, part 1023 of the Code of Federal Regulations is amended as follows:

PART 1023—STANDARDS FOR REGISTRATION WITH STATES

1. The authority citation for part 1023 continues to read as follows:

Authority: 49 U.S.C. 10321 and 11506; 5 U.S.C. 553.

2. Section 1023.5 is revised to read as follows:

§ 1023.5 Registration receipts.

(a) On compliance by a motor carrier with the annual or supplemental registration requirements of § 1023.4, the registration State must issue the carrier a receipt reflecting that the carrier has filed the required proof of insurance and paid fees in accordance with the requirements of that section. The registration State also must issue a number of official copies of the receipt equal to the number of motor vehicles for which fees have been paid.

(1) The receipt and official copies must contain only information identifying the carrier and specifying the States for which fees were paid. Supplemental receipts and official copies need contain only information relating to their underlying supplemental registrations.

(b) Receipts and official copies issued pursuant to a filing made during the annual registration period specified in § 1023.4(b)(2) must be issued within 30 days of filing of a fully acceptable registration application. All other receipts and official copies must be issued by the 30th day following the date of filing of a fully acceptable supplemental registration application. All receipts and official copies shall expire at midnight on the 31st day of December of the registration year for which they were issued.

(c) A carrier is permitted to operate its motor vehicles only in those participating States with respect to which it has paid appropriate fees, as indicated on the receipts and official copies. It may not operate more motor vehicles in a participating State than the number for which it has paid fees.

(d) A motor carrier may not copy or alter a receipt or an official copy of a receipt.

(e) A motor carrier must maintain in each of its motor vehicles an official copy of its receipt indicating that it has filed the required proof of insurance and paid appropriate fees for each State in which it operates.

(f) A motor carrier may transfer its official copies of its receipts from vehicles taken out of service to their replacement vehicles.

(g) The driver of a motor vehicle must present an official copy of a receipt for inspection by any authorized government personnel on reasonable demand.

(h) No registration State shall require decals, stamps, cab cards, or any other means of registering or identifying specific vehicles operated by a motor carrier.

Decided: May 24, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald. Vice Chairman Owen commented with a separate expression.

Vernon A. Williams,

Secretary.

[FR Doc. 95–13935 Filed 6–6–95; 8:45 am]

BILLING CODE 7035–01–P

Proposed Rules

Federal Register
Vol. 60, No. 109
Wednesday, June 7, 1995

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 1150

[DA–95–15]

Dairy Promotion Program; Invitation To Submit Comments on Proposed Amendments to the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document invites written comments on a proposal to amend the Dairy Research and Promotion Order to modify the term expiration date for National Dairy Board members, effective December 1, 1996. The proposal was submitted by the National Dairy Promotion and Research Board which contends the action is necessary to enable it to operate more effectively.

DATES: Comments are due no later than July 7, 1995.

ADDRESSES: Comments should be sent to: USDA/AMS/Dairy Division, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Silvio Capponi, Jr., Deputy Director, USDA/AMS/Dairy Division, Room 2953, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–4664.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed amendment would modify the term expiration date of National Dairy Board members and would not have an economic effect on any entity engaged in the dairy industry.

The Department is issuing this proposed rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect. The Dairy and Tobacco Adjustment Act of 1983 provides in section 121(a) that nothing in the Act may be construed to preempt or supersede any other program relating to dairy product promotion organized and operated under the laws of the United States or any State.

The Dairy and Tobacco Adjustment Act of 1983 provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 118(a) of the Act, any person subject to an order issued under the Act may file with the Secretary a petition stating that any such order or any provisions of the order or obligation imposed in connection with the order is not in accordance with law and request a modification of an order or to be exempted from the order. A petitioner is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the person is an inhabitant or carries on business has jurisdiction to review the Secretary's ruling on the petition, provided a complaint is filed not later than 20 days after the date of the entry of the ruling.

Section 1150.132(b) of the Dairy Research and Promotion Order currently provides that each member of the Board shall serve until April 30 of the year in which his/her term expires, except that a retiring member may serve until a successor is appointed. The proposed amendment would modify the term expiration date from April 30 to November 30.

The National Dairy Promotion and Research Board, which administers the order, contends that the proposed amendment is necessary to enable it to operate more effectively to conclude yearly business. The Board indicates that the proposed amendment would take effect with the Board members seated at its annual meeting in December 1996. Additionally, it states that the proposed term of December through November closely corresponds with its fiscal year of January 1 through December 31.

Accordingly, it may be appropriate to amend the aforesaid provision, effective December 1, 1996.

List of Subjects in 7 CFR Part 1150

Dairy products, Reporting and recordkeeping requirements, Research.

The proposed amendment, as set forth below, has not received the approval of the Secretary of Agriculture.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 1150 be amended as follows:

PART 1150—[AMENDED]

1. The authority citation for 7 CFR Part 1150 continues to read as follows:

Authority: Pub. Law 98–180, 97 Stat. 1128.

Proposed by the National Dairy Promotion and Research Board

2. Section 1150.132(b) is revised to read as follows:

§ 1150.132 Term of Office.

* * * * *

(b) Each member of the Board shall serve until November 30 of the year in which his/her term expires, except that a retiring member may serve until a successor is appointed.

* * * * *

Dated: June 1, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–13922 Filed 6–6–95; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL RESERVE SYSTEM

12 CFR Part 203

[Regulation C; Docket No. R–0881]

Home Mortgage Disclosure

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; staff interpretation.

SUMMARY: The Board is publishing for comment a staff commentary to Regulation C (Home Mortgage Disclosure). The commentary applies and interprets the requirements of Regulation C. The proposed commentary provides guidance on various issues including the treatment under Regulation C of prequalifications, participations, refinancings, home

equity lines, mergers, and loan applications received through a broker. The Board believes the proposed commentary will reduce burden and ease compliance by clarifying a number of issues, by providing flexibility in compliance, and by consolidating the guidance that is currently available from a variety of sources.

DATES: Comments must be received on or before August 7, 1995.

ADDRESSES: Comments should refer to Docket No. R–0881 and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, NW. (between Constitution Avenue and C Street) at any time. Comments received will be available for inspection in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding availability of information.

FOR FURTHER INFORMATION CONTACT: Jane Jensen Gell, W. Kurt Schumacher, or Manley Williams, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or (202) 452–2412; for the hearing impaired *only*, Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The Board's Regulation C (12 CFR Part 203) implements the Home Mortgage Disclosure Act of 1975 (HMDA) (12 U.S.C. 2801 *et seq*). HMDA requires most mortgage lenders located in metropolitan areas to collect data about their housing-related lending activity. Annually, lenders must file reports with their federal supervisory agencies and make disclosures available to the public. The reports and disclosures cover loan originations, applications that do not result in originations (for example, applications that are denied or withdrawn), and loan purchases. Information reported includes the location of the property to which the loan or application relates; the race or national origin, gender, and gross annual income of the borrower or applicant; and the type of purchaser for loans sold in the secondary market.

The Board has received many requests from other supervisory agencies and from financial institutions suggesting adoption of a staff commentary to Regulation C to provide guidance on compliance with the regulation. In response, the Board is proposing to issue a staff commentary (12 CFR part 203 (Supp. I)) that interprets the regulation. The Board believes the commentary will provide significant assistance to institutions by clarifying a number of issues and providing flexibility in compliance with the regulation. The proposed commentary follows the narrative format used in most of the Board's other staff commentaries, such as those issued to interpret Regulation Z (12 CFR part 226) and Regulation B (12 CFR part 202). The proposed commentary provides general guidance in applying the regulation to various transactions, and would be updated periodically to address significant questions that arise.

II. Explanation of Proposed Commentary

The proposed commentary incorporates much of the guidance in *A Guide to HMDA Reporting—Getting It Right!*, developed by member agencies of the Federal Financial Institutions Examination Council (FFIEC) (the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Reserve Board), and the Department of Housing and Urban Development. Other sources of material in the proposed commentary include supplementary information published in the **Federal Register** notice of the amendments to Regulation C recently adopted by the Board (59 FR 63698, December 9, 1994) and other **Federal Register** notices on Regulation C, and portions of Appendix A to the regulation. The Board believes that consolidating the guidance that is currently available from a variety of sources into one source will ease compliance and reduce burden.

The Board solicits suggestions on additional issues that are not addressed in this proposal but that may need clarification, and will consider adding commentary material to address such issues in the final version of the commentary.

In cases where provisions of Regulation C have been modified by the amendments issued by the Board in December 1994 (scheduled to take effect on a mandatory basis in calendar year 1996), the relevant commentary provisions relate to those amendments rather than the existing regulatory requirements.

Most of the proposed commentary material is self-explanatory. The following discussion, however, provides some explanation on a few of the points covered in the proposal.

Section 203.1—Authority, Purpose, and Scope

1(c) Scope

Refinancings

Proposed comments 1(c)–3 and –4 clarify that an origination includes the refinancing of a home purchase loan for purposes of determining coverage and exemptions from coverage. The comments provide guidance on alternate ways an institution may identify transactions to determine coverage and data collection requirements.

Participations

Proposed comment 1(c)–7 would allow the reporting of an institution's partial interest in a participation loan, at the institution's option. Among other things, this would allow an institution to report its partial interest in a large-dollar home purchase or home improvement loan. Of course, given the exclusion in section 203.4(d) from reporting the purchase of an interest in a loan pool, the present comment is intended to allow the reporting of partial interests where the reporting institution has a direct interest in the loan itself, and not an interest in a security such as a mortgage-backed security.

The Board solicits comment on whether reporting participation interests in this manner will address home mortgage lending by a consortium of lenders. A consortium may be structured in several ways. If a consortium is a nonprofit mortgage lender, it would not be covered under Regulation C. If the consortium is a for-profit mortgage lender that meets the tests for coverage under Regulation C, it would report applications and loans originated by the consortium. If the consortium is structured so that participating lenders underwrite and originate a loan, each lender may report its partial interest in the loan.

Section 203.2—Definitions

2(b) Application

Prequalifications

Financial institutions must report action taken upon applications for (as well as originations and purchases of) home purchase and home improvement loans (including refinancings). Institutions have asked the Board for clarification on the correct treatment under Regulation C of prequalification and preapproval programs.

In its amendments to Regulation C issued in December 1994, the Board deferred a final determination on whether and how lenders ought to report prequalifications (or preapprovals). Instead, the Board provided that institutions need not include data about prequalifications (or preapprovals) in their HMDA submissions for calendar year 1994 or 1995.

The Board believes that prequalification requests (as that term is used in the proposed commentary) are not applications for purposes of Regulation C, even though they may be applications under Regulation B. Proposed comment 2(b)–2 provides guidance so that institutions can distinguish a request for a prequalification from an application under Regulation C.

The Board may consider proposing amendments to Regulation C to address prequalifications and preapprovals, including whether institutions should be required to report some or all preapproval requests. (A preapproval request is generally considered to be a request by an applicant for a commitment from an institution to lend a specific amount, subject to the applicant's selection of residential property that is satisfactory to the institution. A preapproval program may be part of or separate from the institution's mortgage loan application program.) If, for example, coverage included all preapprovals, the Board might consider adding to the purpose codes ''code 5. Preapproval'' to distinguish preapprovals from other application procedures. The Board may also consider adding a new action taken code, such as ''code 7. Loan preapproved'' to distinguish situations where a loan is preapproved but not originated from other actions taken on applications.

2(e) Financial Institution

Foreign banks

Proposed comments 2(e)–1 and –2 discuss coverage of various types of branches and other offices of foreign banks for purposes of Regulation C. The definition of a covered institution in HMDA refers, in part, to banks as defined in the Federal Deposit Insurance Act (FDI Act). The FDI Act definition of ''bank'' includes certain types of branches and offices of foreign banks, and excludes other types. Accordingly, certain branches and offices of foreign banks, which meet the FDI Act definition of ''bank,'' are covered by HMDA as depository institutions (assuming they are not excluded by some other exemption). Other branches and offices of foreign banks, which do not meet the FDI Act definition, are covered by HMDA only if they meet the tests for coverage of nondepository institutions.

2(g) Home-purchase Loan

Home Equity Lines

Under Regulation C, institutions have the option to report that portion of a home equity line of credit that the borrower indicates, at the time of application or when the account is opened, will be used for home improvement purposes. Proposed comment 2(g)–6 sets forth the same position with regard to home equity lines to be used for home purchase purposes. As in the case of home equity lines for home improvement, the institution may choose not to report home equity lines at all. If the institution reports home equity originations, the institution must also report home equity applications that did not result in originations. If the institution chooses to report a home equity line, it should report only the amount indicated at time of application or establishing the credit line, to be used for purposes of purchasing a dwelling.

Section 203.3—Exempt Institutions

3(a) Exemption Based on Location, Asset Size, or Number of Home-purchase Loans

Mergers

Proposed comment 3(a)–2 deals with reporting responsibilities in situations where two financial institutions merge. The proposed comment is based on material in the *Guide to HMDA Reporting*, but additional detail has been added concerning mergers involving a covered and an exempt institution. (Other material from the section of the *Guide* relating to mergers and changes in supervisory agencies appears in proposed comments 3(a)–3 and 5(a)–1.)

Section 203.4—Compilation of Loan Data

4(a) Data Format and Itemization

Paragraph 4(a)(6)

Location of Property—BNAs

Proposed comment 4(a)(6)–4 allows institutions to report block numbering areas (BNAs) for properties located in counties for which census tracts have not been established. This option would provide more detailed information that may be used to examine and assess an institution's housing-related lending.

Paragraph 4(a)(7)

Income of Applicants

Proposed comment 4(a)(7)–5 provides guidance regarding data reporting requirements for applicant income. The comment clarifies that institutions must report all income used to make the credit decision. This figure would include any income the institution considers in qualifying the applicant, even if the funds are not factored into the debt-to-income ratio analysis.

III. Form of Comment Letters

Comment letters should refer to Docket No. R–0881. The Board requests that, when possible, comments be prepared using a standard courier typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text into machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may also be submitted on computer diskettes, using either the 3.5″ or 5.25″ size, in any IBM-compatible DOS-based format. Comments on computer diskettes must be accompanied by a hard copy version.

List of Subjects in 12 CFR Part 203

Banks, banking, Consumer protection, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 203 as follows:

PART 203—HOME MORTGAGE DISCLOSURE (REGULATION C)

1. The authority citation for part 203 continues to read as follows:

Authority: 12 U.S.C. 2801–2810.

2. Part 203 would be amended by adding a new Supplement I—Staff Interpretations after the Appendices to read as follows:

Supplement I to Part 203—Staff Interpretations

Introduction

1. *Status.* This commentary in this supplement is the vehicle by which the staff of the Division of Consumer and Community Affairs of the Federal Reserve Board issues staff interpretations of Regulation C (12 CFR part 203).

Section 203.1—Authority, Purpose, and Scope

1(c) Scope.

1. *General.* The comments in this section address issues affecting coverage of institutions, exemptions from coverage, and data collection requirements. (Paragraphs I., II., IV. and V. of Appendix A of this part.)

2. *Meaning of refinancing.* A refinancing of a loan is the satisfaction and replacement of an existing obligation by a new obligation by the same borrower. The term ''refinancing'' refers to the new obligation. If the existing obligation is not satisfied and replaced, but is only renewed or modified (such as in certain ''modification, extension, and consolidation agreements''), the transaction is not a refinancing. (Paragraph V.A.5. Code 3. of Appendix A of this part.)

3. *Refinancing—coverage.* For purposes of determining whether an institution is covered by Regulation C or is exempt, an origination of a home purchase loan includes the refinancing of a home purchase loan. (Paragraphs I.B., I.C. and I.D. of Appendix A of this part.) When an institution refinances an existing obligation, the institution must either:

i. Assume that if the refinancing results in a new obligation secured by a lien on a dwelling, the new obligation is a refinancing of a home purchase loan under Regulation C (and may assume, if the new obligation is not secured by a lien on a dwelling, that it is not a refinancing of a home purchase loan); or

ii. Determine the purpose of the existing obligation. The institution may use the following guidelines:

a. The institution may rely on the statement of the applicant or borrower.

b. If the existing obligation was secured, the institution may assume that it was for home purchase purposes, and that the new obligation is a refinancing of a home purchase loan under Regulation C.

c. If the existing obligation was unsecured, the institution may assume that it was not for home purchase purposes, and that the new obligation is not a refinancing of a home purchase loan under Regulation C.

4. *Refinancing—data collection.* For purposes of data collection (paragraph V.A.5. Code 3. of Appendix A of this part) an institution must either:

i. Assume that if a refinancing results in a new obligation secured by a lien on a dwelling, the new obligation is a refinancing of a home purchase or home improvement loan under Regulation C (and may assume, if the new obligation is not secured by a lien on a dwelling, that it is not a refinancing of a home purchase or home improvement loan); or

ii. Determine the purpose of the existing obligation. The institution may use the following guidelines:

a. The institution may rely on the statement of the applicant or borrower.

b. If the existing obligation was secured, the institution may assume that it was for home purchase or home improvement purposes, and that the new obligation is a refinancing under Regulation C.

5. *Meaning of ''broker'' and ''investor institution.''* The term ''broker'' (or correspondent) refers to any party (whether a bank, thrift, credit union, mortgage banker, mortgage broker, or other type of depository or nondepository institution) that takes and processes loan applications from applicants and that has an arrangement with another party (an ''investor institution'') under which the investor institution (1) reviews the application prior to closing, (2) makes a credit decision, and (3) determines whether to acquire the loan at or after closing. (Paragraphs IV.A. and V.B.1. of Appendix A of this part.)

6. *The broker rule—originations.* If an investor institution reviews a loan application from a broker prior to closing, makes a decision to extend credit, and then acquires the loan at or after closing, the investor institution originates that loan for purposes of Regulation C, whether the loan closes in the name of the broker or the investor institution. If a broker submits a loan application to more than one investor, each investor reports the action it has taken on the application. For example, each investor denying the application reports a denial. (Paragraphs IV.A. and V.B.1. of Appendix A of this part.)

7. *Broker's use of investor institution's underwriting criteria.* A broker makes a decision to extend credit based on underwriting criteria set by an investor institution, but without the investor institution's review before closing. Under these facts, the broker originates that loan for purposes of Regulation C (unless the broker is an agent or contract underwriter for the investor institution), and the investor institution that acquires the loan after closing purchases the loan under Regulation C. If the broker is subject to Regulation C, the broker reports as originations the loans that it approves and closes, and reports as denials the loan applications that it turns down (either because they do not meet the investor's underwriting guidelines or for some other reason).

8. *Post-closing review by the investor institution.* An investor institution agrees with a broker to purchase loans that meet the investor institution's underwriting guidelines, which the broker uses in making credit decisions on loan applications. The investor institution reviews loans only after closing to confirm that the loans meet its underwriting guidelines. Under these facts, the broker originates the loans and the investor institution purchases the loans under Regulation C. If the broker is covered by Regulation C, the broker reports as originations the loans that it approves and closes, and reports as denials the loan applications that it turns down. The investor reports only those loans it purchases.

9. *Third-party underwriting guidelines.* An investor institution agrees to purchase from a broker loans that have government or private insurance, but does not review loan applications prior to closing. The broker evaluates loan applications using the insurer's guidelines, or delivers applications to the insurer for a determination on whether it will insure the loan. After closing, the investor institution purchases those loans that have been insured. Under these facts, the broker makes the credit decisions and the investor institution purchases the loans under Regulation C. The investor reports those loans it purchases; it does not report other loans. If the broker is covered by Regulation C, it reports as originations the loans that it approves and closes, and reports as denials the loan applications that it turns down.

10. *Participation loan.* If an institution participates in the underwriting and origination of a home purchase or home improvement loan, it may report the transaction as an origination to the extent of its participation interest, or it may choose not to report the transaction. If an institution chooses to report originations, it must also report applications that do not result in originations (for example, denials). When a single institution originates the loan and subsequently sells participation interests to other institutions, those institutions report their interests as purchased loans. (Paragraphs I., II., IV. and V. of Appendix A of this part.)

Section 203.2—Definitions

(2)(b) Application.

1. *Consistency with Regulation B.* The definition of ''application'' in Regulation C is virtually identical to the definition of ''application'' in Regulation B (Equal Credit Opportunity, 12 CFR Part 202). Accordingly, guidance in the official staff commentary to Regulation B is generally applicable to the definition of an application under Regulation C. (Paragraph IV.A. of Appendix A of this part.)

2. *Prequalification.* A prequalification request is generally considered to be a request by a prospective loan applicant to a lending institution for a preliminary determination on whether the prospective applicant would likely qualify for credit under the institution's standards, or on how much credit the prospective applicant would likely qualify for. Further, a prequalification request is generally evaluated by the institution through a procedure that is separate from the institution's normal loan application process. A prequalification request is not an application under Regulation C, even though it may constitute an application under Regulation B, requiring a lender to notify an applicant of the action taken. (Paragraphs I. and IV.A. of Appendix A of this part.)

(2)(c) Branch office.

1. *Depository institution.* A branch of a depository institution does not include a loan production office or the office of an affiliate, nor does it include the office of a third party such as a loan broker. (Paragraphs I., V.A.6. and V.C. of Appendix A of this part.)

2. *Nondepository institution.* A branch of a nondepository institution does not include the office of an affiliate or other third party. (Paragraphs I., V.A.6. and V.C. of Appendix A of this part.) (But see paragraph V.C.6. of Appendix A of this part, requiring nondepository institutions to report property location even in MSAs where they do not have a physical location.)

(2)(d) Dwelling.

1. *Scope.* The definition of ''dwelling'' is not limited to the principal or other residence of the applicant or borrower. Thus, vacation or second homes and rental properties are dwellings under Regulation C. Dwellings include mobile or manufactured homes, multifamily structures (such as apartment buildings), and condominium and cooperative units. Recreational vehicles such as boats or campers are not dwellings. (Paragraphs I.B., IV., and V.A.5. of Appendix A of this part.)

(2)(e) Financial institution.

1. *Branches of foreign banks—treated as a bank.* Both a federal branch and a state-licensed insured branch of a foreign bank are a ''bank'' under the Federal Deposit Insurance Act, and are covered if they meet the tests for a depository institution found in §§ 203.2(e)(1) and 203.3(a)(1). (Paragraphs I.A. and I.B. of Appendix A of this part.)

2. *Branches and offices of foreign banks—treated as a for-profit mortgage lending institution.* Federal agencies, state-licensed agencies, state-licensed uninsured branches of foreign banks, commercial lending companies owned or controlled by foreign banks, and entities operating under section 25A or 25 of the Federal Reserve Act (Edge Act and agreement corporations) are covered by Regulation C if they meet the tests for a nondepository mortgage lending institution found in §§ 203.2(e)(2) and 203.3(a)(2). (Paragraphs I.C. and I.D. of Appendix A of this part.)

(2)(f) Home-improvement loan.

Paragraph (2)(f)(1).

1. *Home improvement.* A home improvement loan is a loan to be used for improvements to a dwelling or to the real property on which the dwelling is located. (Paragraphs IV. and V.A.5. Code 2. of Appendix A of this part.) Examples include:

i. Installation of a swimming pool;

ii. Construction of a detached garage;

iii. Landscaping; or

iv. Purchase of appliances to be installed as fixtures to the dwelling.

2. *Multiple properties.* A home improvement loan includes a loan secured by one dwelling, with the proceeds to be used to improve another dwelling. (Paragraphs IV. and V.A.5. Code 2. of Appendix A of this part.)

3. *Mixed-use property.* A loan to improve property used primarily for residential purposes (for example, an apartment building containing a convenience store) is a home improvement loan. (Paragraphs IV. and V.A.5. Code 2.)

4. *Multipurpose loan.* A loan to make home improvements (even though less than 50 percent of the total loan proceeds are to be used for this purpose) may be treated as a home improvement loan provided that the institution classifies the loan as a home improvement loan. (Paragraphs IV. and V.A.5. Code 2. of Appendix A of this part.)

5. *Home equity lines.* An institution may report the part of a home equity line of credit that is for home improvement. An institution that reports the origination of home equity lines must also report applications that did not result in originations. (Paragraphs IV. and V.A.5. Code 2.c. of Appendix A of this part.)

6. *Reliance on statement of borrower.* An institution may rely on the oral or written statement of an applicant or borrower that the loan proceeds will be used for home improvement purposes. (Paragraphs IV. and V.A.5. Code 2.c of Appendix A of this part.)

Paragraph (2)(f)(2).

1. *Classification.* The requirement that a loan be ''classified'' as a home improvement loan provides flexibility to institutions in determining which loans to report. An institution meets the requirement if it has entered a loan on its books as a home improvement loan, or has otherwise identified or coded the loan as a home improvement loan. For example, an institution that has marketed a loan, ''booked'' it, or reported it on a ''call report'' as home improvement loan has ''classified'' it as a home improvement loan. (Paragraphs IV. and V.A.5. Code 2. of Appendix A of this part.)

(2)(g) Home-purchase loan.

1. *Multiple properties.* A home purchase loan includes a loan secured by one dwelling, with the proceeds to be used to purchase another dwelling. (Paragraphs IV. and V.A.5. Code 1. of Appendix A of this part.)

2. *Mixed-use property.* A loan to purchase property used primarily for residential purposes (for example, an apartment building containing a convenience store) is a home purchase loan. (Paragraphs IV.A., IV.B.1. and V.A.5. Code 1. of Appendix A of this part.)

3. *Commercial and other loans.* A home purchase loan includes a loan for home purchase purposes originated outside an institution's mortgage lending division (such as a loan for the purchase of an apartment building handled by the institution's commercial loan department). (Paragraphs IV. and V.A.5. Code 1. of Appendix A of this part.)

4. *Farm loan.* If the property being purchased is used primarily for agricultural purposes—even if the property includes a dwelling—a loan to purchase the property is not a home purchase loan. (Paragraphs IV.B.1. and V.A.5. Code 1. of Appendix A of this part.)

5. *Construction/permanent loan.* Construction-only loans are ''temporary'' financings under Regulation C and are not reported. If the institution commits to provide both the construction and the permanent financing, however, the loan is a home purchase loan for purposes of Regulation C. (Paragraphs IV.A. and B.2 and V.A.5. Code 1. of Appendix A of this part.)

6. *Home equity lines.* An institution may report the part of a home equity line of credit that is for home purchase. An institution may rely on the oral or written statement of an applicant or borrower that the loan proceeds will be used for home purchase purposes. An institution that reports the origination of home equity lines must also report applications that did not result in originations. (Paragraphs IV. and V.A.5. Code 1. of Appendix A of this part.)

Section 203.3—Exempt Institutions

3(a) Exemption based on location, asset size, or number of home-purchase loans.

1. *General.* An institution that ceases to be a financial institution (as that term is defined in § 203.2(e)) or that becomes an exempt institution under this section may stop collecting HMDA data beginning with the first calendar year after the event that resulted in noncoverage. For example, a bank whose assets drop to $10 million or less on December 31 of a given year collects data for that full calendar year, but need not collect data for the succeeding year. (Paragraph I. of Appendix A of this part.)

2. *Coverage after a merger.* Data collection responsibilities under several scenarios are described below for the calendar year of the merger. (Paragraph I. of Appendix A of this part.)

i. Two institutions are exempt from Regulation C. The institutions merge, producing a covered institution. No data collection is required; the surviving institution begins HMDA data collection in the following calendar year.

ii. A covered and an exempt institution merge. The covered institution is the surviving institution. Data collection is required for the covered institution's transactions; data collection is optional for transactions of the previously exempt institution (for example, transactions handled in offices of the previously exempt institution).

iii. A covered and an exempt institution merge. The exempt institution is the surviving institution. Data collection is required for the covered institution's transactions taking place prior to the merger, and is optional for transactions taking place after the merger date and attributable to the covered institution.

iv. Two covered institutions merge. The surviving institution is required to collect all data for both institutions; it may file a consolidated submission or separate submissions for that year.

3. *Mergers versus purchases in bulk.* If a covered institution acquires loans in bulk from another institution (for example, the receiver of a failed institution), but no merger or acquisition is involved, the institution treats the loans as purchased loans. (Paragraph V.B. of Appendix A of this part.)

Section 203.4—Compilation of Loan Data

4(a) Data format and itemization.

1. *Quarterly updating.* An institution should make a good-faith effort to enter all data concerning covered transactions—loan originations (including refinancings), loan purchases, and the disposition of applications that did not result in an origination—fully and accurately within 30 days after the end of each calendar quarter. If the quarterly update shows that some data are inaccurate or incomplete despite this good-faith effort, the error or omission is not a violation of Regulation C. (Paragraph II.E. of Appendix A of this part.)

Paragraph 4(a)(1).

1. *Application date—consistency.* In reporting the date of application, an institution enters the date an application was received or the date shown on the application. The institution should be consistent in its practice. (Paragraph V.A.2. of Appendix A of this part.)

2. *Application date—application received through broker.* For an application forwarded by a broker, an institution enters the date the application was received by the broker, the date the application was received by the institution, or the date shown on the application. The institution should be consistent in its practice. (Paragraph V.A.2. of Appendix A of this part.)

3. *Application date—reinstated application.* If an applicant asks an institution to reinstate a counteroffer that the applicant previously rejected (or to reconsider a denied application), the institution may treat the request as the

continuation of a single transaction if the applicant's request occurs within the same calendar year as the prior disposition of the application. Alternatively, the institution may treat the request as a separate transaction and the date of the request as the application date. (Paragraph V.A.2. of Appendix A of this part.)

Paragraph 4(a)(3).

1. *Loans outside an MSA.* If a loan relates to property not located in an MSA (or to property in an MSA where the institution has no home or branch office under Regulation C), the institution may report the actual occupancy status or use the code for ''not applicable.'' (Paragraphs V.A.7.c. and V.C.6. of Appendix A of this part.)

2. *Multiple properties.* If a loan relates to multiple properties, the institution reports the owner-occupancy status for the property that is reported under comment 1 to paragraph 203.4(a)(6). (Paragraph V.A.6. of Appendix A of this part.)

Paragraph 4(a)(4).

1. *Multiple purpose loan.* If a loan relates to other purposes in addition to home purchase or home improvement, the institution reports the entire amount of the loan, even though not all of the proceeds are for home purchase or home improvement. (Paragraph V.A.8. of Appendix A of this part.)

2. *Home equity line of credit.* An institution that reports home equity lines reports only the amount that the applicant indicates will be used for home improvement or home purchase purposes. (Paragraph V.A.8.c. of Appendix A of this part.)

3. *Counteroffer.* If an institution makes a counteroffer to lend an amount different from an applicant's initial request and the counteroffer is accepted, the institution reports the loan amount as the amount actually granted. If the counteroffer is rejected or if the applicant fails to respond to the counteroffer, the institution reports the amount initially requested. (Paragraph V.A.8.f. of Appendix A of this part.)

4. *Participation loan.* An institution reporting a participation loan origination enters the amount of its interest. (Paragraph V.A.8. of Appendix A of this part.)

Paragraph 4(a)(5).

1. *Action taken—counteroffer.* If an institution makes a counteroffer to lend an amount different from an applicant's initial request and the counteroffer is accepted, the institution reports the loan as an origination. If the counteroffer is rejected or if the applicant fails to respond to the counteroffer, the institution reports the action taken as a denial. (Paragraph V.B. of Appendix A of this part.)

2. *Action taken—rescinded transaction.* If an applicant rescinds a transaction after closing, an institution reports the action taken as an origination or as approved but not accepted. (Paragraph V.B. of Appendix A of this part.)

3. *Action taken—purchased loan.* An institution reports only purchased loans, not loans that the institution has declined to purchase. (Paragraph V.B. of Appendix A of this part.)

4. *Action taken—conditional approval.* If an institution issues a loan approval subject to the applicant's meeting certain underwriting or other conditions and the conditions are not met, the institution reports the action taken as a denial. (Paragraph V.B. of Appendix A of this part.)

5. *Action taken date—approved but not accepted.* For a loan approved by the institution but not accepted by the applicant, the institution reports either the date of the commitment letter sent to the applicant or any deadline that the institution gave the applicant for accepting the offer. The institution should be consistent in its practice. (Paragraph V.B.3.b. of Appendix A of this part.)

6. *Action taken date—origination.* Generally, for originations, an institution enters the settlement or closing date. For a loan that an investor institution acquired through a broker and reports as an origination, the institution enters the settlement date, the closing date, or the date the institution acquired the loan from the broker. The institution should be consistent in its practice. (Paragraph V.B.3. of Appendix A of this part.)

7. *Action taken date—construction/permanent loan.* For a construction/permanent loan, the institution reports the date the institution enters into the construction-loan transaction or when the loan converts to the permanent financing. The institution should be consistent in its practice. (Paragraph V.B.3. of Appendix A of this part.)

Paragraph 4(a)(6).

1. *Multiple properties.* For a loan secured by one dwelling and made for the purpose of purchasing or improving another dwelling or dwellings, an institution reports the location of the property taken as security. For a loan secured by two or more dwellings, and for the purpose of purchasing or improving one of those dwellings, an institution reports the location of the purchased property. (Paragraph V.C. of Appendix A of this part.) For example:

i. For a loan to purchase or improve property A, secured by property B, report the location of B (the property taken as security);

ii. For a loan to purchase or improve properties A and B, secured by property C, report the location of C (the property taken as security);

iii. For a loan to purchase or improve property A, secured by properties A and B, report the location of A (the property purchased or improved); and

iv. For a loan to purchase or improve properties A and B, secured by properties A and B, the institution may report the location of A or B (one of the properties taken as security). Alternatively, the institution may report the loan in two entries on its Loan/Application Register (using unique identifiers and allocating the loan amount between A and B).

2. *Loans purchased from another institution.* The requirement to report the location of a property in an MSA where the institution has a home or branch office applies not only to loan applications and originations but also to loans purchased from another institution. This includes loans purchased from an institution that itself did not have a home or branch office in that MSA (and thus may not have collected the property location information). (Paragraph V.C. of Appendix A of this part.)

3. *Mobile or manufactured home.* If information about the potential site of a mobile or manufactured home is not available, an institution may enter the code for ''not applicable.'' (Paragraph V.C. of Appendix A of this part.)

4. *Use of BNA permitted.* Block numbering areas (BNAs) are statistical subdivisions delineated by state agencies and the U.S. Census Bureau for grouping and numbering blocks in counties for which census tracts have not been established. BNAs (which generally are identified in census data by numbers in the range 9501 to 9999.99) may be entered if no census tract number exists. (Paragraph V.C.4. of Appendix A of this part.)

Paragraph 4(a)(7).

1. *Applicant data—joint applicant.* If a joint applicant does not file the application in person and does not provide the monitoring information, the institution reports using the code for information not provided by applicant in mail or telephone application. (Paragraph V.D. of Appendix A of this part.)

2. *Applicant data—application completed in person.* When an applicant meets with a loan officer to complete an application that was begun previously (for example by mail or telephone), the institution must treat the application as taken in person and request the monitoring information. A loan closing is not a meeting with a loan officer to complete an application. (Paragraph V.D. of Appendix A of this part.)

3. *Applicant data—completion by applicant.* An institution reports the monitoring information an applicant provides. If an applicant fails to provide the requested information for an application taken in person, the institution enters the data on the basis of visual observation or surname. If an applicant checks the ''other'' box the institution must report using the ''other'' code. (Paragraph V.D. of Appendix A of this part.)

4. *Applicant data—interactive video application.* An institution that uses an interactive application process with video capabilities should treat these applications as taken in person and collect the information about race or national origin and sex of applicants. (Paragraph V.D. of Appendix A of this part.) (See Appendix B of this part for procedures to be used for data collection.)

5. *Income data—income relied upon.* Except for income of cosigners (sureties) and guarantors, an institution enters the gross annual income relied on in evaluating the creditworthiness of applicants. For example, if an institution uses an applicant's salary to compute a debt-to-income ratio, but also relies on the applicant's annual bonus to meet underwriting standards and approve the loan, the institution reports both salary and bonus. (Paragraph V.D.5. of Appendix A of this part.)

6. *Income data—co-applicant.* If two persons jointly apply for a loan and both list income on the application, but the institution relies only on the income of one applicant in evaluating creditworthiness, the institution should report only the income of the one

applicant. (Paragraph V.D.5. of Appendix A of this part.)

7. *Income data—cosigners and guarantors.* Although an institution may rely on the income of cosigners and guarantors in making a credit decision, an institution does not report this income. Because cosigners and guarantors generally are not ''applicants'' under Regulation B, they are not treated as co-applicants under Regulation C. (Paragraph V.D.5. of Appendix A of this part.)

8. *Income data—loan to employee.* An institution may enter ''NA'' in the income field for a loan to its employee for privacy reasons, even though the institution may have relied on income in making its credit decisions. (Paragraph V.D.5. of Appendix A of this part.)

Paragraph 4(a)(8).

1. *Type of purchaser—loan participation interests sold to more than one entity.* Where a loan is originated by one institution but is sold to more than one entity, the originating institution reports the type of purchaser based on the entity purchasing a majority interest, if any. Otherwise, the institution uses the code for loans not sold in the calendar year covered by the register. (Paragraph V.E. of Appendix A of this part.)

4(c) Optional data.

1. *Agency requirements.* The reporting of reasons for denial, although optional under HMDA and Regulation C, may be required information for institutions that are regulated by an agency such as the Office of Thrift Supervision. (Paragraph V.F. of Appendix A of this part.)

4(d) Excluded data.

1. *Loan pool.* The purchase of an interest in a loan pool (such as a mortgage-participation certificate, a mortgage-backed security, or a real estate mortgage investment conduit or ''REMIC'') is a purchase of an interest in a security and is not reported. (Paragraph IV.B.5. of Appendix A of this part.)

Section 203.5—Disclosure and Reporting

5(a) Reporting to agency.

1. *Change in supervisory agency.* If the supervisory agency of a covered institution changes, the institution reports data for the year of the change and subsequent years to its new supervisory agency. (Paragraphs I., III. and IV. of Appendix A of this part.)

2. *Subsidiaries.* An institution is a subsidiary of a bank or savings association (for purposes of reporting HMDA data to the parent's supervisory agency) if the bank or savings association holds or controls an ownership interest that is greater than 50 percent of the institution. (Paragraph I.E. of Appendix A of this part.)

5(e) Notice of availability.

1. *Poster—suggested text.* The wording of the poster text provided in Appendix A (''Instructions for Completing the HMDA–LAR'') is optional. An institution may use other text that meets the requirements of the regulation. (Paragraph III.G. of Appendix A of this part.)

Section 203.6—Enforcement

6(b) Bona fide errors.

1. *Bona fide error—data from third parties.* Although an institution may obtain the property location information for applications and loans from third parties (such as appraisers or ''geocoding'' vendors), the reporting institution is responsible for ensuring that the data are correct. An incorrect census tract number can be treated as a bona fide error (and is thus not a violation of the act or regulation) only if the institution has maintained procedures reasonably adopted to avoid the error, such as performing an audit of the information. (Paragraph V.C. of Appendix A of this part.)

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, June 1, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–13861 Filed 6–6–95; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–111; Notice No. SC–95–4–NM]

Special Conditions: Israel Aircraft Industries Model Galaxy Series Airplane, High Altitude Operation

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Israel Aircraft Industries (IAI) Ltd. Model Galaxy airplane. This new airplane will have an unusual design feature associated with an unusually high operating altitude (45,000 feet), for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received on or before July 24, 1995.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn.: Rules Docket (ANM–7), Docket No. NM–111, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked ''Docket No. NM–111.'' Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Timothy Dulin, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056, telephone (206) 227–2141.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. NM–111.'' The postcard will be date stamped and returned to the commenter.

Background

On July 29, 1992, IAI Ltd., Ben-Gurion International Airport, 70100, Israel, applied for a new type certificate in the transport airplane category for the Model Galaxy airplane. The IAI Model Galaxy airplane is a derivative of the IAI Model 1125 Westwind Astra and is designed to be a long range, high speed swept low wing airplane with two aftfuselage mounted Pratt & Whitney PW 306A engines and a conventional empennage.

The type design of the Model Galaxy contains a number of novel and unusual design features for an airplane type certificated under the applicable provisions of part 25 of the Federal Aviation Regulations (FAR). Those features include the relatively small passenger cabin volume and a high maximum operating altitude. The applicable airworthiness requirements do not contain adequate or appropriate safety standards for the IAI Galaxy; therefore, special conditions are necessary to establish a level of safety

equivalent to that established in the regulations.

Type Certification Basis

Under the provisions of § 21.17 of the FAR, IAI Ltd. must show that the Galaxy meets the applicable provisions of part 25, effective February 1, 1965, as amended by Amendments 25–1 through 25–77. The certification basis may also include later amendments to part 25 that are not relevant to these special conditions. In addition, the certification basis for the Galaxy includes part 34, effective September 10, 1990, plus any amendments in effect at the time of certification; and part 36, effective December 1, 1969, as amended by Amendments 36–1 through the amendment in effect at the time of certification. These special conditions form an additional part of the type certification basis. In addition, the certification basis may include other special conditions that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Galaxy because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Feature

The IAI Galaxy will incorporate an unusual design feature in that it will be certified to operate up to an altitude of 45,000 feet.

The FAA considers certification of transport category airplanes for operation at altitudes greater than 41,000 feet to be a novel or unusual feature because current part 25 does not contain standards to ensure the same level of safety as that provided during operation at lower altitudes. Special conditions have therefore been adopted to provide adequate standards for transport category airplanes previously approved for operation at these high altitudes, including certain Learjet models, the Boeing Model 747, Dassault-Breguet Falcon 900, Canadair Model 600, Cessna Model 650, Israel Aircraft Industries Model 1125 Westwind Astra, and Cessna Model 560. The special conditions for the Learjet Model 45 are considered the most applicable to the Galaxy and its proposed operation and are therefore used as the basis for the special conditions described below.

Damage tolerance methods are proposed to be used to ensure pressure vessel integrity while operating at the higher altitudes, in lieu of the ½-bay crack criterion used in some previous special conditions. Crack growth data are used to prescribe an inspection program that should detect cracks before an opening in the pressure vessel would allow rapid depressurization. Initial crack sizes for detection are determined under § 25.571, as amended by Amendment 25–72. The maximum extent of failure and pressure vessel opening determined from the above analysis must be demonstrated to comply with the pressurization section of the proposed special conditions, which state that the cabin altitude after failure must not exceed the cabin altitude/time curve limits shown in Figures 3 and 4.

In order to ensure that there is adequate fresh air for crewmembers to perform their duties, to provide reasonable passenger comfort, and to enable occupants to better withstand the effects of decompression at high altitudes, the ventilation system must be designed to provide 10 cubic feet of fresh air per minute per person during normal operations. Therefore, these special conditions require that crewmembers and passengers be provided with 10 cubic feet of fresh air per minute per person. In addition, during the development of the supersonic transport special conditions, it was noted that certain pressurization failures resulted in hot ram or bleed air being used to maintain pressurization. Such a measure can lead to cabin temperatures that exceed human tolerance. Therefore, these special conditions require airplane interior temperature limits following probable and improbable failures.

Continuous flow passenger oxygen equipment is certificated for use up to 40,000 feet; however, for rapid decompressions above 34,000 feet, reverse diffusion leads to low oxygen partial pressures in the lungs, to the extent that a small percentage of passengers may lose useful consciousness at 35,000 feet. The percentage increases to an estimated 60 percent at 40,000 feet, even with the use of the continuous flow system. Therefore, to prevent permanent physiological damage, the cabin altitude must not exceed 25,000 feet for more than 2 minutes, or 40,000 feet for any time period. The maximum peak cabin altitude of 40,000 feet is consistent with the standards established for previous certification programs. In addition, at high altitudes the other aspects of decompression sickness have a significant, detrimental effect on pilot performance (for example, a pilot can be incapacitated by internal expanding gases).

Decompression resulting in cabin altitudes above the 37,000-foot limit depicted in Figure 4 approaches the physiological limits of the average person; therefore, every effort must be made to provide the pilots with adequate oxygen equipment to withstand these severe decompressions. Reducing the time interval between pressurization failure and the time the pilots receive oxygen will provide a safety margin against being incapacitated and can be accomplished by the use of mask-mounted regulators. These special conditions therefore require pressure demand masks with mask-mounted regulators for the flightcrew. This combination of equipment will provide the best practical protection for the failures covered by the special conditions and for improbable failures not covered by the special conditions, provided the cabin altitude is limited.

As discussed above, these special conditions are applicable to the IAI Model Galaxy. Should IAI Ltd. apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain design features on the IAI Ltd. Model Galaxy airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. app. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the IAI Ltd. Model Galaxy series airplanes:

Operation to 45,000 Feet

1. *Pressure Vessel Integrity.*

(a) The maximum extent of failure and pressure vessel opening that can be demonstrated to comply with paragraph 4 (Pressurization) of this special condition must be determined. It must be demonstrated by crack propagation and damage tolerance analysis supported by testing that a larger opening or a more severe failure than demonstrated will not occur in normal operations.

(b) Inspection schedules and procedures must be established to ensure that cracks and normal fuselage leak rates will not deteriorate to the extent that an unsafe condition could exist during normal operation.

2. *Ventilation.* In lieu of the requirements of § 25.831(a), the ventilation system must be designed to provide a sufficient amount of uncontaminated air to enable the crewmembers to perform their duties without undue discomfort or fatigue, and to provide reasonable passenger comfort during normal operation conditions and also in the event of any probable failure of any system that could adversely affect the cabin ventilating air. For normal operations, crewmembers and passengers must be provided with at least 10 cubic feet of fresh air per minute per person, or the equivalent in filtered, recirculated air based on the volume and composition at the corresponding cabin pressure altitude of not more than 8,000 feet.

3. *Air Conditioning.* In addition to the requirements of § 25.831, paragraphs (b) through (e), the cabin cooling system must be designed to meet the following conditions during flight above 15,000 feet mean sea level (MSL):

(a) After any probable failure, the cabin temperature-time history may not exceed the values shown in Figure 1.

(b) After any improbable failure, the cabin temperature-time history may not exceed the values shown in Figure 2.

4. *Pressurization.* In addition to the requirements of § 25.841, the following apply:

(a) The pressurization system, which includes for this purpose bleed air, air conditioning, and pressure control systems, must prevent the cabin altitude from exceeding the cabin altitude-time history shown in Figure 3 after each of the following:

(1) Any probable malfunction or failure of the pressurization system. The existence of undetected, latent malfunctions or failures in conjunction with probable failures must be considered.

(2) Any single failure in the pressurization system, combined with the occurrence of a leak produced by a complete loss of a door seal element, or a fuselage leak through an opening having an effective area 2.0 times the effective area that produces the maximum permissible fuselage leak rate approved for normal operation, whichever produces a more severe leak.

(b) The cabin altitude-time history may not exceed that shown in Figure 4 after each of the following:

(1) The maximum pressure vessel opening resulting from an initially detectable crack propagating for a period encompassing four normal inspection intervals. Mid-panel cracks and cracks through skin-stringer and skin-frame combinations must be considered.

(2) The pressure vessel opening or duct failure resulting from probable damage (failure effect) while under maximum operating cabin pressure differential due to a tire burst, engine rotor burst, loss of antennas or stall warning vanes, or any probable equipment failure (bleed air, pressure control, air conditioning, electrical source(s), etc.) that affects pressurization.

(3) Complete loss of thrust from all engines.

(c) In showing compliance with paragraphs 4(a) and 4(b) of these special conditions (Pressurization), it may be assumed that an emergency descent is made by approved emergency procedure. A 17-second crew recognition and reaction time must be applied between cabin altitude warning and the initiation of an emergency descent.

Note: For the flight evaluation of the rapid descent, the test article must have the cabin volume representative of what is expected to be normal, such that IAI Ltd. must reduce the total cabin volume by that which would be occupied by the furnishings and total number of people.

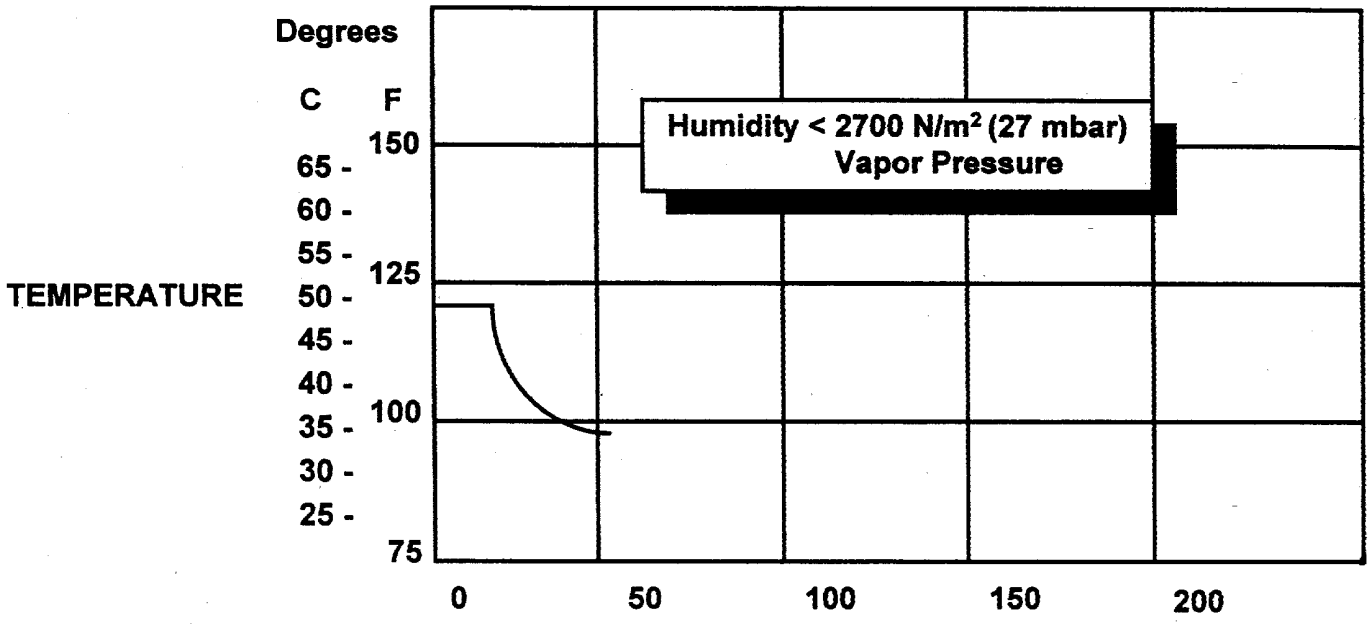
5. *Oxygen Equipment and Supply.*

(a) A continuous flow oxygen system must be provided for the passengers.

(b) A quick-donning pressure demand mask with mask-mounted regulator must be provided for each pilot. Quick-donning from the stowed position must be demonstrated to show that the mask can be withdrawn from stowage and donned within 5 seconds.

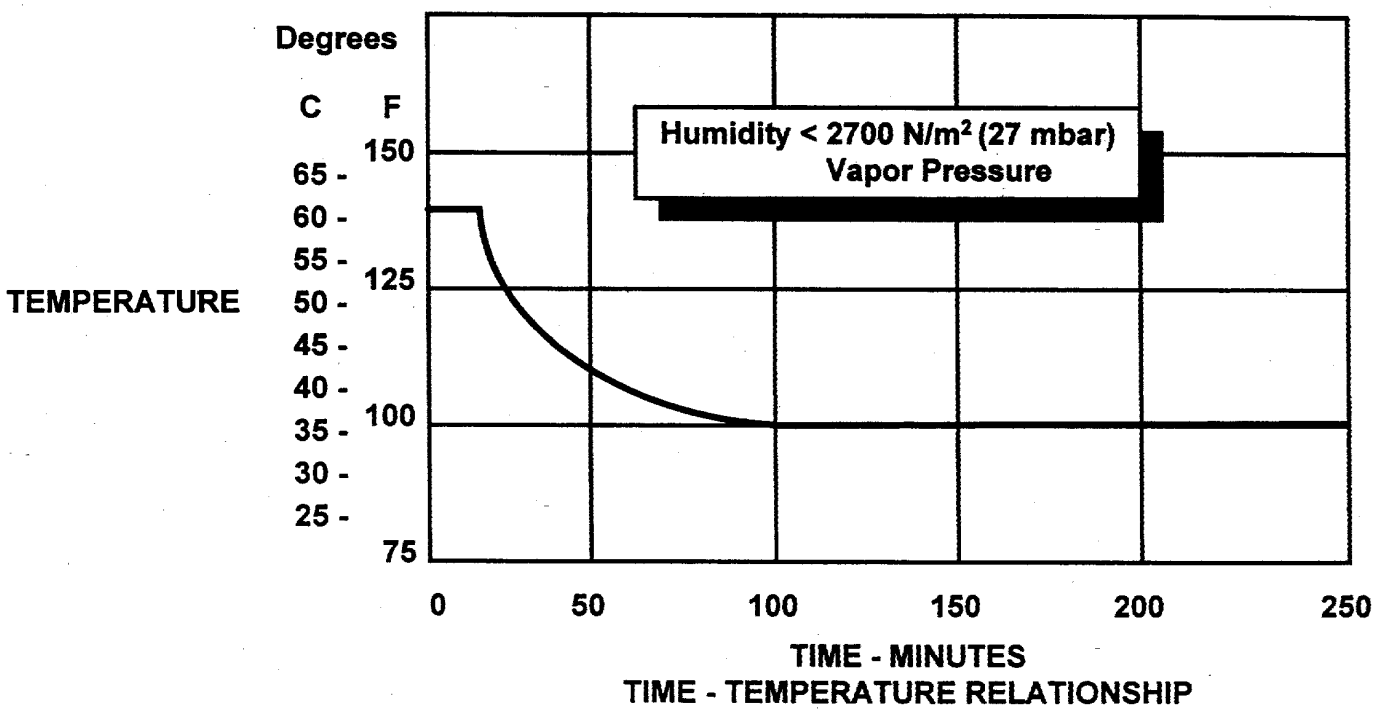
BILLING CODE 4910–13–M

Figure 1



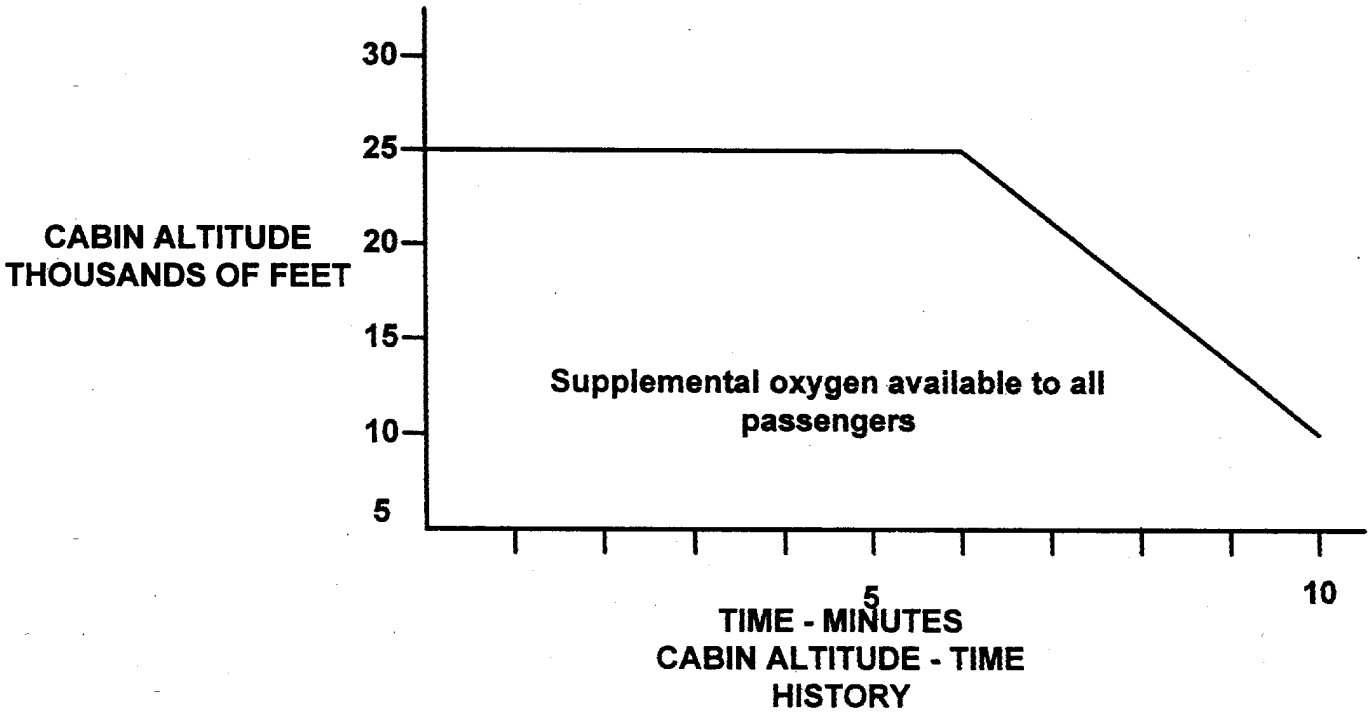
TIME - TEMPERATURE RELATIONSHIP

Figure 2



TIME - TEMPERATURE RELATIONSHIP

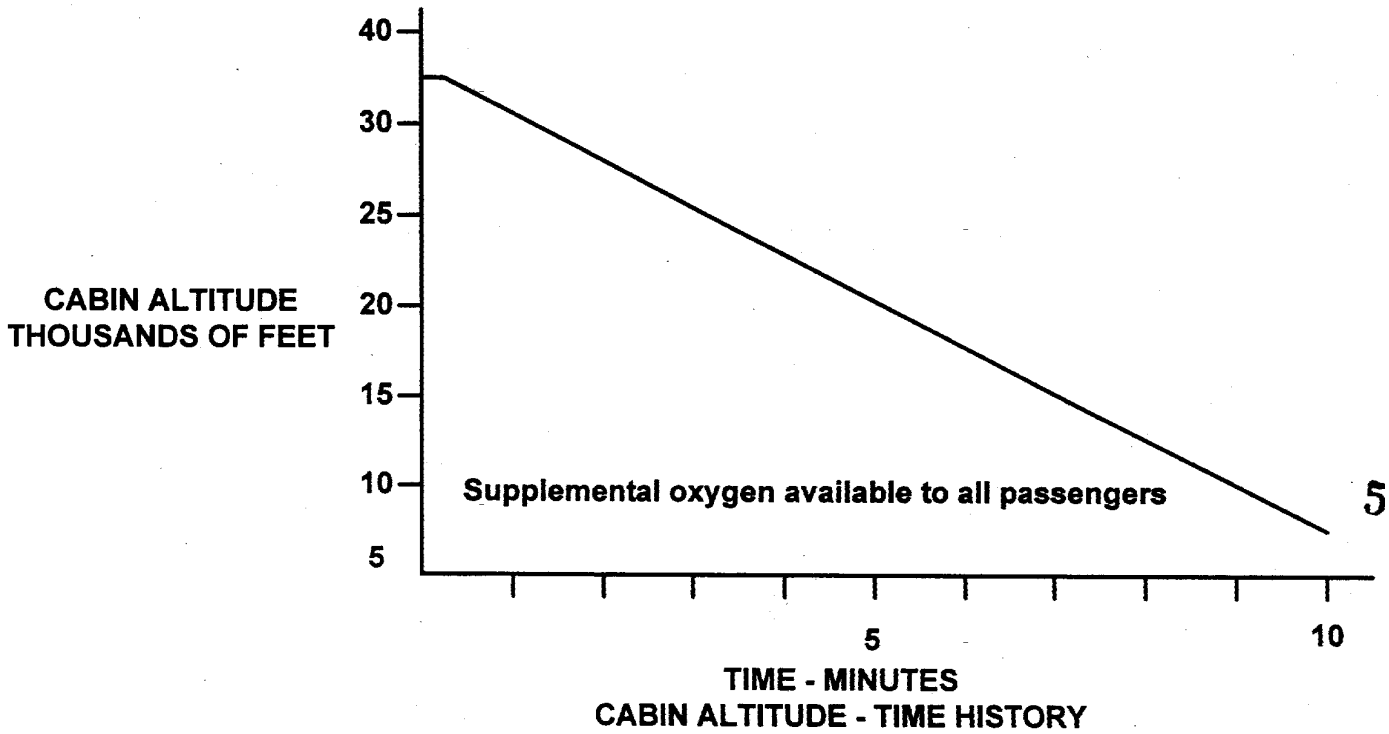
Figure 3



CABIN ALTITUDE - TIME HISTORY

NOTE: For figure 3, time starts at the moment cabin altitude exceeds 8,000 feet during depressurization. If depressurization analysis shows that the cabin altitude limit of this curve is exceeded, the following alternate limitations apply: After depressurization, the maximum cabin altitude exceedence is limited to 30,000 feet. The maximum time the cabin altitude may exceed 25,000 feet is 2 minutes; time starting when the cabin altitude exceeds 25,000 feet and ending when it returns to 25,000 feet.

Figure 4



NOTE: For figure 4 , time starts at the moment cabin altitude exceeds 8,000 feet during depressurization. If depressurization analysis shows that the cabin altitude limit of this curve is exceeded, the following alternate limitations apply: After depressurization, the maximum cabin altitude exceedence is limited to 40,000 feet. The maximum time the cabin altitude may exceed 25,000 feet is 2 minutes; time starting when the cabin altitude exceeds 25,000 feet and ending when it returns to 25,000 feet.

BILLING CODE 4910–13–C

Issued in Renton, Washington, on May 26, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 95–13940 Filed 6–6–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 95–AAL–1]

Proposed Establishment and Alteration of Class E Airspace; Fort Yukon, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a Class E2 airspace area and amend the Class E5 airspace area at Fort Yukon, Alaska. The intended effect of this proposal is to provide controlled airspace for aircraft executing the Standard Instrument Approach Procedure (SIAP) at the Fort Yukon Airport. The area would be depicted on aeronautical charts.

DATES: Comments must be received on or before July 10, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, AAL–530, Federal Aviation Administration, Docket No. 95–AAL–1, 222 West 7th Avenue, #14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Alaskan Region at the same address.

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

FOR FURTHER INFORMATION CONTACT: Robert C. Durand, AAL–531, 222 West 7th Avenue #14, Anchorage, AK 99513–7587; telephone: (907) 271–5898.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 95–AAL–1.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch, AAL–530, 222 West 7th Avenue, #14, Anchorage, AK 99513–7587 or by calling (907) 271–5898. Communications must identify the notice number of this NPRM. Persons interested in being placed on mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish new Class E airspace and revise the existing Class E airspace to provide additional controlled airspace for Instrument Flight Rules (IFR) procedures at the Fort Yukon Airport. The FAA has recomputed the terminal airspace requirements for all the SIAP's and installed an Automated Weather Observation Station (AWOS) at the Fort Yukon Airport. The additional airspace would provide required controlled airspace for IFR procedures at the Fort Yukon Airport. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas designated as a surface area for an airport are published in paragraph 6002 of FAA Order 7400.9B, dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1, and Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9B, dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(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 proposed rule would 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).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (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. 40103, 40113, 40120; 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 Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6002 Class E Airspace Areas Designated as a Surface Area for an Airport.

* * * * *

AAL AK E2 Fort Yukon, AK [New]

Fort Yukon Airport, AK
(Lat. 66°34′18″ N, long. 145°15′01″ W)
Yukon River, NDB
(Lat. 66°34′48″ N, long. 145°12′46″ W)
Fort Yukon VORTAC
(Lat. 66°34′28″ N, long. 145°16′36″ W)

That airspace extending upward from the surface within a 4-mile radius of the Fort Yukon Airport and within 2.5 miles each side of the Yukon River NDB 059° bearing extending from the 4-mile radius to 8.2 miles northeast of the airport and within 3.3 miles each side of the Fort Yukon VORTAC 075° radial extending from the 4-mile radius to

11.6 miles east of the airport and within 3.3 miles each side of the Fort Yukon VORTAC 213° radial extending from the 4-mile radius to 12.4 miles southwest of the airport. This Class E airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Supplement Alaska (Airport/Facility Directory).

* * * * *

Paragraph 6005 Class E Airspace Areas Extending From 700 Feet or More Above the Surface of the Earth.

* * * * *

AAL AK E5 Fort Yukon, AK [Revised]

Fort Yukon Airport, AK
(Lat. 66°34′18″ N, long. 145°15′01″ W)
Yukon River, NDB
(Lat. 66°34′48″ N, long. 145°12′46″ W)
Fort Yukon VORTAC
(Lat. 66°34′28″ N, long. 145°16′36″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Fort Yukon Airport and within 4 miles each side of the 213° radial of the Fort Yukon VORTAC extending from the 6.5-mile radius to 15.4 miles southwest of the airport and within 4 miles each side of the 075° radial or the Fort Yukon VORTAC extending from the 6.5-mile radius to 14.6 miles east of the airport and within 3 miles each side of the Yukon River NDB 059° bearing extending from the 6.5-mile radius to 11.3 miles northeast of the airport.

* * * * *

Issued in Anchorage, Alaska on May 12, 1995.

Trent S. Cummings,

Acting Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 95–13936 Filed 6–6–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–ACE–5]

Proposed Amendment to Class E Airspace; Scott City, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Scott City, KS. The development of a new standard instrument approach procedure (SIAP) at Scott City Municipal Airport, Scott City, KS, utilizing the Scott City NDB has made the proposal necessary. The intended effect of this proposal is to provide controlled airspace for aircraft executing the SIAP at Scott City, KS.

DATES: Comments must be received on or before June 30, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Operations Branch, ACE–530, Federal Aviation Administration, Docket No. 95–ACE–5, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Central Region at the same address between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Operations Branch, Air Traffic Division, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, ACE–530c, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 95–ACE–5.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to provide additional controlled airspace for a new Instrument Flight Rules (IFR) procedure at the Scott City Municipal Airport. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9B, dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(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 proposed rule would 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).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (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. 40103, 40113, 40120; 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 Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending From 700 Feet or More Above the Surface of the Earth

* * * * *

ACE IA E5 Scott City, KS [New]

Scott City Municipal Airport, KS.
(Lat. 38°28′30″N, long. 100°53′05″W)
Scott City NDB
(Lat. 38°28′49″N, long. 100°53′18″W)

That airspace extending upward from 700 feet above the surface within 6.5-mile radius of the Scott City Municipal Airport and within 2.5 miles each side of the 169° bearing from the Scott City NDB extending from the 6.5-mile radius to 7 miles south of the airport.

* * * * *

Issued in Kansas City, MO, on May 8, 1995.

Herman J. Lyons, Jr.,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 95–13937 Filed 6–6–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–AGL–02]

Proposed Amendment of Class E Airspace; Cadillac, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Class E Airspace at Cadillac, MI. A Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway 25 has been developed for the Wexford County Airport. Additional controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed for aircraft executing the approach. The intended effect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before July 19, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 95–AGL–02, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Griffith, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 95–AGL–02.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E airspace at Cadillac, MI; this proposal would provide adequate Class E airspace for IFR operators executing the GPS Runway 25 SIAP at Wexford County Airport. Controlled airspace extending from 700 to 1200 feet AGL is needed for aircraft executing the approach. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. Aeronautical maps and charts would reflect the defined area which would enable pilots to circumnavigate the area in order to comply with applicable visual flight rules requirements.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed 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 effect air traffic procedures and air navigation, it is certified that this rule, when promulgated, 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).

The Proposed Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR 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 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AGL MI E5 Cadillac, MI [Revised]

(lat. 44°16′31″ N., long. 85°25′08″ W.)

That airspace extending upward from 700 feet above the surface within a 7.4 mile radius of the Wexford County Airport and within 3.9 miles either side of the 246 degree bearing from the airport extending from the 7.4 mile radius to 8.3 miles southwest of the airport, and within 1.7 miles either side of the 062 degree bearing from the airport extending from the 7.4 mile radius to 10.3 miles northeast of the airport.

* * * * *

Issued in Des Plaines, Illinois on May 22, 1995.

Roger Wall,

Manager, Air Traffic Division.

[FR Doc. 95–13939 Filed 6–6–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 792

[Docket No. 950525141–5141–01]

Administration of State Log Exports Ban

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Advance notice of proposed rulemaking with request for comments.

SUMMARY: This notice announces the Department of Commerce's intention to issue regulations implementing the ban on the export of unprocessed timber originating from non-Federal public lands in 17 western states pursuant to the Forest Resources Conservation and Shortage Relief Act of 1990, as amended (FRCSRA). This notice delineates the actions the Department is considering taking to implement the FRCSRA and requests public comments on these actions.

DATES: Comments must be received by July 7, 1995.

ADDRESSES: Written comments (three copies) should be sent to: Steven C. Goldman, Acting Director, Office of Chemical and Biological Controls and Treaty Compliance, Bureau of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230, Telephone: (202) 482–3825, Fax (202) 482–0751.

FOR FURTHER INFORMATION CONTACT: Bernard Kritzer, Manager, Short Supply Program, Office of Chemical and Biological Controls and Treaty Compliance, Bureau of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230, Telephone: (202) 482–0894, Fax (202) 482–0751.

SUPPLEMENTARY INFORMATION:

Background

Section 491 of the Forest Resources Conservation and Shortage Relief Act of 1990, (Pub. L. 101–382, 16 U.S.C. 620 et seq.) (the Act), requires the Secretary of Commerce to issue orders restricting the export of unprocessed timber originating from non-Federal public lands located west of the 100th meridian in the contiguous United States (state timber). Prior to its amendment in 1993, the Act required the affected States to issue and implement regulations administering the export ban. On May 4, 1993, the U.S. Ninth Circuit Court of Appeals held unconstitutional the provisions of the Act that required the States to implement the Act's prohibitions.

On July 1, 1993, the President signed into law Public Law 103–45, the Forest Resources Conservation and Shortage Relief Amendments Act of 1993 (the Amendments Act). The Amendments Act reassigned the export control implementation responsibilities from the States to the Federal government (Federal Program), specifically to the Secretary of Commerce. It also allows individual states to petition the Secretary to approve their own programs to implement the ban on exports of state timber (State Program). If the Secretary approves a State Program, it applies in that State in lieu of the Federal Program.

Scope of the Export Ban

Pursuant to the FRCSRA, on August 23, 1993, the Secretary of Commerce signed a General Order (Order) prohibiting the export of State timber effective June 1, 1993 (58 F.R. 55038). This Order affects Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, New Mexico, Nevada, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming (the affected States). The export ban, however, excludes public lands in the State of Alaska and lands held in trust by any Federal or State official or agency for a recognized Indian tribe or for any member of such tribe.

The Order includes restrictions on who may purchase state timber to prevent the direct or indirect substitution of such timber for exported private timber. It also provides exemptions for certain prior contracts. For States with annual sales greater than 400 million board feet (MBF), the Order expires December 31, 1995. For States with annual sales of less than 400 MBF, the Order remains in effect permanently.

For States with annual sales of more than 400 MBF, section 491 (b)(2)(B) of the FRCSRA requires the Secretary to issue an Order, not later than September 30, 1995, for all periods on or after January 1, 1996, prohibiting the export of the lesser of 400 MBF or the annual sales volume in that State of unprocessed timber originating from public lands.

The FRCSRA allows the governor of each affected State to request that the Secretary of Commerce approve a State Program for the administration of its own state timber export controls in lieu of the Federal Program. On August 17, 1993, the Secretary authorized Washington to continue administering its pre-existing export control program on an interim basis. On March 10, 1994, the Secretary authorized Oregon to continue administering its pre-existing export control program on an interim basis. On June 1, 1995, the Secretary gave final authorization to Oregon and Washington to administer their pre-existing programs pursuant to Section 491(d) of the FRCSRA.

Proposed Elements of the Federal Program

This notice announces the Department of Commerce's intention to issue regulations implementing the ban on the export of state timber originating in the 15 States identified in the Order which have not had programs approved or had FRCSRA's prohibitions modified or removed pursuant to Section 491(h). Before drafting regulations, however, the Department seeks comments from interested parties on the following proposed elements of the Federal Program:

1. *Procedures to identify and mark State timber.* Pursuant to section 491(c)(1) of the FRCSRA, the Department proposes to require *owners/purchasers* of State timber:

(a) To identify and paint, by means described at subparagraphs (b) and (c) of this paragraph, State timber (sometimes hereafter ''logs requiring domestic processing'');

(b) To use highway yellow paint to identify logs requiring domestic processing. Before removal from the harvest area, the owner must paint each log at each end with a spot of highway yellow paint not less than three inches square;

(c) To retain the identification placed on an unprocessed log until the log is domestically processed. If a log is cut into two or more segments before processing, the owner is required to identify each segment in the same manner as the original log. The marking requirement would include all State timber;

2. *Procedures for documenting transfers of State timber.* Pursuant to Sections 492(a)(3) and 492(a)(4) of the FRCSRA, the Department proposes to require the following reporting procedures for the receipt and disposition of the unprocessed public timber:

(a) *Documenting the transfer of unprocessed State timber.* Each person who transfers to another person State timber must, before completing the transfer:

(i) Provide to the other person a written document identifying the public lands from which the timber originated and giving notice to the person of the prohibition against exporting the State timber or substituting it for exported private timber;

(ii) receive from the purchaser written acknowledgement of the notice, and a written agreement that the recipient of the timber will comply with all the requirements of the FRCSRA; and

(iii) provide annually to the Secretary of Commerce copies of all notices, acknowledgements, and agreements referred to in paragraphs (3)(a)(i) and (3)(a)(ii).

(b) *Documenting the acquisition of unprocessed State timber.* Each person who directly or indirectly acquires or processes State timber shall report the receipt and disposition of the timber to the Secretary of Commerce as follows:

(i) the source of the State timber acquired.

(ii) from whom the timber was acquired and to whom the timber was sold, transferred or otherwise conveyed; and

(iii) an accounting by source, in net board feet Scribner, or cubic feet, of the volume of State timber acquired, the volume domestically processed by the purchaser and the volume sold for domestic processing.

This requirement would apply to all intermediate parties until a purchaser sends the logs to a domestic sawmill and they are processed;

3. *Procedures for assessing civil penalties and applying administrative remedies for violations of the FRCSRA.* Pursuant to Section 492(c)(1)(B), if the Secretary of Commerce finds, on the record and after an opportunity for a hearing, that a person has exported or caused to be exported State timber with willful disregard of the Secretary's Orders, the Secretary may assess a civil penalty on such person. The civil penalty may be up to $500,000 for each violation or 3 times the gross value of unprocessed timber involved in the violation, whichever amount is greater.

Pursuant to Section 492(c)(2)(B), if the Secretary of Commerce finds on the record and after an opportunity for a hearing, that a person has violated any provision of the FRCSRA or any regulation issued under the FRCSRA relating to the export of unprocessed timber originating from public lands, whether or not the violation caused the export of unprocessed timber from public lands in violation of the FRCSRA, the Secretary may impose a civil penalty of up to $75,000 for each violation or up to $500,000 depending on the nature of the violation.

4. *Definition.* Pursuant to Section 493(7) of the FRCSRA, the term unprocessed timber means trees or portions of trees or other roundwood not processed to standards and specifications suitable for end product use. It does not include among other things chips, pulp, or pulp products and pulp logs or cull logs.

Petitions for Minimizing the Reporting Burdens on Those States That Do Not Export Timber From Public Lands

The Department is aware that a number of the states subject to the export ban have very small state timber sales volumes or do not sell state timber at all. The Department also is aware that some states do not have any unprocessed timber exported from state public lands. The Department is prepared to consider requests from such states for removal or modification of state restrictions, including reporting requirements of the Federal Program, pursuant to section 491(h) of the FRCSRA.

Particularly Useful Comments

The Department invites written comments from interested parties that may assist it in implementing the Federal Program. Specifically, information concerning the following would be particularly useful:

1. Under what circumstance should the Secretary include substitution as part of the rules for the Federal Program?

2. Are the Department's procedures for identifying and marking export-restricted State timber adequate to track such timber and prevent unauthorized export? Should the Department require persons/purchasers of State timber to hammer brand a log on each end with a brand approved for use by the Forest Supervisor of the State Forest in each affected State?

3. Are there more cost-effective ways to identify and track export-restricted State timber?

4. Is the Department's annual reporting requirement sufficient to track the flow of State timber?

Comment Procedures

The Department will consider public comments in the development of proposed regulations. The Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The following procedures will apply to any comments submitted pursuant to this procedure:

1. Interested parties are invited to submit written comments (3 copies), opinions, data, information, or advice with respect to this notice to the address above by the dates specified above.

2. The Department will consider all comments received by the close of the comment period in developing proposed regulations. While comments received after the end of the comment period will be considered if possible, this cannot be assured.

3. All public comments on this advanced notice of proposed rulemaking will be a matter of public record and will be available for public inspection and copying. (Communications from agencies of the United States Government or foreign governments will not be made available for public inspection).

4. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda which will also be a matter of public record and will be available for public review and copying.

5. The Department will *not* accept public comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will *not* consider them in the development of final regulations, and;

6. The comments received in response to this notice will be maintained in the Bureau of Export Administration, Freedom of Information Records Inspection Facility, Room 4525, Department of Commerce, 14th Street and Pennsylvania Avenue, N.W., Washington, DC 20239. Interested parties may inspect and copy records in this facility, including written public comments and memoranda summarizing the substance of oral communications, in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records may be obtained from Margaret Cornejo, Bureau of Export Administration, Management Analyst, at the above address or by calling (202) 482–5653.

Rulemaking Requirements

The rule which is likely to be proposed based on this notice was determined to be significant under Executive Order 12866.

Dated: June 2, 1995.

Sue E. Eckert,

Assistant Secretary for Export Administration.

[FR Doc. 95–14038 Filed 6–6–95; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 872

[Docket No. 95N–0033]

Dental Devices; Effective Date of Requirement for Premarket Approval of Endodontic Dry Heat Sterilizer

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; opportunity to request a change in classification.

SUMMARY: The Food and Drug Administration (FDA) is proposing to require the filing of a premarket approval application (PMA) or a notice of completion of a product development protocol (PDP) for the endodontic dry heat sterilizer, a medical device. The agency also is summarizing its proposed findings regarding the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to meet the statute's approval requirements, and the benefits to the public from use of the device. In addition, FDA is announcing the opportunity for interested persons to request the agency to change the classification of the device based on new information.

DATES: Written comments by September 5, 1995; requests for a change in classification by June 22, 1995. FDA intends that, if a final rule based on this proposed rule is issued, PMA's will be required to be submitted within 90 days of the effective date of the final rule.

ADDRESSES: Submit written comments or requests for a change in classification to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–594–4765.

SUPPLEMENTARY INFORMATION:

I. Background

Section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c) requires the classification of medical devices into one of three regulatory classes: Class I (general controls), class II (special controls), and class III (premarket approval). Generally, devices that were on the market before May 28, 1976, the date of enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94–295), and devices marketed on or after that date that are substantially equivalent to such devices, have been classified by FDA. For the sake of convenience, this preamble refers to both the devices that were on the market before May 28, 1976, and the substantially equivalent devices that were marketed on or after that date as ''preamendments devices.''

Section 515(b)(1) of the act (21 U.S.C. 360e(b)(1)) establishes the requirement that a preamendments device that FDA has classified into class III is subject to premarket approval. A preamendments class III device may be commercially distributed without an approved PMA or notice of completion of a PDP until 90 days after FDA issues a final rule requiring premarket approval for the device, or 30 months after final classification of the device under section 513 of the act, whichever is later. Also, a preamendments device, subject to the rulemaking procedure under section 515(b) of the act, is not required to have an approved investigational device exemption (IDE) (21 CFR part 812) contemporaneous with its interstate distribution until the date identified by FDA in the final rule requiring the submission of a PMA for the device.

Section 515(b)(2)(A) of the act provides that a proceeding to issue a final rule to require premarket approval shall be initiated by publication of a notice of proposed rulemaking containing: (1) The proposed rule; (2) proposed findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to have an approved PMA or a declared completed PDP and the benefit to the public from the use of the device; (3) an opportunity for the submission of comments on the proposed rule and the proposed findings; and (4) an opportunity to request a change in the classification of the device based on new information relevant to the classification of the device.

Section 515(b)(2)(B) of the act provides that if FDA receives a request for a change in the classification of the device within 15 days of the publication of the notice, FDA shall, within 60 days of the publication of the notice, consult with the appropriate FDA advisory committee and publish a notice denying the request for change of classification or announcing its intent to initiate a proceeding to reclassify the device under section 513(e) of the act. If FDA does not initiate such a proceeding, section 515(b)(3) of the act provides that FDA shall, after the close of the

comment period on the proposed rule and consideration of any comments received, issue a final rule to require premarket approval, or publish a notice terminating the proceeding. If FDA terminates the proceeding, FDA is required to initiate reclassification of the device under section 513(e) of the act, unless the reason for termination is that the device is a banned device under section 516 of the act (21 U.S.C. 360f).

If a proposed rule to require premarket approval for a preamendments device is made final, section 501(f)(2)(B) of the act (21 U.S.C. 351(f)(2)(B)) requires that a PMA or a notice of completion of a PDP for any such device be filed within 90 days of the date of issuance of the final rule or 30 months after final classification of the device under section 513 of the act, whichever is later. If a PMA or a notice of completion of a PDP is not filed by the later of the two dates, commercial distribution of the device is required to cease. The device may, however, be distributed for investigational use if the manufacturer, importer, or other sponsor of the device complies with the IDE regulations. If a PMA or a notice of completion of a PDP is not filed by the later of the two dates, and no IDE is in effect, the device is deemed to be adulterated within the meaning of section 501(f)(1)(A) of the act, and subject to seizure and condemnation under section 304 of the act (21 U.S.C. 334) if its distribution continues. Shipment of the device in interstate commerce will be subject to injunction under section 302 of the act (21 U.S.C. 332), and the individuals responsible for such shipment will be subject to prosecution under section 303 of the act (21 U.S.C. 333). FDA has in the past requested that manufacturers take action to prevent the further use of devices for which no PMA has been filed and may determine that such a request is appropriate for endodontic dry heat sterilizers.

The act does not permit an extension of the 90-day period after issuance of a final rule within which an application or a notice is required to be filed. The House Report on the amendments states that:

> the thirty month 'grace period' afforded after classification of a device into class III * * * is sufficient time for manufacturers and importers to develop the data and conduct the investigations necessary to support an application for premarket approval.

(H. Rept. 94–853, 94th Cong., 2d sess. 42 (1976).)

A. Classification of Endodontic Dry Heat Sterilizers

In the **Federal Register** of August 12, 1987 (52 FR 30082), FDA issued a final rule (§ 872.6730 (21 CFR 872.6730)) classifying the endodontic dry heat sterilizer into class III. The preamble to the proposal to classify the device published in the **Federal Register** of December 30, 1980 (45 FR 86155), included the recommendation of the Dental Device Classification Panel (the panel), of the Medical Devices Advisory Committee, an FDA advisory committee, regarding the classification of the device.

The panel recommended that the device be in class III (premarket approval) because the device presented an unreasonable risk of illness or injury. According to the panel, the devices failed to sterilize adequately various endodontic and dental instruments. The panel felt that the failures could be the result of: (1) The device not reaching and maintaining an adequate temperature because of a faulty thermostat or (2) the result of unequal heat distribution by the glass beads throughout the well despite sufficient heat. The panel believed that it was not possible to establish an adequate performance standard for the device because satisfactory performance had never been demonstrated. The panel recommended the device to be subject to premarket approval to assure that manufacturers of the device demonstrate satisfactory performance and that further study was necessary to determine the causes of the device's ineffectiveness.

FDA agreed with the panel's recommendation that endodontic dry heat sterilizers be classified into class III. FDA believed that there was an unreasonable risk of illness or injury because of the potential failure of the device to sterilize dental instruments adequately. FDA believed that there was inadequate information to determine if general controls or a performance standard would provide reasonable assurance of safety and effectiveness.

B. Dates New Requirements Apply

In accordance with section 515(b) of the act, FDA is proposing to require that a PMA or a notice of completion of a PDP be filed with the agency for the endodontic dry heat sterilizer within 90 days after issuance of any final rule based on this proposal. An applicant whose device was legally in commercial distribution before May 28, 1976, or has been found by FDA to be substantially equivalent to such a device, will be permitted to continue marketing the endodontic dry heat sterilizer during FDA's review of the PMA or notice of completion of the PDP. FDA intends to review any PMA for the device within 180 days, and any notice of completion of a PDP for the device within 90 days of the date of filing. FDA cautions that, under section 515(d)(1)(B)(i) of the act, FDA may not enter into an agreement to extend the review period for a PMA beyond 180 days unless the agency finds that '' * * * the continued availability of the device is necessary for the public health.''

FDA intends that, under § 812.2(d), the preamble to any final rule based on this proposal will state that, as of the date on which a PMA or a notice of completion of a PDP is required to be filed, the exemptions in § 812.2 (c)(1) and (c)(2) from the requirements of the IDE regulations for preamendments class III devices will cease to apply to any endodontic dry heat sterilizer which is: (1) Not legally on the market on or before that date; (2) legally on the market on or before that date but for which a PMA or notice of completion of a PDP is not filed by that date; or (3) for which PMA approval has been denied or withdrawn.

If a PMA or a notice of completion of a PDP for the endodontic dry heat sterilizer is not filed with FDA within 90 days after the date of issuance of any final rule requiring premarket approval for the device, commercial distribution of the device must cease. The device may be distributed for investigational use only if the requirements of the IDE regulations are met. FDA would not consider an investigation of an endodontic glass bead sterilizer to pose a significant risk as defined in the IDE regulation provided that instruments processed in the device are terminally sterilized by a sterilization process which can be biologically monitored, such as steam, ethylene oxide, or dry heat. If the investigation cannot be so designed, the investigation would constitute a significant risk. The requirements for significant risk devices include submitting an IDE application to FDA for its review and approval. An approved IDE is required to be in effect before an investigation of the device may be initiated or continued. FDA, therefore, cautions that IDE applications should be submitted to FDA at least 30 days before the end of the 90-day period after the final rule is published to avoid interrupting investigations.

C. Description of Device

Endodontic dry heat sterilizers are small electrically heated dry heat sterilizers with a central well containing a heat transfer medium. The types of

heat transfer media used in these units have included glass beads, molten metal, metal beads, and salt. The instruments which are to be sterilized are inserted directly into the heat transfer medium. The units are defined in § 872.6730 as devices used to sterilize endodontic and other dental instruments by the application of dry heat which is supplied by the glass beads which have been heated by electricity.

The proposed rule to require premarket approval of the endodontic dry heat sterilizer applies to devices that were being commercially distributed before May 28, 1976, and to devices that were introduced into commercial distribution since that date which have been found to be substantially equivalent to predicate endodontic dry heat sterilizers.

D. Proposed Findings With Respect to Risks and Benefits

As required by section 515(b) of the act, FDA is publishing its proposed findings regarding: (1) The degree of risk of illness or injury designed to be eliminated or reduced by requiring endodontic dry heat sterilizers to have an approved PMA or a declared completed PDP; and (2) the benefits to the public from the use of the device.

E. Risk Factors

The panel identified the primary risk to health as infection by stating that ''The inability of the device to sterilize adequately endodontic and other dental instruments may lead to transmission of microorganisms among patients and subsequent spread of infection.''

A review of the literature on endodontic dry heat sterilizers has identified the following problems associated with the use of these devices which contribute to the inability of endodontic dry heat sterilizers to sterilize instruments, including general medical instruments.

1. Temperature Variation Within the Well

There are many reports in the literature describing the temperature variation found within the wells of glass bead sterilizers (Refs. 2, 3, 4, 7, 10, and 11). Engelhardt et al. (Ref. 4) measured the temperature distribution in four brands of glass bead sterilizers at two different sites from the center and at six different depths in the well. He reported that the temperature within the well varied significantly depending upon location. The temperature was highest closest to the wall and midway down from the surface (Ref. 4). Corner also reported that near the periphery of the well the temperature varied by as much as 10 °C over time (Ref. 5). According to Ingle, glass bead sterilizers should not be used as a substitute for dry heat convection or steam sterilizers because of the temperature variations (Ref. 7).

2. Lack of Methods to Monitor the Recommended Exposure Times for Sterilization of the Instruments

The manufacturers' recommended exposure times for sterilization of instruments vary from as short as 2 seconds to 45 seconds for sterilizers whose purported operating temperatures are from 218 °C to 260 °C. However, location of the instruments in the well, the size and mass of the instruments, the number of instruments, and the shape of the instruments must be factored into the amount of time required for sterilization. Larger instruments composed of more metal take more time to heat than smaller instruments. Koehler reported that the time required to raise an instrument's temperature was dependent upon its size. Small instruments such as root canal files heated rapidly, while large instruments such as cotton pliers never reached the specified operating temperature (Ref. 6). Corner reported that instruments such as forceps, scalpels, spatulas, and scissors sterilized in rapid succession caused the temperature in the well to drop an average of 7 °C for each instrument and that it took 15 minutes for the temperature of the well to recover (Ref. 2). Smith reported sterilization times of 15 seconds to kill orthodontic bands contaminated with *Staphylococcus albus* and 45 seconds for bands contaminated with *Bacillus subtilis* spores; but if five bands were sterilized simultaneously, then the sterilization times doubled (Ref. 10). Fahid reported that a No. 60 file, which was the largest file tested in the study, was the most difficult to sterilize. The difficulty was attributed to two factors: the large mass of the file, and the air trapped in the deep trough since air is a poor heat conductor (Ref. 5). Engelhardt described sterilization times for endodontic instruments ranging from 15 to more than 100 seconds in glass bead sterilizers, and in some cases, the 100 seconds were not sufficient to achieve sterilization (Ref. 4). Schutt et al. found that it took 60 seconds to sterilize dental burs. He also emphasized that the temperature at the depth of the immersion of the burs should be measured and that the minimum temperature should be at least 175 °C at 2 millimeters (mm) below the surface and 240 °C at 15 mm below the surface (Ref. 9). It has been reported in the literature that glass bead sterilizers have been shown to be effective only with small instruments that can be imbedded into the heat transfer media and that their effectiveness has not been demonstrated for instruments of larger bulk. The insertion of large instruments would reduce the temperature of the glass beads below the minimum temperature required for sterilization (Ref. 1). Heat conduction in a large, partially imbedded device would be variable.

Precleaning of the instruments before insertion into the glass bead sterilizer is critical to the effectiveness of the device. Engelhardt demonstrated that if endodontic instruments were contaminated with a protein load (blood), the time required for sterilization was more than doubled. Such adverse conditions can easily be found in infected or gangrenous pulp. Spores, which are more resistant to sterilization processes than vegetative organisms, have been found in the oral cavity and cultured from pulp material (Ref. 4).

3. Lack of Methods to Monitor the Performance/Sterilization Efficacy of the Device

There are no identified methods for the routine monitoring of the sterilization efficacy of the endodontic dry heat sterilizer such as the ones which exist with the traditional sterilization methods, i.e., steam autoclaves, hot air dry heat sterilizers, or ethylene oxide sterilizers. Chemical and biological indicators are available for routine monitoring of the efficacy of the cycle parameters and for the validation of the process specifications for these traditional sterilizers. The data in the literature, as noted above, suggest that the user can not be assured that instruments inserted into an endodontic dry heat sterilizer will be reliably exposed to the minimum cycle parameters required for sterilization, i.e., exposure of the device to a set temperature for a specified time.

4. Variability of the Warm-up Times for Glass Bead Sterilizers

Reported warm-up times for these devices range from 15 minutes to 50 minutes with the average of 15–20 minutes. However, Corner reported that it took up to 30 minutes for the temperature of the glass beads to stabilize even though the manufacturer claimed that the device reached operating temperature within 10 minutes (Ref. 2).

5. Maintenance of Sterility After Removal From the Device

The instructions for use for most of the devices do not instruct the user on the proper procedure to remove instruments from the device, and on how to maintain sterility of the instruments or the processed portion of the instrument during the cool down period. There also exists the possibility that the heat transfer medium could serve as a source of contamination between patients. Because of the reported temperature gradients within the wells, there exists the possibility that heat resistant microorganisms could survive in the cooler regions near the top of the well and contaminate the instruments used upon the next patient as they are removed from the well. Furthermore, because endodontic dry heat sterilizers only process that portion of the instrument which has been inserted into the glass beads, there is the potential of contaminating a sterile field with a device which had not been properly processed.

6. Possibility of the Heat Transfer Medium Remaining Upon The Devices

Occasionally the heat transfer media has been observed to adhere to wet instruments. If the particles are not detected before the devices are inserted into the site, then they could cause blockage of the wound site or other adverse effects. This would cause significant problems if the heat transfer media were glass beads or molten metal (Ref. 1).

F. Benefit of the Devices

The endodontic dry heat sterilizer could be used to decontaminate endodontic instruments during a procedure on a single patient provided the instruments are properly cleaned to remove organic debris before insertion into the unit. In theory the number of microorganisms that would be introduced into the same site or into a new site on the same patient during a single procedure would be reduced. Once the procedure is over, the instruments should be processed using traditional methods of decontamination and sterilization before use in the next patient.

G. Need for Information for Risk/Benefit Assessment of the Device

The data in the literature indicate the lack of uniform sterilization parameters among the various glass bead sterilizers which have been marketed. Because of the temperature variation found within the wells of glass bead sterilizers, exposure of an instrument to an adequate sterilizing temperature is difficult to determine and must be confirmed independently for each instrument. Also determination of the sterilization exposure time is dependent upon instrument size and mass. As Koehler noted, some instruments never reach the appropriate temperature because of their size and mass (Ref. 6); and, as noted in the American Dental Association's ''Accepted Dental Therapeutics,'' 40th ed., endodontic dry heat sterilizers are not appropriate for large bulk instruments (Ref. 1).

Review of the claims being made for these devices suggests that manufacturers are expanding the claims beyond those originally defined in § 872.6730. The claims have been expanded to include the sterilization of general medical instruments and electrolysis and acupuncture needles, and to devices not regulated by FDA such as manicurist's instruments. The claims imply that these devices can be used as a substitute for the traditional methods of sterilization. Scarlett noted that endodontic dry heat sterilizers are not sterilizers, but are decontaminating devices and that they should not be used to sterilize instruments between patients (Ref. 8). No system exists for (1) Monitoring the exposure of the instrument to sterilization conditions, or (2) demonstrating that the sterilization exposure parameters have been achieved within the well. Only the portion of the instrument which is inserted into the heat transfer medium has the potential of being sterilized; the portion which is not inserted into the glass beads is not sterilized. The use of endodontic dry heat sterilizers with general medical instruments and with the implication as a substitute sterilization method raises serious safety and effectiveness questions which the manufacturers of these devices have not adequately addressed. There is the serious risk of infection through the use of inadequately processed instruments.

FDA believes that sufficient information may exist regarding the risks and benefits associated with the device, but the information must be assembled in such a way as to enable FDA to determine if the information provides reasonable assurance of the safety and effectiveness of the device for its intended use as defined in 21 CFR 860.7.

FDA classified the endodontic dry heat sterilizer into class III because it determined that insufficient information existed to determine that general controls would provide reasonable assurance of the safety and effectiveness of the device or to establish a performance standard to provide such assurance. FDA has determined that the special controls that may now be applied to class II devices under the Safe Medical Devices Act of 1990 also would not provide such assurance. FDA has weighed the probable risks and benefits to the public health from the use of the device and believes that the literature reports and other information discussed above present evidence of significant risks associated with use of the device. These risks must be addressed by the manufacturers of endodontic dry heat sterilizers. FDA believes that the endodontic dry heat should undergo premarket approval to establish effectiveness and to determine whether the benefits to the patient are sufficient to outweigh any risk.

II. PMA Requirements

A PMA for this device must include the information required by section 515(c)(1) of the act. Such a PMA should also include a detailed discussion of the risks identified above, as well as a discussion of the effectiveness of the device for which premarket approval is sought.

A PMA should include valid scientific evidence obtained from well-controlled studies, with detailed data, in order to provide reasonable assurance of the safety and effectiveness of the endodontic dry heat sterilizer for its intended use. The data must include the following information:

a. A general description of the sterilizer including its specifications, process parameters and process monitors;

b. An overview of the sterilization process with accompanying charts, graphs, or other visuals explaining all parameters;

c. A description of any test packs used in validating the performance of the endodontic dry heat sterilizer and in routine monitoring of the device;

d. Physical tests which demonstrate that the sterilizer achieves and maintains the physical process lethality conditions within specifications. The testing should describe how the process parameters and specifications were determined;

e. The microbiological performance tests must demonstrate that the device can sterilize to an acceptable sterilization assurance level all medical products identified in the labeling when used in accordance with the directions for use. The tests should be consistent with those used to validate sterilization processes including simulated and actual use tests;

f. Material compatibility tests must show that the medical devices identified in the labeling are compatible with the

sterilization process of the endodontic dry heat sterilizer; and

g. Final qualification tests from at least three consecutive runs under worst case loading conditions as indicated in the labeling.

Additional information about the validation of sterilization processes can be found in: ''Guidance on Premarket Notification (510(k)) Submissions for Sterilizers Intended for Use in Health Care Facilities'' (available upon request from the Center for Devices and Radiological Health, Division of Small Manufacturers Assistance (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850); the American Association of Medical Instrumentation's (AAMI) voluntary standards describing the validation requirements for sterilization processes; and the publication entitled ''Sterile Medical Devices, A GMP Workshop Manual, 4th Ed., HHS Publication (FDA) 84–4147.

The PMA should contain a detailed discussion with supporting simulated- and in-use studies, as described in the above guidance, of: (1) All risks that have been identified in this proposed rule; and (2) the effectiveness of the specific endodontic dry heat sterilizer that is the subject of the application. In addition, the submission should contain all data and information on: (1) Risks known to the applicant that have not been identified in this proposed rule; (2) summaries of all existing simulated- and in-use data from investigations on the safety and effectiveness of the device for which premarket approval is sought; and (3) the results of simulated- and in-use studies conducted by or for the applicant. Applicants should submit any PMA in accordance with the FDA's ''Guideline for the Arrangement and Content of a PMA Application.'' The guideline is available from the Center for Devices and Radiological Health, Division of Small Manufacturers Assistance (address above).

III. Comments

Interested persons may, on or before September 5, 1995, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments or requests are to be identified with the docket number found in brackets in the heading of this document. Received comments and requests may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

IV. Opportunity to Reguest a Change in Classification

Before requiring the filing of a PMA or a notice of completion of a PDP for a device, FDA is required by section 515 (b)(2)(A)(i) through (b)(2)(A)(iv) of the act and 21 CFR 860.132 to provide an opportunity for interested persons to request a change in the classification of the device based on new information relevant to its classification. Any proceeding to reclassify the device will be under the authority of section 513(e) of the act.

A request for a change in the classification of the endodontic dry heat sterilizer is to be in the form of a reclassification petition containing the information required by § 860.123 (21 CFR 860.123), including new information relevant to the classification of the device, and shall, under section 515(b)(2)(B) of the act, be submitted by June 22, 1995.

The agency advises that, to ensure timely filing of any such petition, any request should be submitted to the Dockets Management Branch (address above) and not to the address provided in § 860.123(b)(1). If a timely request for a change in the classification of the endodontic dry heat sterilizer is submitted, the agency will, by August 7, 1995, after consultation with the appropriate FDA advisory committee and by an order published in the **Federal Register**, either deny the request or give notice of its intent to initiate a change in the classification of the device in accordance with section 513(e) of the act and 21 CFR 860.130 of the regulations.

V. 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. American Dental Association, ''Accepted Dental Therapeutics,'' 40th ed., pp. 138–139, Chicago, IL, 1984.
2. Corner, G. A., ''An Assessment of the Performance of a Glass Bead Sterilizer,'' *Journal of Hospital Infection,* 10:308–311, 1987.
3. Dayoub, M. B., and M. J. Devine, ''Endodontic Dry-Heat Sterilizer Effectiveness,'' *Journal of Endodontics,* 2:343–344, 1976.
4. Engelhardt, M. P., L. Grun, and H. Dahl, ''Factors Affecting Sterilization in Glass Bead Sterilizers,'' *Journal of Endodontics,* 10:454–470, 1984.
5. Fahid, A., and J. F. Tainter, ''The Influence of File Size, Cleaning, and Time on the Effectiveness of Bead Sterilizers,'' *Oral Surgery,* 58:443–445, 1984.
6. Koehler, H. M., and J. J. Hefferren, ''Time-Temperature Relations of Dental Instruments Heated in Root-Canal Instrument Sterilizers,'' *Journal of Dental Research,* 41:182–195, 1962.
7. Ingle, J. I., *Endodontics,* 3d Ed., Philadelphia, Lea & Febiger, pp. 615–616.
8. Jakush, J., ''Infection Control Procedures and Products: Cautions and Common Sense,'' *Journal of The American Dental Association,* 117:293–301, 1988.
9. Schutt, R. W., and W. J. Starsiak, ''Glass Bead Sterilization of Surgical Dental Burs,'' *International Journal of Oral and Maxillofacial Surgery,* 19:250–251, 1990.
10. Smith, G. E., ''Glass Bead Sterilization of Orthodontic Bands,'' *American Journal of Orthodontics Dentofacial Orthopedics,* 90:243–249, 1986.
11. Windeler, A. S., and R. G. Walter, ''The Sporicidal Activity of Glass Beads Sterilizers,'' *Journal of Endodontics,* 1:273–275, 1975.

VI. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because PMA's for this device could have been required by FDA as early as February 12, 1990, and because firms that distributed this device prior to May 28, 1976, or whose device has been found by FDA to be substantially equivalent will be permitted to continue marketing the endodontic dry heat sterilizer during FDA's review of the PMA or notice of completion of the

PDP, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

Therefore, under the Regulatory Flexibility Act, no further analysis is required.

List of Subjects in 21 CFR Part 872

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 872 be amended as follows:

PART 872—DENTAL DEVICES

1. The authority citation for 21 CFR part 872 is revised to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 522, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371).

2. Section 872.6730 is amended by revising paragraph (c) to read as follows:

§ 872.6730 Endodontic dry heat sterilizer.

* * * * *

(c) *Date premarket approval application (PMA) or notice of completion of product development protocol (PDP) is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (90 days after the effective date of a final rule based on this proposed rule), for any endodontic dry heat sterilizer that was in commercial distribution before May 28, 1976, or that has on or before (90 days after the effective date of a final rule based on this proposed rule), been found to be substantially equivalent to the endodontic dry heat sterilizer that was in commercial distribution before May 28, 1976. Any other endodontic dry heat sterilizer shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

Dated: May 24, 1995.

D. B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 95–13831 Filed 6–6–95; 8:45 am]

BILLING CODE 4160–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[TX–001; FRL–5217–7]

Clean Air Act Proposed Interim Approval Operating Permits Program for the State of Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed interim approval.

SUMMARY: The EPA proposes source category-limited interim approval of the operating permits program submitted by the Governor of Texas for the State of Texas for the purpose of complying with Federal requirements which mandate that States develop and submit to EPA programs for issuing operating permits to all major stationary sources, with the exception of sources on Indian Lands. Source category-limited interim approval was specifically requested by the Governor for this submission.

DATES: Comments on this proposed action must be received in writing by July 7, 1995.

ADDRESSES: Written comments on this action should be addressed to Ms. Jole C. Luehrs, Chief, New Source Review (NSR) Section, at the EPA Region 6 Office listed below. Copies of the State's submittal and other supporting information used in developing the proposed interim approval are available for inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before visiting day.

Environmental Protection Agency, Region 6, Air Programs Branch (6T–AN), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: David F. Garcia, New Source Review Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone 214–665–7217.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

As required under title V of the Clean Air Act, as amended on November 15, 1990 (''the Act''), the EPA has promulgated rules which define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of a State operating permits program (see 57 **Federal Register** 32250, July 21, 1992). These rules are codified at 40 Code of Federal Regulations (CFR) part 70 (''the part 70 regulation''). Title V requires States to develop, and submit to the EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that States develop and submit these programs to the EPA by November 15, 1993, and that the EPA act to approve or disapprove each program within one year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulation which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, the EPA may grant the program interim approval for a period of up to two years. Where a State requests source category-limited interim approval and demonstrates compelling reasons in support thereof, the EPA may also grant such an interim approval. If the EPA has not fully approved a program by two years after the date of November 15, 1993 or by the end of an interim program, it must establish and implement a Federal program.

B. Federal Oversight and Sanctions

If the EPA were to finalize this proposed source category-limited interim approval, it would grant that approval for a period of two years following the effective date of final interim approval, and the interim approval could not be renewed. During the interim approval period, the State of Texas would be protected from sanctions, and the EPA would not be obligated to promulgate, administer, and enforce a Federal permits program for the State of Texas. Permits issued under a program with interim approval have full standing with respect to part 70, and the State will permit sources based on the transition schedule provided in Regulation XII, Title 31 of the Texas Administrative Code (TAC).

Following final interim approval, if Texas has failed to submit a complete corrective program for full approval by the date six months before expiration of the interim approval, the EPA would start an 18-month clock for mandatory sanctions. If Texas then failed to submit a corrective program that the EPA found complete before the expiration of that 18-month period, the EPA would be required to apply one of the sanctions

in section 179(b) of the Act, which would remain in effect until the EPA determined that Texas had corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator found a lack of good faith on the part of Texas, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that Texas had come into compliance. In any case, if six months after application of the first sanction, Texas still had not submitted a corrective program that the EPA found complete, a second sanction would be required.

If following final interim approval, the EPA were to disapprove Texas' complete corrective program, the EPA would be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date Texas had submitted a revised program and the EPA had determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator found a lack of good faith on the part of Texas, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that Texas had come into compliance. In any case, if six months after application of the first sanction, Texas still had not submitted a corrective program that the EPA found complete, a second sanction would be required.

In addition, discretionary sanctions may be applied where warranted any time after the end of an interim approval period if Texas has not timely submitted a complete corrective program or the EPA has disapproved a submitted corrective program. Moreover, if the EPA has not granted full approval to Texas' program by the expiration of an interim approval, and that expiration occurs after November 15, 1995, the EPA must promulgate, administer, and enforce a Federal permits program for Texas upon interim approval expiration.

II. Proposed Action and Implications

A. Analysis of State Submission

1. Support Materials

Pursuant to section 502(d) of the Act, the Governor of each State is required to develop and submit to the Administrator an operating permits program under State or local law or under an interstate compact meeting the requirements of title V of the Act. Texas submitted, under the signature of former Governor Ann W. Richards, the operating permits program submittal to be implemented in all areas of the State of Texas with the exception of Indian Lands. The State of Texas requested that the EPA approve its operating permit program as a source category-limited interim program for a period of two years.

In the State's operating permits program submittal, Texas does not assert jurisdiction over Indian lands or reservations. To date, no tribal government in Texas has authority to administer an independent air program in the State. Upon promulgation of regulations under section 301(d) of the Act, Indian tribes will be able to apply for treatment as States under the Act, and receive the authority from the EPA to implement an operating permits program under title V of the Act. The EPA will, where appropriate, conduct a Federal title V operating permits program in accordance with forthcoming EPA regulations, for those Indian tribes which do not apply for treatment as States under the Act.

The Texas Air Control Board (TACB) was the traditional implementing authority for the Act and all of its amendments. The submittal, including the rules, were adopted by the TACB. The TACB's operations and legal responsibilities were consolidated with operations of other Texas environmental agencies. Therefore, effective September 1, 1993, the Texas Air Control Board became part of a new State of Texas environmental agency, the Texas Natural Resource Conservation Commission (TNRCC). All rules, permits, orders, and any other final actions of the TACB remain in full legal effect unless and until revised by the TNRCC.

40 CFR 70.4(b)(1) requires that the submittal contain a program description of the State's operating permits program describing how it intends to carry out its responsibilities under the part 70 regulations. The Texas Federal Operating Permits program description, volume 1 of the submittal, explains that the Texas operating permits program was developed to satisfy all of the requirements of the part 70 regulation. The operating permit in Texas will be used to consolidate relevant applicable requirements into one permit document.

The program description provides a broad overview of the State's program, a broad description of how the Federal operating permits program in Texas will be implemented in accordance with part 70, and a description of how the program will implement the applicable requirements set forth in other titles of the Act, specifically title I, title III, title IV, and title VII. The State projects over 3,000 sites will be subject to the operating permits program.

Pursuant to 40 CFR 70.4(b)(3), the Governor is required to submit a legal opinion from the Attorney General (or the attorney for a State air pollution control agency that has independent legal counsel), demonstrating adequate authority to carry out all aspects of a title V operating permits program. The Texas Attorney General submitted such an opinion in Volume 5 (the submittal supplement), demonstrating adequate legal authority as required by Federal law and regulation for interim approval.

40 CFR 70.4(b)(4) requires the submission of relevant permitting program documentation not contained in the regulations, such as permit forms and relevant guidance to assist in the State's implementation of its permits program. The State addresses this requirement in the Texas Federal Operating Permits Program Submittal Supplement in Volume 5 (the submittal supplement). The supplemental volume contains a model permit, application forms (including the standard phase II acid rain forms), monitoring, recordkeeping and reporting forms, public notice examples and guidance to implement the operating permits program. The detailed guidance addresses many part 70 requirements including documentation on permit applicability, permit application procedures, permit issuance, permit revisions and reopenings, permit renewals, compliance plan and certifications, and monitoring, reporting and recordkeeping.

2. Regulations and Program Implementation

The State of Texas has submitted TACB Regulation XII, Title 31 of TAC, Chapter 122—''Federal Operating Permits'' (''the Texas permit regulation'') and TACB General Rules, Title 31 of TAC, section 101.27 (''the Texas fee regulation''), for implementing the State's operating permits program as required by 40 CFR 70.4(b)(2). Sufficient evidence of their procedurally correct adoption was submitted in the Texas Federal Operating Permits Program Volumes 1 and 2 of the submittal. Copies of all applicable State and local statutes and regulations which authorize the part 70 program, including those governing State administrative procedures, were submitted with the State's program in Volumes 3 and 4.

The following discusses how the Texas permit regulation meets or does not meet the existing part 70 regulation. However, due to pending litigation involving sections of the part 70 regulation, revisions have been proposed, and more proposed revisions may be forthcoming. Any revisions to

the part 70 regulation may alter or obviate the need for the State to make the regulatory changes identified in this notice. During the State's rulemaking process proposing to make changes necessary for full title V approval, the EPA will comment on the State's proposal using the criteria in whatever regulation is in place at that time. In the **Federal Register** notice proposing action on the State's submittal for full approval, the EPA will use the criteria in whatever is the final part 70 regulation, whether it be the existing July 21, 1992, regulation or a later version (''part 70'').

The following requirements, set out in the part 70 regulation, are addressed in the State's submittal: (1) Provisions to determine applicability (40 CFR 70.3(a)): 31 TAC section 122.120; (2) Provisions to determine complete applications (40 CFR 70.5(a)(2)): 31 TAC section 122.134 and the forms (40 CFR 70.4(b)(4)): Supplemental Volume, Operating Permits Guidance; (3) Public Participation (40 CFR 70.7(h)): 31 TAC sections 122.150–122.155; (4) Provisions for minor permit modifications (40 CFR 70.7(e)(2)): 31 TAC sections 122.215–122.217; (5) Provisions for permit content (40 CFR 70.6(a)): 31 TAC sections 122.141–122.145; (6) Provisions for operational flexibility (40 CFR 70.4(b)(12)): 31 TAC section 122.221; (7) Provisions to determine insignificant activities (40 CFR 70.5(c)): 31 TAC section 122.010 (definition of applicable requirement) and sections 122.215–122.217; (8) Enforcement provisions (40 CFR 70.4(b)(5) and 70.4(b)(4)(ii)): Supplemental Volume ''State of Texas Office of the Attorney General'' and Volume 3, ''Texas Health and Safety Code'', section 382.082(b).

The following requirements of 40 CFR part 70 are addressed in the Texas permit regulation:

(a) Applicability criteria, including any criteria used to determine insignificant activities or emissions levels (40 CFR 70.4(b)(2)). These provisions require all sources subject to the operating permits regulations to have a permit to operate that assures compliance by the source with all applicable requirements. The State is to submit a program that, at a minimum, assures adequate authority to issue permits in compliance with all the applicable requirements of title V of the Act and the part 70 regulation. 40 CFR 70.2 defines the term ''applicable requirement'' to include: any standard or other requirement provided for in the applicable implementation plan approved or promulgated by the EPA through rulemaking under title I of the Act that implements the relevant requirements of the Act; any term or condition of any preconstruction permit issued pursuant to regulation approved or promulgated through rulemaking under title I including Part C or D, of the Act; and additional requirements listed in 40 CFR 70.2. 40 CFR part 70 requires all applicable requirements to be adequately addressed in the permit application and the operating permit.

Section 122.010 of the Texas permit regulation defines the term ''applicable requirement.'' Paragraph A of the definition makes specific reference to the Texas State Implementation Plan (SIP) approved chapters which the State considers relevant requirements of title I of the Act. Paragraph B uses the qualifier ''Part C (Prevention of Significant Deterioration) or Part D (Nonattainment Review)'' to further specify what constitute applicable requirements. This definition excludes certain minor NSR permitting activities as applicable requirements. Under the Texas permitting structure, any reasonably available control technology (RACT), maximum achievable control technology (MACT), section 112, or section 111 requirements applicable to minor units at major sources (whether reflected in a minor source permit or not) will be included as part of major source's original title V permit. Any non-RACT, non-111, and non-112 minor NSR permitting requirement will not be included in the major source's title V permit. For this reason, the proposed definition is inconsistent with the definition contained in the part 70 regulation. The EPA interprets the Federal definition of ''applicable requirement'' to include terms and conditions of ''any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under title I'', including all minor new source review permits.

However, on August 29, 1994, (see 59 FR 44574, Operating Permits Program Interim Approval Criteria), the EPA proposed revisions to 40 CFR part 70 to allow interim approval for States such as Texas whose programs do not provide for incorporating into permits all requirements established through EPA-approved minor NSR programs, and that can show compelling reasons for receiving interim approval. The State of Texas has argued that the State's existing minor NSR program is so stringent as to make the integration of a minor NSR permit into part 70 permits infeasible, and from the standpoint of environmental protection, unnecessary. The EPA acknowledges that Texas' minor NSR program is a very stringent one. The Texas program requires authorization prior to the construction of any new facility or the modification of an existing facility. The term ''facility'' is broadly defined to include any ''point of origin'' of air contaminants, so there is no opportunity for a source to ''net out'' of minor NSR. Moreover, Texas mandates best available control technology (BACT) as the emission control technology which applies to all minor NSR changes. Texas further subjects each minor NSR permit and permit amendment to a health effects evaluation which considers the cumulative effect of the proposed action, together with other air contaminant sources, on ambient air quality. Finally, where the Texas minor NSR program provides for public notice of a permit action, the program provides citizens the right to request a full evidentiary hearing on the action. Texas has also pointed to the exceptionally large number of part 70 sources which are located in the State and which are candidates for minor NSR. On the basis of the showing of compelling reasons described above, the EPA believes that a State or local permitting authority with minor NSR/part 70 integration difficulties such as Texas would warrant interim approval.

The following sections of the permit regulation are directly related and are considered part of the minor NSR/part 70 integration issue: permit application (sections 122.130–122.139), permit revisions (sections 122.210–122.221), and permit content (section 122.141–122.145). For full approval, these sections must be revised to be consistent with part 70.

The August 29, 1994, proposal for Operating Permits Program Interim Approval Criteria requires that, in such interim approval situations, a State: (1) Include a statement in permits that certain minor NSR requirements are not included in permits issued during the interim period; (2) include a cross-reference in each operating permit to the minor NSR permit for that source; and (3) require reopening of permits for incorporation of minor NSR permit conditions upon completion of the interim approval period. If the August proposal is finalized, it is the EPA's position that the Texas program can be granted interim authorization as long as the State complies with the three conditions discussed above.

Section 122.120 of the Texas permit regulation addresses 40 CFR 70.3(a), regarding applicability of part 70. Section 122.120 requires the owner or operator of a site to submit an application for a Federal operating permit if the site contains one or more of the following: (1) Any major source as defined in section 122.010 (relating to

general definitions); (2) any affected source as defined in section 122.012 (relating to acid rain definitions); (3) any solid waste incineration unit required to obtain a Federal operating permit pursuant to section 129(e) of title I of the Act; and (4) any non-major source which the EPA, through further rulemaking, has designated as no longer exempt from the obligation to obtain a Federal operating permit. The State further identifies in sections 122.120(4)(A)–(C) any non-major source subject to section 111, any non-major source subject to section 112 or ''any source in a source category designated by the Administrator pursuant to title III of the Act''. The State's provision regarding applicability is inconsistent with the Federal definition. Sections (4) (A) and (B) each appear to define non-major source as ''*any source*, including an area source,'' subject to standards under section 111 or 112 of the Act. Section 122.120(4) could potentially be interpreted as exempting any source, even a major source, from the requirement to obtain a part 70 permit. For full approval, the State must revise sections 122.120(4) (A) and (B) to clarify source applicability. Additionally, section 122.120(4)(C) of the permit regulation defines non-major source as ''any source in a source category designated by the Administrator pursuant to Title III of the Act.'' 40 CFR 70.3(a) includes a number of different types of sources other than section 112 sources. For full approval, section 122.120(4)(C) of the permit regulation must be modified to be consistent with 40 CFR 70.3(a).

Section 122.010 of the Texas permit regulation defines major source as ''any site which emits or has the potential to emit air pollutants as described in subparagraphs (A), (B), and (C) of this definition.'' The permit regulation defines ''site'' to allow research and development (R & D) operations to be treated as a separate site from any manufacturing facility with which they are co-located. The State's permit regulation is inconsistent with 40 CFR 70.3 which requires that a State's operating permits program provide for the permitting of all major sources, and 40 CFR 70.4(b)(3)(i) which requires that the State demonstrate adequate legal authority to issue permits and assure compliance with each applicable requirement by all part 70 sources.

Confusion over this issue has occurred as a result of language in the preamble to the final July 21, 1992, 40 CFR part 70 rulemaking (57 FR 32264). The preamble language indicates that States would have the flexibility in many cases to treat R & D facilities separately from the manufacturing facilities with which they are co-located. The EPA intended for this language to clarify the flexibility in part 70 for allowing R & D facilities to be treated separately in cases where the R & D facility has a different two-digit Standard Industrial Classification (''SIC'') code and is not a support facility. This approach is consistent with the treatment of R & D facilities in the New Source Review program.

The Texas permit regulation could cause certain part 70 major sources, as defined in 40 CFR 70.2, or portions of such sources with the same SIC code, to be treated as separate sources. This could cause some part 70 sources to be exempted from coverage by part 70 permits which must ensure all part 70 requirements for these sources are met. For full part 70 approval, the Texas permit regulations must treat research and development activities consistent with part 70.

Pursuant to 40 CFR 70.5(c), a permit application must describe all emissions of regulated air pollutants emitted from any emission unit. However, the Administrator may approve, as part of a State program, a list of insignificant activities and emission levels which need not be included in the permit application. The Texas operating permit program is designed to require the applicant to certify all emission units subject to an applicable or potential applicable requirement be described in the permit application.

Section 122.132 of the Texas permit regulation discusses the required information the permittee is to include in the operating permit application. The permit application shall include for each emission unit, or group of similar emission units: (1) Information identifying each applicable requirement, any corresponding emission limitation and any corresponding monitoring, reporting, and recordkeeping requirements; and (2) information identifying potentially applicable requirements for that particular type of emission unit and the basis for the determination that those applicable requirements do not apply.

Therefore, it is necessary for the applicant to identify all potential applicable requirements for each unit and give a basis for all negative applicable determinations. In other words, where a unit has a limitation or a specific characteristic of an emission unit that is limited by a regulation, but the applicant claims the unit is not subject to that regulation, the applicant is required to justify why. The applicant is responsible and is liable for including all applicable and potentially applicable requirements in the permit application. The potential applicable requirement language as a practical manner will require the source to characterize operations and emissions in a manner that is comprehensive enough to allow the State to independently verify which requirements are applicable. This process is subject to audits by State field inspectors, and action could be taken if violations of the Texas Permit Regulation exist.

Pursuant to section 122.120(1) of the Texas permit regulation, the owner or operator of a site shall submit an application to the TNRCC if the source is a major source. Major source applicability is calculated on a site's potential to emit air pollutants. When the applicant is calculating major source applicability, all emissions at each unit will be accounted for at the site, regardless if a unit is potentially subject to an applicable requirement. The operating permit application requires the applicant to indicate all air pollutants that are major at the site. The operating permit will reference pre-construction permits in which specific emission data for each emission unit will reside. Additionally, more detail of specific emission data is contained in an emission inventory database.

The design and approach the State uses to keep activities out of the operating permit application is considered practical and equivalent to part 70. This design attains the same results as a list of insignificant activities or emissions thresholds for units. The EPA believes the procedure set forth in the Texas permit regulation to identify insignificant activities achieves the goal and intent of the part 70 regulation and therefore is consistent and acceptable.

The part 70 regulation requires the permit application to describe all emissions of regulated air pollutants emitted from any emissions unit. A regulated air pollutant includes any pollutant subject to a standard promulgated under section 112 or other requirement established under section 112 of the Act, including sections 112(g), (j), and (r). The Texas permit regulation defines the term ''air pollutant'' and does not define ''regulated air pollutant.'' It defines air pollutant to include ''any pollutant listed in section 112(b) or section 112(r) of the Act *and* subject to a standard promulgated under section 112 of the Act.'' The term ''air pollutant'' is also used in the Texas definitions for ''potential to emit'' and ''major source.'' This creates an inconsistency with the part 70 regulation, in which applicability is based on a source's potential to emit any air pollutant,

including those *listed* pursuant to section 112, rather than on pollutants which are subject to a promulgated standard. For full approval, the definition of ''air pollutant'' must be modified to be consistent with the part 70 regulation.

Section 122.010 of the Texas permit regulation defines ''major source'' and further identifies the twenty-seven stationary source categories required to include a source's fugitive emissions in determining when a source is major. Category xxvii states that, for ''any other stationary source category which, as of August 7, 1980, is being regulated under sections 111 or 112 of the Act,'' fugitives must be counted in determining if the source is major. This is inconsistent with the current 40 CFR 70.2 which requires fugitive emissions to be counted for all section 111 and 112 standards, and which does not limit the stationary source categories to those which existed as of August 7, 1980. For full approval, the State must be consistent with part 70.

Section 122.010 of the Texas permit regulation defines ''title I modification'' as a change at a site that qualifies as a modification under section 111 of title I of the Act or section 112(g) of title I of the Act, or as a major modification under part C or part D of title I of the Act. The State's definition of ''title I modification'' does not include changes reviewed under a minor source preconstruction review program (''minor NSR changes''), nor does it include changes that trigger the application of National Emission Standards for Hazardous Air Pollutants (NESHAP) established pursuant to section 112 of the Act prior to the 1990 Amendments. The EPA is currently in the process of determining the appropriate interpretation of ''title I modification''. As further explained below, the EPA has solicited public comment on whether the phrase ''modification under any provision of title I of the Act'' in 40 CFR 70.7(e)(2)(i)(A)(5) should be interpreted to mean literally any change at a source that would trigger permitting authority review under regulations approved or promulgated under title I of the Act. This would include minor State preconstruction review programs approved by the EPA as part of the State Implementation Plan under section 110(a)(2)(C) of the Clean Air Act and regulations addressing source changes that trigger the application of NESHAP established pursuant to section 112 of the Act prior to the 1990 Amendments.

In the August 29, 1994, proposed revisions to the interim approval criteria at 40 CFR section 70.4(d) the EPA proposes to allow State programs with a narrower definition of ''title I modification'' to receive interim approval (59 FR 44572). The EPA in that notice states its belief that the better reading of ''title I modification'' would include minor NSR and pre-1990 NESHAP requirements, but solicited public comment on the appropriate interpretation of the term (59 FR 44573). If the definition of ''title I modification'' is finalized to include minor NSR changes, States such as Texas which have a narrower definition are eligible for interim but not final approval. If the final definition excludes changes reviewed under minor NSR and changes that trigger a pre-1990 NESHAP requirement, the State's definition of ''title I modification'' would be consistent with part 70.

For similar reasons, the EPA will not construe 40 CFR section 70.7(e)(2)(i)(A)(3) to prohibit the State from receiving interim approval because it allows minor NSR case-by-case determination changes to be processed as minor permit modifications. Again, although the EPA has reasons for believing that the better interpretation of ''title I modification'' is the broader one, the EPA does not believe that it is appropriate to deny interim approval to a State such as Texas on such grounds.

(b) Permit application requirements (40 CFR 70.5(c)). These requirements are addressed in sections 122.130–122.139 of the Texas permit regulation. A transition plan is included in the permit regulation which accounts for six SIC codes subject to the Texas interim approval program. The Texas permit regulation requires the owner or operator to submit a timely and complete application for each site subject to the requirements of the permit regulations.

Pursuant to 40 CFR 70.5(c)(8)(iii)(C), a compliance schedule is required for sources out of compliance at the time of permit issuance. Section 122.132(b)(3)(B) of the Texas permit regulation addresses compliance schedules but appears to not require that schedules be at least as stringent as any consent decree or administrative order to which the source is subject. For full part 70 approval, the State must revise the permit regulation to be consistent with the part 70 regulation.

(c) Permit issuance and revision procedures (40 CFR 70.7). These requirements are provided for in subchapter C of the permit regulation. The State has requested that the EPA approve the proposed operating permits program as a source category-limited interim program for a period of two years. Section (II)(B) of this notice (referring to options for approval/disapproval and implications) further discusses the sites subject to the interim approval program and the Texas rationale for requesting interim approval.

Section 122.241 of the Texas permit regulation requires permit applications for renewal at least six months prior to the date of permit expiration, but not more than eighteen months prior to the date of permit expiration. The permit regulation contains criteria for determining completeness of applications consistent with 40 CFR 70.5(a)(2).

Pursuant to 40 CFR 70.7, the State's program must prohibit a source from operating after the time that the source is required to submit a timely and complete application, except in compliance with a permit issued under a part 70 program. Section 122.138 of the Texas permit regulation allows an application shield if there is a timely and complete application for permit issuance, significant permit modification to a permit, or renewal. The site's failure to have a Federal operating permit is not a violation until the State takes final action on the permit. The application shield provided for in 40 CFR 70.7(b) does not apply to significant modifications, but only applies to a ''complete application for permit issuance (including for renewal)''. For this reason, section 122.138 of the Texas permit regulation is inconsistent with 40 CFR 70.7. For full approval, the Texas permit regulation must be made consistent with the part 70 regulation by deleting the reference in section 122.138 to ''significant permit modification to a permit.''

Sections 122.211–122.213 of the Texas permit regulation contain the requirements of 40 CFR 70.7(d) for administrative amendments, but do not require the Administrator's approval for similar changes allowed by section 122.211. This is inconsistent with 40 CFR 70.7(d)(1)(vi) which requires that, in order for changes other than those specified in 40 CFR 70.7(d) (i) through (v) to be made as administrative amendments, they must first be determined by the Administrator, as part of the approved part 70 program, to be similar to those specified in 70.7(d)(1) (i) through (iv). For full approval, section 122.211 must be revised to specifically list the types of changes that the State proposes to be eligible for processing as administrative amendments, for the Administrator's approval as part of the State's part 70 program.

Sections 122.215–122.217 of the Texas permit regulation requires certain permit revisions to be processed as ''permit additions''. The criteria for ''permit additions'' appear to be the same as the Federal criteria for some types of changes noted under minor permit modification provisions (40 CFR 70.7) and for some changes allowed as ''off permit'' changes under 40 CFR 70.4(b)(14). The State proposes to implement the ''permit addition'' criteria in the interest of providing adequate, streamlined, and reasonable procedures for processing permit revisions. However, the EPA does not consider the streamlined procedures set out in sections 122.215–122.217 of the Texas permit regulation to be equivalent to the minor permit modification procedures found in the part 70 regulation. For full approval, the permit additions rule and all other Texas permit revisions rules must be modified to be consistent with part 70.

The criteria to qualify for permit additions in section 122.215 include the following: A change at a site may qualify as a permit addition if the change is not addressed or prohibited by the Federal operating permit, does not violate any existing term or condition of the Federal operating permit, does not violate any applicable requirement, and is not a title I modification.

Section 122.215(c) also allows a change at a site to be processed as a permit addition if the change ''does not require or change a determination of an emission limitation under section 112(g) or section 112(j) of title I of the Act * * *''. The Federal part 70 regulation contains a similar provision at 40 CFR 70.7(e)(2)(i)(A)(3) with respect to minor permit modification procedures, but the Federal provision is written in general terms to prohibit modifications that change a ''case-by-case'' determination of an emission limitation or standard. Section 122.215(c) of the Texas permit regulation does not require case-by-case reasonably available control technology (RACT) changes to be processed as significant permit modifications. The EPA interprets 40 CFR 70.7(e)(2)(i)(A)(3) provisions prohibiting changes in ''case-by-case'' determinations to apply to RACT equivalency determinations. Therefore, the EPA does not consider the Texas provision to be equivalent to the part 70 regulation. For full approval, the permit regulation must be modified consistent with part 70.

Section 122.215(c)(2) of the Texas permit regulation defines ''significant changes to monitoring, reporting or recordkeeping requirements in the permit.'' The definition includes the ''removal of monitoring, recordkeeping, or reporting terms and conditions, or a substitution in those terms and conditions promulgated pursuant to Federal New Source Performance Standards or National Emission Standards for Hazardous Air Pollutants.'' This definition of significant changes to monitoring, reporting or recordkeeping requirements is acceptable under the current part 70 rule. If any additional rulemaking is promulgated by the EPA on this subject, the State must change its definition consistent with the new rulemaking.

Section 122.216 of the Texas permit regulation allows applications for permit additions to be submitted to the State no later than 90 days after the owner or operator has obtained or qualified for a preconstruction authorization. However, under this rule after the source receives its preconstruction permit, it may make the requested operating change before submitting the operating permit application within the 90-day timeframe. 40 CFR 70.7(e)(2)(v) requires that no operating change be made if a source is changing a term in its original part 70 permit until the source has submitted the operating permit revision application. For full approval, the Texas permit regulation must be revised to be consistent with part 70.

Section 122.217 addresses the procedures used to process permit additions and states ''the permit addition shall not become final until after the EPA's 45-day review period at renewal.'' For the EPA to consider permit additions equivalent to the procedures in 40 CFR 70.7(e)(2), the EPA must have the opportunity to review and object to the issuance in writing within 45 days of receipt of the proposed permit. For full approval, the Texas permit regulation must be consistent with part 70 and allow for timely EPA review.

The Texas permit addition procedures addressed in section 122.217 provide that, within 90 days after receipt of a complete application, the agency is to determine that the requested modification does not meet the permit addition criteria and that it should therefore be reviewed under the significant modification procedure, or the agency is to revise the draft permit addition and transmit to the EPA the new proposed permit addition. This section does not include a deadline for the TNRCC to issue or deny a permit addition modification. The minor permit modification procedures contained in 40 CFR 70.7(e)(2) require a State to issue or deny the permit modification within 90 days or 15 days after the end of the Administrator's 45 day review period, whichever is later. For full approval, the Texas permit regulation must be consistent with part 70.

Subchapter E of the Texas permit regulation contains the acid rain provisions, as well as the deadlines for submitting acid rain permit applications. The provisions and timelines are consistent with those required by title IV of the Act. Section 122.139 of the Texas permit regulation regarding action on permit applications and section 122.136 regarding additional information are consistent with 40 CFR 70.4(b)(6) and 70.7(a)(4).

Pursuant to the part 70 regulation, a permit must be reopened and revised for cause when an additional applicable requirement becomes applicable to a permitted site with a remaining permit term of three or more years. Sections 122.231 and 122.233 of the Texas permit regulation discuss the criteria and procedures for permit reopenings and meet the requirements of 40 CFR 70.7(f).

Provisions for public notice have been contained in section 122.153 of the Texas permit regulation and in section 122.202(a)(3) for general permits. Those sections provide for procedures for public notice and an opportunity for public comment for all permit issuance proceedings, including initial permit issuance, significant modifications, renewals, and initial general permits. 40 CFR 70.7(h) requires the public notice to include the emissions change involved in any permit modification. For full approval, the State must revise its permit regulation to be consistent with part 70.

Provisions for the EPA and affected State review to be accomplished in an expeditious manner as required by 40 CFR 70.8 have been provided for in sections 122.310 and 122.311 of the Texas permit regulation. Section 122.132 of the Texas permit regulation requires the applicant, rather than the permitting authority, to submit the permit application directly to the Administrator. This is acceptable and meets the requirements of 40 CFR 70.8.

40 CFR 70.8(a)(3) requires each State permitting authority to keep records for five years. The State did not address this requirement in the Texas permit regulation. However, the TNRCC is subject to, and must comply with, the State of Texas Records Retention Schedule that is approved by the State Auditor's Office and the Texas State Library and Archives Commission (signed and dated April 7, 1993) requiring permit files to be maintained for three years after a file is closed. A closed file is one that is closed, terminated, expired, or settled.

Therefore, records will be maintained for the life of the permitted facility plus an additional three years. This is consistent with and meets the requirements of 40 CFR 70.8(a)(3).

(d) Permit Content (40 CFR 70.6(a)). The permit content requirements are contained in sections 122.141–122.145 of the Texas permit regulation. 40 CFR 70.3(d) requires fugitive emissions from a part 70 source to be included in the operating permit in the same manner as stack emissions. The definition of an ''emission unit'' in section 122.010 of the Texas permit regulation includes fugitive emissions to be collectively considered as an emission unit. The operating permit will consolidate already existing federally enforceable requirements at relevant emission units. This raises the minor NSR/part 70 integration issue as discussed in section II(A)(2)(a) above because of the manner in which Texas has defined ''applicable requirement''. Under 40 CFR 70.3, a permit application must describe all emissions of regulated air pollutants emitted from any emission unit, including fugitive emissions from emission units not subject to an applicable requirement. Because of the issue discussed in section II(A)(2)(a) of this notice regarding the State's definition of applicable requirement, the State's operating permit program does not ensure that this part 70 requirement will be met. For full approval, Texas must revise the Texas permitting regulation to be consistent with part 70.

The Texas permit regulation allows for such changes as emission trading and anticipated operating scenarios provided the permittee meets the requirements set forth in section 122.221 (operational flexibility), that the permittee comply with Regulation VI (Control of Air Pollution by Permits for New Construction or Modification), and provided the Texas SIP allows it. Regulation VI does not allow for a facility to ''trade emissions'' without best available control technology and an impacts review, nor does Regulation VI allow a source to vary its operating scenario, unless expressly allowed under an existing preconstruction authorization. The Texas permit regulation has adequately addressed emission trading and operating scenarios.

40 CFR 70.6(b) requires all terms and conditions of a permit, including any provisions designed to limit a source's potential to emit, to be enforceable by the EPA and citizens, unless such terms and conditions are specifically designated as not federally enforceable. The State submitted section 122.122 (relating to establishment of federally enforceable restrictions on potential to emit) as a SIP revision on September 17, 1993. Section 122.122 establishes a procedure for grandfathered sources, (i.e. sources exempted from having a State NSR permit because they were constructed or operated prior to 1971), to submit a certification to the State that establishes a limit on potential to emit that is enforceable as a matter of State law. If section 122.122 is approved by the EPA into the SIP, these limits would be federally enforceable as well. The EPA is taking no action on section 122.122 in this notice. A separate action will be taken on the State's proposed SIP revision at a later date.

On January 25, 1995, the EPA's Office of Air Quality Planning and Standards issued guidance which, among other things, announced the availability of a two-year transition period during which a State could give sources additional options for seeking federally enforceable limitations on potential to emit. These options allow a source with a practicably enforceable limit on potential to emit in a State enforceable permit and/or limitations established by State rule (such as by certificates of registration issued pursuant to section 122.122), to certify to the EPA that it accepts the Federal enforceability of that limit for the duration of the transition period. Certifications developed pursuant to section 122.122 will serve as the basis for exercise of this transition policy, provided Texas wishes to exercise this option, and an acceptable certification process is developed between Texas and the EPA addressing the source's acceptance of Federal enforceability.

40 CFR 70.4 requires the State to issue permits for a fixed term of five years in the case of permits for acid rain and all other permits for a period not to exceed five years. 40 CFR 70.4(b)(3)(iv) provides that permits issued for solid waste incineration units combusting municipal waste subject to provisions under section 129(e) of the Act can have a fixed permit term of twelve years. Rather than making the distinction between five and twelve years, section 382.0543(a) of the Texas Clean Air Act provides that an operating permit is subject to renewal at least every five years. This approach for solid waste incineration units combusting municipal waste is acceptable and meets the requirements of the part 70 regulation. The Texas permit regulation does not, however, limit the general permit term to a maximum of five years. For full approval, the State of Texas must revise the general permit term to be consistent with part 70.

Temporary sources, as allowed by 40 CFR 70.6(e), are provided for in section 122.204 of the Texas permit regulation. This section meets the requirements of the part 70 regulation.

The concept of a permit shield is discussed in 40 CFR 70.6(f) as a means by which States could allow an enforcement shield as a permit provision, provided certain criteria were met. The State determined that the permit shield was too broad in scope and too difficult to apply properly. Therefore, the State chose not to include the permit shield as described in the part 70 regulation. Instead, the State adopted section 122.145(e) through which the State intends to provide for an enforcement shield in those situations where the interpretation of a rule is required and may be subject to change.

The EPA believes the intent of the rule is worthy, but is concerned about its ambiguities. Therefore, the EPA believes it can not go forward with a final action granting interim approval to the State of Texas unless the EPA receives a written commitment from the board of the TNRCC or designee agreeing to process any actions taken pursuant to section 122.145(e) as follows: (1) The interpretation made pursuant to section 122.145(e) shall be limited to applicability issues only; (2) the EPA shall have the opportunity to review and veto every section 122.145(e) action; and (3) the interpretation will be based upon the most current EPA guidance, and any guidance developed by the TNRCC must be in writing and preapproved by the EPA. Additionally, for full part 70 approval, the TNRCC must revise section 122.145(e) of the Texas permit regulation to reflect the three previous provisions.

Emergency provisions are provided for in 40 CFR 70.6(g). Section 122.143 of the Texas permit regulation references chapter 101 (General Rules), which contains notification requirements for major upsets. Under this chapter, the owner or operator of a facility must notify the Executive Director of the TNRCC as soon as possible of any major upset condition which causes or may cause an excessive emission that contravenes the intent of the statute or the regulations. In the event that the information required in the notification is unknown at the time of the initial notification, then such information must be provided as soon as possible, and submitted as a written report no later than two weeks from the onset of the upset condition. This allowance for time of agency notification by the permittee is

inconsistent with the part 70 regulation. 40 CFR 70.6(g)(3) requires the permittee to submit notice of the emergency to the permitting authority within two working days. For full approval, the Texas permitting rule must be consistent with the part 70 regulation.

The part 70 regulation requires an operating permits program to allow for operational flexibility. 40 CFR 70.4(b)(12) allows for ''section 502(b)(10) changes without requiring a permit revision, if the changes are not modifications under any provision of title I of the Act and the changes do not exceed emissions allowable under the permit.'' ''Section 502(b)(10) changes'' are not defined or included in the Texas permit regulation; therefore, it is not clear what types of changes can be processed through the State's operational flexibility provision. Section 122.221 of the Texas permit regulation could be interpreted to allow changes which violate what the EPA considers an applicable requirement. This is inconsistent with the definition of ''Section 502(b)(10) changes'' in the part 70 regulation. Therefore, for full approval, the State must revise its permit regulation such that the definition of ''Section 502(b)(10) changes'' is consistent with part 70.

(e) Off-permit (40 CFR 70.4(b)(14) and 70.4(b)(15)). Section 122.215 of the Texas permit regulation defines off-permit changes under part 70 as changes which qualify as permit additions. Because of the State's narrow definition of applicable requirement, some changes which would be allowed as ''off-permit'' changes under the Texas rule would not be considered ''off-permit'' under the Federal definition of changes which can be made without a permit revision under 40 CFR 70.4(b)(14). Section (II)(A)(2)(a) of this notice identifies issues regarding the definition of applicable requirement that must be addressed prior to full approval.

3. Permit Fee Demonstration

In the fee regulation, the State proposes to charge an emission fee for sources subject to title V in Fiscal Year 1994 (FY 1994) and FY 1995 equivalent to at least the part 70 presumptive minimum fee of $25 per ton of regulated air pollutants, adjusted per the consumer price index (CPI). The emission fee rate for FY 1994 is set at $25 per ton of regulated pollutants including carbon monoxide (CO). Texas does not charge fees above the 4,000 ton per year cap. The State will collect $40 million per year to support all applicable part 70 activities. The generation of $40 million in revenue, if CO emissions were excluded, corresponds to an average of $30.77 per ton of regulated pollutants. This average rate is above the presumptive minimum adjusted by the CPI. The emission fee rate for FY 1995 averages $26 per ton of criteria pollutants including the collection for CO emissions. The fee rate will be reviewed in early calendar year 1995 and every two years thereafter. The fee review will account for projected CPI adjustment, additional staffing needs, and/or emission reductions that may require increasing the fee rate.

Pursuant to 40 CFR 70.4(b)(8), the State must include in the fee demonstration an estimate of the permit program costs for the first four years after approval and a plan detailing how the State plans to cover these costs. The EPA has received the TNRCC FY 1994 and FY 1995 operating budget. Since the EPA has not received a complete four year projection, this will be required for full approval.

4. Provisions Implementing the Requirements of Other Titles of the Act

The State of Texas request for approval of a part 70 program also serves as a request for approval of the State's rulemaking process as a mechanism to gain delegation, when requested by the State for a particular standard, of unchanged section 112 standards under the authority of section 112(l). At this time, the State plans to use the mechanisms of adoption-by-reference and case-by-case adoption to adopt unchanged Federal section 112 requirements into its regulations. The State of Texas may, at any time, exercise its option to request, under section 112(l) of the Act, delegation of section 112 requirements in the form of State regulations which the State demonstrates are equivalent to the corresponding section 112 provisions promulgated by the EPA. The State will receive delegation of those remaining standards and programs through the section 112(l) delegation process.

The radionuclide NESHAP is a section 112 regulation and therefore also an applicable requirement under the State operating permits program for part 70 sources. There is not yet a Federal definition of ''major'' for radionuclide sources. Therefore, until a major source definition for radionuclides is promulgated, no source would be a major section 112 source solely due to its radionuclide emissions. However, a radionuclide source may, in the interim, be a major source under part 70 for another reason, thus requiring a part 70 permit. The EPA will work with the State in the development of its radionuclide program to ensure that permits are issued in a timely manner.

Texas has demonstrated in its operating permits program submittal adequate legal authority to implement and enforce all section 112 requirements through the title V permit. This legal authority is contained in Texas enabling legislation and in regulatory provisions defining ''applicable requirements'' and stating that the permit must incorporate all applicable requirements. The EPA has determined that this legal authority is sufficient to allow Texas to issue permits that assure compliance with all section 112 requirements.

The State of Texas will pursue delegation of rules and programs, as appropriate, to implement and enforce the existing and future requirements of sections 111, 112, and 129 of the Act, and all MACT standards promulgated in the future, in a manner consistent with State law, to ensure all applicable requirements of part 70 are met.

Section 112(g) of the Act requires that, after the effective date of a permits program under title V, no person may construct, reconstruct, or modify any major source of hazardous air pollutants unless the State determines that the MACT emission limitation under section 112(g) will be met. The EPA has announced its interpretation of the Act in the **Federal Register** (see 60 FR 8333, February 14, 1995) (hereafter Interpretive Notice). The Interpretive Notice postpones the effective date of section 112(g) until after the EPA has promulgated a final rule addressing that provision. The rationale for the revised interpretation was explained in detail in the Interpretive Notice.

The Interpretive Notice explains that the EPA is still considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal rule to allow States time to adopt rules implementing the Federal rule. If a decision is made to allow such additional delay in the implementation of section 112(g), the EPA will announce that decision in the final section 112(g) rulemaking.

The State of Texas adopted, and incorporated by reference, the provisions of 40 CFR part 72 in effect on the date of this action for purposes of implementing an acid rain program that meets the requirements of title IV of the Act. It is the EPA's position that this State program meets the requirements of the Federal acid rain program.

5. Enforcement Provisions

40 CFR part 70 requires each operating permit program to provide enforcement authority to address

violations of program requirements by permitted sources. The Texas enforcement provisions are contained in the Texas Clean Air Act (TCAA) and are discussed in the Attorney General's Opinion. Pursuant to 40 CFR 70.11(a)(3)(ii), the permitting authority shall have the authority to recover penalties against any person who knowingly violates any applicable requirement, any permit condition, or any fee or filing requirement. These fees shall be recoverable in a maximum amount of not less than $10,000 per day per violation. The TCAA contains provisions which exceed the $10,000 per day per violation for all cases except for the filing fee criminal enforcement provision. This filing fee provision contained in section 382.092 of the TCAA imposes a penalty for failing to pay a required fee which is punishable ''for an individual by a fine of not more than twice the amount of the required fee, confined in jail not to exceed 90 days, or both fine and confinement and, for a corporation or association, by a fine of not more than twice the amount of the required fee.'' The preamble to part 70 regulation recommends that State enforcement authorities consider as criminal penalties not only fines, but also incarceration, so that State prosecutors will have more inducement to prosecute environmental crimes. Because this provision imposes a range of fines, confinement in jail, and imprisonment, the EPA is proposing to accept that the TCAA meets the criminal enforcement provisions of part 70. The EPA believes the filing fee provision achieves the goal and intent of 40 CFR part 70. The EPA is soliciting comments on the proposed position.

Texas' operating permits program submittal adequately addressed the enforcement requirements of 40 CFR 70.4(b)(4) and 70.4(b)(5) in Volume 1 and the supplemental volume. The submittal contains permit program documentation such as draft copies of the permit forms, application forms, public notice forms, certification forms, and compliance/enforcement reporting forms. Monitoring requirements are contained in this guidance material including the types of monitoring used to demonstrate compliance. However, this guidance may be subject to change once the part 64 enhanced monitoring rules are promulgated. The enforcement program is described in the document ''Guidance on Compliance and Enforcement Matters'' found in attachment IV of the State's submittal. Volume 1 contains a complete description of the State's compliance tracking and enforcement program which includes an agreement between the State and the EPA, entitled ''Fiscal Year 1993 Memorandum of Understanding between the Texas Air Control Board and the U.S. Environmental Protection Agency.''

6. Summary

The State of Texas submitted to the EPA its operating permits program, requesting the EPA to grant interim approval to the Texas operating permits program. The submittal has been reviewed for adequacy to meet the requirements of 40 CFR part 70 (1992). The results of this review are included in the technical support document, which will be available at the docket at the locations noted above. The submittal has adequately addressed all 11 elements required for interim approval as discussed in the part 70 regulation. However, the EPA has in this notice described inconsistencies between the Texas permit regulation and the part 70 regulation. These inconsistencies involve both the permit regulation and program implementation, with regard to applicability, permit application requirements, and permit issuance and revision. It is essential that these inconsistencies be remedied by the State consistent with the Act and 40 CFR part 70 prior to the EPA granting full approval of the State's operating permits program.

Due to pending litigation involving sections of 40 CFR part 70, the part 70 regulation may be revised. Any final revisions may require the State to make regulatory and statutory changes.

The State of Texas addressed all requirements necessary to receive interim approval of the State operating permits program pursuant to title V, 1990 Amendments and part 70 (1992).

B. Options for Approval/Disapproval and Implications

Pursuant to 40 CFR 70.4(d), Texas requested that the EPA approve the Texas Operating Permits Program as a source category-limited interim program for a period of two years. The EPA is proposing to grant interim approval to the operating permits program submitted by Texas on November 15, 1993, for a period of two years.

Volume 1 of the Texas operating permits program submittal includes the rationale for requesting interim approval. The State projects that over 3,000 major sources will be subject to the operating permits program. Many of these sources are complex. The EPA recognizes that a large percentage of the Nation's title V sources will be permitted by a single agency and that a ramp-up period is essential. The time following interim approval will allow the State to hire additional engineers and train experienced engineers to write quality permits that consolidate all applicable requirements into one document. Furthermore, the additional time is necessary to develop a computer information management system that will manage the permits, permit applications, and additional documentation. This computer system will be the mechanism used to interchange information between the TNRCC, the EPA, the affected States, the regulated community, and the general public. Such a database will give interested parties an efficient mechanism to review the current applicable requirements and the compliance status of a source. The EPA is satisfied that the State has demonstrated compelling reasons for a source category-limited interim approval.

Between the interim program and the full program, the transition schedule requires the State to take final action on applications for 400 sites each of the first two years, 1,000 sites the third year, and 600 sites each of the last two years. Therefore, it is projected that 60 percent of the sources required to obtain operating permits will obtain those permits in the first three years of the program.

State-specific circumstances preclude the TNRCC from demonstrating coverage of sources which are responsible for at least 80 percent of the aggregate emissions during the interim period. The State will be required to permit complex stationary sources such as refineries and petrochemical plants. These complex plants can have as many as 3,000 emission units per source. The State's rationale for requesting interim approval is to permit these complex sources toward the end of the permit issuance period (rather than during the first two years). The State designed the interim program to bring in similar types of sources and those which have the fewest number of emission points. This will enable the State to spend its resources on writing quality permits that are federally enforceable. The EPA is confident that the State is addressing enough sources in those first three years to represent a significant portion of the program.

III. Proposed Rulemaking Action

In this action, the EPA is proposing source category-limited interim approval of the operating permits program submitted by the State of Texas. The program was submitted by the State to the EPA for the purpose of complying with Federal requirements

found in title V of the Act and in 40 CFR part 70, which mandate that States develop, and submit to the EPA, programs for issuing operating permits to all major stationary sources, and to certain other sources with the exception of Indian Lands.

Requirements for title V approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a mechanism for delegation of Federal section 112 standards as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under 40 CFR part 70. Therefore, as part of this interim approval, the EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of the State's mechanism for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated when requested by the State. The State will receive delegation of the remaining standards through other section 112(l) delegation processes.

The EPA has reviewed this submittal of the Texas operating permits program and is proposing source category-limited interim approval for a period of two years. Certain defects in the State's permit regulation and program implementation preclude the EPA from granting full approval of the State's operating permits program at this time. The EPA is proposing to grant interim approval, subject to the State obtaining the needed regulatory and program implementation revisions within 18 months after the Administrator's approval of the Texas title V program pursuant to 40 CFR 70.4.

IV. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed interim approval. Copies of the State's submittal and other information relied upon for the proposed interim approval are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, the EPA in the development of this proposed interim approval. The principal purposes of the docket are:

(1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and

(2) To serve as the record in case of judicial review. The EPA will consider any comments received by July 7, 1995.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permit programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 70

Administrative practice and procedure, Air pollution control, Environmental protection, Intergovernmental relations, Operating permits, and Reporting and recordkeeping requirements.

VI. Miscellaneous

A. Interim Approval

Proposed interim approval of the part 70 operating permits program for the State of Texas.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 3, 1995.

A. Stanley Meiburg,

Deputy Regional Administrator (6D).

[FR Doc. 95–13926 Filed 6–6–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 81

[FRL–5217–3]

Clean Air Act Reclassification; Arizona-Phoenix Nonattainment Area; PM–10

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action EPA proposes to find that the Phoenix metropolitan PM–10 nonattainment area has not attained the PM–10 national ambient air quality standards (NAAQS) by the Clean Air Act (CAA) mandated attainment date for moderate nonattainment areas. Section 188(c)(1) of the Act established an attainment date of no later than December 31, 1994 for areas classified as moderate nonattainment areas under section 107(d)(4)(B) of the CAA. This proposed finding is based on monitored air quality data for the PM–10 NAAQS during the years 1992–94. If EPA takes final action on this proposed finding, the Phoenix Planning Area (PPA) will be reclassified by operation of law as a serious nonattainment area for PM–10 under section 188(b)(2)(A) of the CAA.

DATES: Comments on this proposed finding must be received in writing by July 7, 1995.

ADDRESSES: Comments should be addressed to Robert Pallarino, U.S. Environmental Protection Agency, Region 9, Air and Toxics Division, Air Planning Branch, Plans Development Section (A–2–2), 75 Hawthorne Street, San Francisco, California 94105.

FOR FURTHER INFORMATION CONTACT: Robert S. Pallarino, U.S. EPA, Region 9, Air and Toxics Division, Air Planning Branch, Plans Development Section (A–2–2), 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1212.

SUPPLEMENTARY INFORMATION:

I. Background

A. CAA Requirements and EPA Actions Concerning Designation and Classification

On November 15, 1990, the date of enactment of the 1990 Clean Air Act Amendments, PM–10 areas meeting the qualifications of section 107(d)(4)(B) of the Act were designated nonattainment by operation of law. Once an area is designated nonattainment, section 188 of the Act outlines the process for classification of the area and establishes the area's attainment date. Pursuant to section 188(a), all PM–10 nonattainment areas were initially classified as moderate by operation of law upon designation as nonattainment. These nonattainment designations and moderate area classifications were codified in 40 CFR part 81 in a **Federal Register** document published on November 6, 1991 (56 FR 56694).

States containing areas which were designated as moderate nonattainment by operation of law under section 107(d)(4)(B) were to develop and submit state implementation plans (SIPs) to provide for the attainment of the PM–10 NAAQS. Pursuant to section 189(a)(2), those SIP revisions were to be submitted to EPA by November 15, 1991.

B. Reclassification as Serious Nonattainment

EPA has the responsibility, pursuant to sections 179(c) and 188(b)(2) of the Act, of determining within 6 months of the applicable attainment date, whether PM–10 nonattainment areas have attained the NAAQS. Section 179(c)(1) of the Act provides that these determinations are to be based upon an area's ''air quality as of the attainment

date'', and section 188(b)(2) is consistent with this requirement. EPA makes the determinations of whether an area's air quality is meeting the PM–10 NAAQS based upon air quality data gathered at monitoring sites in the nonattainment area and entered into the Aerometric Information Retrieval System (AIRS). These data are reviewed to determine the area's air quality status in accordance with EPA guidance at 40 CFR part 50, Appendix K.

Pursuant to Appendix K, attainment of the annual PM–10 standard is achieved when the annual arithmetic mean PM–10 concentration is equal to or less than 50 μg/m³. Attainment of the 24 hour standard is determined by calculating the expected number of exceedances of the 150 μg/m³ limit per year. The 24 hour standard is attained when the expected number of exceedances is 1.0 or less. A total of 3 consecutive years of clean air quality data is generally necessary to show attainment of the 24 hour and annual standards for PM–10. A complete year of air quality data, as referred to in 40 CFR part 50, Appendix K, is comprised of all 4 calendar quarters with each quarter containing data from at least 75 percent of the scheduled sampling days.

Under section 188(b)(2)(A) a moderate PM–10 nonattainment area must be reclassified as serious by operation of law after the statutory attainment date if the Administrator finds that the area has failed to attain the NAAQS. Pursuant to section 188(b)(2)(B) of the Act, EPA must publish a document in the **Federal Register** identifying those areas that failed to attain the standard and the resulting reclassifications.

II. Today's Action

EPA is, by today's action, proposing to find that the PPA did not attain the PM–10 NAAQS by the required attainment date of December 31, 1994. As discussed below, this proposed finding is based upon air quality data which revealed violations of the PM–10 NAAQS during 1992–1994.

A. Ambient Air Monitoring Data

The following table lists each of the monitoring sites in the PPA where the 24 hour PM–10 NAAQS has been exceeded during 1992–1994:

Monitoring site	24 hour concentration	Date
4732 S. Central, PX.	171 μg/m³	11/20/92
4732 S. Central, PX.	158 μg/m³	12/2/92
1475 E. Pecos, CHAN.	156 μg/m³	11/20/92

The two monitoring sites in the PPA that recorded exceedances of the PM–10 NAAQS operate on a one in six day sampling schedule. Generally, if PM–10 sampling is scheduled less than every day, EPA requires the adjustment of observed exceedances to account for incomplete sampling. The method for adjusting the observed exceedances is described in 40 CFR Part 50, Appendix K, section 3.1. In the case of the Phoenix site, two exceedances of the 24 hour NAAQS were observed in 1992. After adjusting for incomplete sampling, the number of exceedances of the NAAQS in 1992 at this site was 13.1. In the case of the Chandler site, one exceedance of the 24 hour NAAQS was observed in 1992. After adjusting for incomplete sampling, the number of exceedances of the NAAQS in 1992 at this site was 11.5.

According to 40 CFR part 50, the 24 hour NAAQS is attained when the expected number of days per calendar year with a 24 hour average concentration above 150 μg/m³ is equal to or less than one. In the simplest case, the number of expected exceedances at a site is determined by recording the number of exceedances in each calendar year and then averaging them over the past three calendar years. Therefore from 1992–1994, the number of expected exceedances at the Phoenix and Chandler monitoring sites were 4.4 and 3.8, respectively. These exceedances cause both the Phoenix site and the Chandler site to be in violation of the 24 hour PM–10 NAAQS.

In addition to violations of the 24 hour NAAQS, the annual standard has not been attained at one monitoring site. The East Pecos site in Chandler had an annual average of 55 μg/m³, based on the monitoring data collected during 1992–1994.

B. SIP Requirements for Serious Areas

PM–10 nonattainment areas reclassified as serious under section 188(b)(2) of the CAA are required to submit, within 18 months of the area's reclassification, SIP revisions providing for the implementation of best available control measures (BACM) no later than four years from the date of reclassification. The SIP also must contain a demonstration that the implementation of BACM will provide for attainment of the PM–10 NAAQS no later than December 31, 2001. EPA has provided specific guidance on developing serious area PM–10 SIP revisions in an addendum to the General Preamble to Title I of the Clean Air Act. See 59 FR 41998 (August 16, 1994).

III. Request for Public Comment

The EPA is requesting comment on all aspects of today's proposal. As indicated at the outset of this notice, EPA will consider any comments received by July 7, 1995.

IV. Executive Order (EO) 12866

Under E.O. 12866, 58 FR 51735 (October 4, 1993), EPA is required to determine whether regulatory actions are significant and therefore should be subject to OMB review, economic analysis, and the requirements of the Executive Order. The Executive Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may meet at least one of the four criteria identified in section 3(f), including, under paragraph (1), that the rule may ''have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.''

The Agency has determined that the finding of failure to attain proposed today would result in none of the effects identified in section 3(f). Under section 188(b)(2) of the CAA, findings of failure to attain and reclassification of nonattainment areas are based upon air quality considerations and must occur by operation of law in light of certain air quality conditions. They do not, in-and-of-themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classifications that, in turn, are triggered by air quality values, findings of failure to attain and reclassification cannot be said to impose a materially adverse impact on State, local, or tribal governments or communities.

V. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

As discussed in section IV of this notice, findings of failure to attain and

reclassification of nonattainment areas under section 188(b)(2) of the CAA do not in-and-of-themselves create any new requirements. Therefore, I certify that today's proposed action does not have a significant impact on small entities.

VI. Unfunded Mandates

Under sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, EPA must assess whether various actions undertaken in association with proposed or final regulations include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local or tribal governments in the aggregate.

EPA believes, as discussed earlier in section IV of this notice, that the proposed finding of failure to attain and reclassification of the Phoenix Planning Area are factual determinations based upon air quality considerations and must occur by operation of law and, hence, do not impose any federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 25, 1995.

David P. Howekamp,

Acting Regional Administrator.

[FR Doc. 95–13925 Filed 6–6–95; 8:45 am]

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40 CFR Part 180

[PP 0F3885/R2142; FRL–4958–9]

RIN 2070–AC18

Burkholderia (Pseudomonas) Cepacia Type Wisconsin; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that an exemption from the requirement of a tolerance be established for residues of the biological pesticide *Burkholderia (Pseudomonas) cepacia* type Wisconsin in or on all raw agricultural commodities, resulting from use on plant roots or seedling roots. EPA is proposing this regulation on its own initiative. The proposal would amend the existing tolerance exemption for this organism, which is limited to the seed treatment use.

DATES: Comments identified by the docket number, [PP 0F3885/R2142], must be received on or before July 7, 1995.

ADDRESSES: Submit written comments by mail to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Public Docket, Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures as set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 1132 at the above address, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PP 0F3885/R2142]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Denise Greenway, Biopesticides and Pollution Prevention Division (7501W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. CS51L6, Crystal Station #1, 2800 Crystal Drive, Arlington, VA 22202, (703)-308-8263; e-mail: greenway.denise@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 3, 1991 (56 FR 13642), EPA issued a notice that Stine Microbial Products, 4722 Pflaum Rd., Madison, WI 53704, had submitted pesticide petition (PP) 0F3885 to EPA proposing to amend 40 CFR part 180 by establishing a regulation pursuant to the Federal Food, Drug and Cosmetic Act (21 U.S.C. 346a and 371), to exempt from the requirement of a tolerance the residues of the biological pesticide *Pseudomonas cepacia* type Wisconsin in or on all raw agricultural commodities when applied as a seed treatment for growing agricultural crops in accordance with good agricultural practices. There were no comments received in response to the notice.

In the **Federal Register** of December 23, 1992 (57 FR 61003), an exemption from the requirement of a tolerance was established for residues of the biological pesticide *Pseudomonas cepacia* type Wisconsin in or on all raw agricultural commodities when applied as a seed treatment for growing agricultural crops in accordance with good agricultural practices.

Stine Microbial Products has subsequently proposed a new use site, plant roots or seedling roots. Like the seed treatment use for which an exemption from the requirement of a tolerance now exists (40 CFR 180.1115), *Pseudomonas cepacia* type Wisconsin applied to plant roots or seedling roots will colonize the developing root system, and by producing antibiotics, protect the seedling or plant from a range of plant pathogenic fungi and nematodes. The Agency has determined that this presents no new hazard issues and that the following originally submitted data can support the registration for use as a soil, seed, or seedling treatment:

The organism is a naturally occurring biotype of the bacterial species *Pseudomonas cepacia* which is found world wide. The original isolates of *Pseudomonas cepacia* type Wisconsin were identified as colonizers of the roots and rhizospheres of maize. Further testing indicated that this biotype will colonize roots of many crop plants. *Pseudomonas cepacia* type Wisconsin has been shown to produce antibiotics which are effective against a diverse range of plant pathogenic fungi. *Pseudomonas cepacia* type Wisconsin is not generally regarded as a human or animal pathogen. Products containing this organism are intended to be used for formulating other end-use products or as a seed treatment (and the proposed plant root and seedling root use). When applied to seeds (or plant or seedling roots), the bacteria colonize the developing root system, and by producing antibiotics, protect the seedling from a range of plant pathogenic fungi and nematodes.

The data submitted in the petition and other relevant material have been

evaluated. The toxicological data considered in support of the exemption from the requirement of a tolerance include an acute oral toxicity/pathogenicity study, an acute dermal toxicity study, an acute pulmonary toxicity/pathogenicity study, and an acute intravenous toxicity/pathogenicity study. All studies were conducted with the rat as the test animal. A review of these studies indicated that the organism was not acutely toxic to test animals when administered via dermal and intravenous routes. The active ingredient was not infective or pathogenic to test animals when administered via the oral, pulmonary, or intravenous route. No reports of hypersensitivity have been recorded from personnel working with this organism. All of the toxicity studies submitted are considered acceptable. The toxicity data provided are sufficient to show that there are no foreseeable health hazards to humans or domestic animals likely to arise from the use of this organism as a seed (or seedling root or plant root) treatment.

Residue chemistry data were not required; such data are necessary only if the submitted toxicity studies indicate that additional Tier II or Tier III toxicology data are needed. These additional data were not needed. Therefore, no residue data are required to establish an exemption from the requirement of a tolerance for the biological pesticide *Pseudomonas cepacia* type Wisconsin in or on all raw agricultural commodities when applied to plant roots and seedling roots or used as a seed treatment for growing agricultural crops in accordance with good agricultural practices.

Acceptable daily intake (ADI) and maximum permissible intake (MPI) considerations are not relevant to this petition because the data submitted demonstrated that this biological control agent is not toxic to humans. No enforcement actions are expected. Therefore, the requirement for an analytical method for enforcement purposes is not applicable to this exemption request.

The Agency hereby takes the initiative to amend the current tolerance exemption (40 CFR 180.1115) by expanding it to include the proposed use on plant roots and seedling roots. The Agency also proposes that the exemption from the requirement of a tolerance be further amended to update the organism name. There has been a recent change in the bacterial taxonomy affecting the generic affiliation of the RNA group II pseudomonads and moving them from the genus *Pseudomonas* to the newly described genus *Burkholderia*. To reduce confusion by completely changing the organism name, it is proposed that the former genus name be inserted parenthetically after the new one, *Burkholderia (Pseudomonas) cepacia*.

Burkholderia (Pseudomonas) cepacia type Wisconsin is considered useful for the purposes for which the exemption from the requirement of a tolerance is sought. Based on the information considered, the Agency concludes that the establishment of a tolerance is not necessary to protect the public health. Therefore, EPA proposes that an exemption from the requirement of a tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains the ingredient listed herein, may request within 30 days after the publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA).

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 0F3885/R2142]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch at the above address from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

A record has been established for this rulemaking under docket number [PP 0F3885/R2142] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

The Office of Management and Budget has exempted this document from the requirement of review pursuant to Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 1, 1995.

Janet L. Andersen,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1115 is revised to read as follows:

§ 180.1115 Burkholderia (Pseudomonas) cepacia type Wisconsin; exemption from the requirement of a tolerance.

The biological pesticide *Burkholderia (Pseudomonas) cepacia* type Wisconsin is exempted from the requirement of a tolerance in or on all raw agricultural commodities when applied to plant roots and seedling roots, or as a seed treatment for growing agricultural crops

in accordance with good agricultural practices.

[FR Doc. 95–13961 Filed 6–6–95; 8:45 am]
BILLING CODE 6560–50–F

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40 CFR Part 721

[OPPTS–50615B; FRL–4916–4]

RIN 2070–AB27

Organotin Lithium Compound; Proposed Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for the chemical substance described generically as an organotin lithium compound which is the subject of premanufacture notice (PMN) P–93–1119. This proposal would require certain persons who intend to manufacture, import, or process this substance for a significant new use to notify EPA at least 90 days before commencing any manufacturing, importing, or processing activities for a use designated by this SNUR as a significant new use. The required notice would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it can occur.

DATES: Written comments must be received by EPA by July 7, 1995.

ADDRESSES: Each comment must bear the docket control number OPPTS–50615B. All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–G99, 401 M St., SW., Washington, DC 20460. All comments which are claimed confidential must be clearly marked as such. Three additional sanitized copies of any comments containing confidential business information (CBI) must also be submitted. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection. See Unit VII. of this document for further information.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number OPPTS–50615B. No CBI should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit VIII. of this document.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: This proposed SNUR would require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of P–93–1119 for the significant new uses designated herein. The required notice would provide EPA with information with which to evaluate an intended use and associated activities.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use. Section 26(c) of TSCA authorizes EPA to take action under section 5(a)(2) with respect to a category of chemical substances.

Persons subject to this SNUR would comply with the same notice requirements and EPA regulatory procedures as submitters of premanufacture notices under section 5(a)(1) of TSCA. In particular, these requirements include the information submission requirements of sections 5(b) and (d)(1), the exemptions authorized by section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a significant new use notice (SNUN), EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities for which it has received a SNUN. If EPA does not take action, section 5(g) of TSCA requires EPA to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707.

II. Applicability of General Provisions

General regulatory provisions applicable to SNURs are codified at 40 CFR part 721, subpart A. On July 27, 1988 (53 FR 28354), and July 27, 1989 (54 FR 31298), EPA promulgated amendments to the general provisions which apply to this SNUR. In the **Federal Register** of August 17, 1988 (53 FR 31252), EPA promulgated a ''User Fee Rule'' (40 CFR part 700) under the authority of TSCA section 26(b). Provisions requiring persons submitting SNUNs to submit certain fees to EPA are discussed in detail in that **Federal Register** document. Interested persons should refer to these documents for further information.

III. Background

EPA published a direct final SNUR for the chemical substance which was the subject of PMN P–93–1119 in the **Federal Register** of May 27, 1994 (59 FR 27474). EPA received adverse comments following publication for this chemical substance. Therefore, as required by 40 CFR 721.160, the final SNUR for P–93–1119 is being revoked elsewhere in this issue of the **Federal Register** and this proposed rule on the substance is being issued.

The comments were submitted by the PMN submitter's customer for this substance. The commenter proposed changing the requirements of the SNUR. Based on potential toxicity to the environment, the direct final SNUR required notification if the substance was predictably or purposefully released to surface waters. The commenter proposed a SNUR requiring notification if the substance was predictably or purposefully released to surface waters above a concentration of 1 ppb (part per billion) according to the formula in 40 CFR 721.90.

The direct final SNUR was based on the information in the PMN that manufacture and use of the PMN substance as a catalyst would not result in releases to surface waters. The commenter demonstrated through a pilot study and analytical measurements that the substance would be released to surface waters. The commenter also demonstrated that treatment at that particular plant site would result in surface water concentrations below EPA's original 1 ppb concern concentration. Because the data demonstrate that releases to water could occur but would not exceed the 1 ppb concern level at the intended site of

manufacture, EPA is proposing this SNUR with a water trigger of 1 ppb as a significant new use.

EPA is not soliciting and will not respond in this proposal to comments on any of the other SNURs that were published in the May 27, 1994 **Federal Register** because those rules either became final, effective July 25, 1994, or EPA is addressing written comments concerning those rules in a separate rulemaking. Except for the use of the 1 ppb level, the supporting rationale and background to this proposal are more fully set out in the preamble to the direct final SNUR for this substance and in the preamble to EPA's first direct final SNURs published in the **Federal Register** of April 24, 1990 (55 FR 17376). Consult those preambles for further information on the objectives, rationale, and procedures for the proposal and on the basis for significant new use designations including provisions for developing test data.

IV. Substance Subject to This Rule

EPA is proposing significant new use and recordkeeping requirements for the following chemical substance under 40 CFR part 721.

PMN Number P–93–1119

Chemical name: (generic) Organotin lithium compound.

CAS number: Not available.

Toxicity concern: The substance will be used as a catalyst. Test data on organotin pesticides indicate that the substance may cause toxicity to aquatic organisms. Based on these data, EPA expects toxicity to aquatic organisms to occur at a concentration of 1 ppb of the substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to surface waters above a concentration of 1 ppb. EPA has determined that manufacture, processing, and use of the substance for uses other than as a catalyst could result in releases to surface waters above 1 ppb. Based on this information, the substance meets the concern criteria at § 721.170(b)(4)(iii).

Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400), a daphnid acute toxicity study (40 CFR 797.1300), and an algal acute toxicity study (40 CFR 797.1050) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.9668.

V. Applicability of SNUR to Uses Occurring Before Effective Date of the Final SNUR

EPA has decided that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of proposal rather than as of the effective date of the rule. Because this SNUR was first published on May 27, 1994, as a direct final rule, that date will serve as the date after which uses would be considered to be new uses. If uses which had commenced between that date and the effective date of this rulemaking were considered ongoing, rather than new, any person could defeat the SNUR by initiating a significant new use before the effective date. This would make it difficult for EPA to establish SNUN requirements. Thus, persons who begin commercial manufacture, import, or processing of the substance for uses that would be regulated through this SNUR after May 27, 1994, would have to cease any such activity before the effective date of the rule. To resume their activities, such persons would have to comply with all applicable SNUN requirements and wait until the notice review period, including all extensions, expires. EPA, not wishing to unnecessarily disrupt the activities of persons who begin commercial manufacture, import, or processing for a proposed significant new use before the effective date of the SNUR, has promulgated provisions to allow such persons to comply with this proposed SNUR before it is promulgated. If a person were to meet the conditions of advance compliance as codified at § 721.45(h), the person would be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substance between proposal and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUN requirements and wait until the notice review period, including all extensions, expires.

VI. Economic Analysis

EPA evaluated the potential costs of establishing SNUN requirements for potential manufacturers, importers, and processors of the chemical substance at the time of the direct final rule. The analysis is unchanged for the substance in this proposed rule. The Agency's complete economic analysis is available in the public record for this proposed rule (OPPTS–50615B).

VII. Comments Containing Confidential Business Information

Any person who submits comments containing information claimed as CBI must mark the comments as ''confidential,'' ''trade secret,'' or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file without further notice to the submitter. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a nonconfidential public version in triplicate of the comments that EPA can place in the public file.

VIII. Rulemaking Record

A record has been established for this rulemaking under docket number OPPTS–50615B (including comments and data submitted electronically as described below). EPA will accept additional materials for inclusion in the record at any time between this proposal and designation of the complete record. EPA will identify the complete rulemaking record by the date of promulgation. A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:

ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

IX. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines a ''significant regulatory action'' as an action likely to lead to a rule (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, it has been determined that this proposed rule would not be ''significant'' and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this proposed rule would not have a significant impact on a substantial number of small businesses. EPA has determined that approximately 10 percent of the parties affected by this proposed rule could be small businesses. However, EPA expects to receive few SNUNs for this substance. Therefore, EPA believes that the number of small businesses affected by this proposed rule will not be substantial, even if all of the SNUN submitters were small firms.

C. Paperwork Reduction Act.

OMB has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and has assigned OMB control number 2070–0012. Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including 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 the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch (2131), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' The final rule will respond to any OMB or public comments on the information requirements contained in this proposal.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Reporting and recordkeeping requirements, Significant new uses.

Dated: May 19, 1995.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 would continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. By adding new § 721.9668 to subpart E to read as follows:

§ 721.9668 Organotin lithium compound.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as organotin lithium compound (PMN P–93–1119) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N = 1 ppb).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

[FR Doc. 95–13964 Filed 6–6–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7142]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (100-year) flood elevations and proposed base (100-year) flood elevation modifications for the communities listed below. The base (100-year) flood elevations and modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW, Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain

management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

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

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

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

§ 67.4 Amended

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/ county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Arkansas	Bryant (City), Saline County.	Crooked Creek	At corporate limits	*351	*349
			At Mills Park Road	*354	*354
			At Ridgecrest Road	*373	*373
		Bryant Tributary	At confluence with Crooked Creek	*353	*352
			At private drive	*372	*372
		Trailer Park Ditch	At downstream corporate limit	None	*348
			At upstream corporate limit	None	*348
			At confluence of Bryant Tributary and Crooked Creek.	None	*352
Maps are available for inspection at 210 Southwest Third Street, Bryant, Arkansas.					
Send comments to The Honorable Roy Bishop, Mayor of Bryant, 210 Southwest Third Street, Bryant, Arkansas 72022.					
Arkansas	Saline County, (Unincorporated Areas).	Crooked Creek	At Brookwood Road (County Road 612)	*336	*336
			Approximately 215 feet upstream of Brookwood Road (County Road 612).	None	*337
			Approximately 1,110 feet upstream of Brookwood Road (County Road 612).	None	*345
		Trailer Park Ditch	At Brookwood Road	None	*348
		Bryant Tributary	At confluence with Crooked Creek	None	*352
			At corporate limit	None	*365
Maps are available for inspection at the Saline County Assessor's Office, 215 North Main, Benton, Arkansas.					
Send comments to The Honorable Terry Parsons, Saline County Judge, 200 North Main, Benton, Arkansas 72015.					
Colorado	Fort Collins (City), Larimer County.	Cooper Slough	Approximately 150 feet downstream of the Colorado & Southern Railroad.	None	*4,938
			At confluence of East Island Divide	None	*4,944
			At divergence of East Island Divide	None	*4,951
			Just upstream of Vine Drive	None	*4,957
		Sherry Drive Overflow	Just upstream of Prospect Road	None	*4,902
			Approximately 1,000 feet upstream of Prospect Road.	None	*4,903
			Approximately 3,400 feet upstream of Prospect Road.	None	*4,913
			Approximately 4,300 feet upstream of Prospect Road.	None	*4,916
		East Island Divide	At confluence with Cooper Slough	None	*4,944

State	City/town/ county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			1,000 feet upstream of confluence with Cooper Slough.	None	*4,947
			At divergence with Cooper Slough	None	*4,951
		State Highway 14 Overflow.	Approximately 300 feet above confluence with Lake Canal.	None	*4,914
			Approximately 800 feet above confluence with Lake Canal.	None	*4,916
		Spring Creek	At confluence with Cache La Poudre River.	*4,896	*4,899
			Just upstream of East Prospect Road	*4,909	*4,905
			Just upstream of Timberline Road	*4,914	*4,907
			Just downstream of the Union Pacific Railroad.	*4,917	*4,916
			Just upstream of Welch Street	*4,938	*4,937
			Just upstream of Lemay Avenue	*4,949	*4,942
			Just upstream of Stover Street	*4,967	*4,960
			Just upstream of Remington Street	*4,981	*4,980
			Approximately 650 feet upstream of South College Avenue.	*4,989	*4,993
			Just upstream of South Shields Street	*5,016	*5,013
			Just upstream of West Drake Road	*5,056	*5,057
			Just upstream of South Taft Hill Road	None	*5,083
			Approximately 3,000 feet upstream of South Taft Hill Road.	None	*5,096
			Approximately 5,300 feet upstream of South Taftt Hill Road.	None	*5,110
			Just upstream of West Horsetooth Road .	None	*5,137
			Approximately 1,450 feet upstream of West Horsetooth Road.	None	*5,149
		Cache La Poudre River South of Burlington Northern Railroad Embankment.	Approximately 4,300 feet upstream of confluence with Boxelder Creek.	*4,878	*4,872
		Cache La Poudre River North of Burlington Northern Railroad Embankment.	At confluence of Boxelder Creek	*4,869	*4,866
			At confluence of Cache La Poudre Low Flow Channel.	*4,874	*4,873
			At confluence of Cache La Poudre Left Flow Path (LPATH).	*4,883	*4,879
		Cache La Poudre River	Just downstream of the Burlington Northern Railroad.	*4,863	*4,858
			At divergence with Cache La Poudre Low Flow Channel.	*4,884	*4,883
			Approximately 3,500 feet downstream of East Prospect Road.	*4,884	*4,886
			Just upstream of East Prospect Road	*4,895	*4,889
			At confluence of Spring Creek	*4,897	*4,900
			At confluence of Cache La Poudre Right Flow Path (RPATH).	*4,902	*4,902
			At divergence of Cache La Poudre Left Flow Path (LPATH).	*4,914	*4,913
			At confluence of Lincoln Avenue Overflow (LINC).	*4,918	*4,918
			At divergence of Cache La Poudre Right Flow Path (RPATH).	*4,923	*4,921
			Just upstream of Lemay Avenue	*4,933	*4,933
			At divergence of Lemay Avenue Overflow (Lemayds).	*4,935	*4,935
			Just downstream of Lincoln Avenue	*4,950	*4,947
			At divergence of Lincoln Avenue Overflow (LINC).	*4,952	*4,951
			Just upstream of North College Avenue ..	*4,966	*4,965
			Approximately 3,300 feet upstream of Lake Canal Diversion Dam.	*4,977	*4,977
		Cache La Poudre Low Flow Channel.	At confluence with Cache La Poudre River.	*4,874	*4,873
			Approximately 2,600 feet upstream of confluence with Cache La Poudre River.	*4,880	*4,877

State	City/town/ county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			At divergence with Cache La Poudre River.	*4,884	*4,885
		Cache La Poudre Left Flow Path (LPATH).	At confluence with Cache La Poudre River.	*4,883	*4,879
			Approximately 2,000 feet upsteam of confluence with Cache La Poudre River.	*4,887	*4,883
			Approximately 5,000 feet upstream of confluence with Cache La Poudre River.	*4,891	*4,897
			At divergence from Cache La Poudre River.	*4,914	*4,913
		Cache La Poudre Right Flow Path (RPATH).	At confluence with Cache La Poudre River.	*4,902	*4,902
			Approximately 3,000 feet upstream of confluence with Cache La Poudre River.	*4,913	*4,905
			At divergence from Cache La Poudre River.	*4,923	*4,921
		Lincoln Avenue Overflow (LINC).	Just upstream of North Lemay Avenue	*4,941	*4,940
			Just upstream of Second Street	*4,947	*4,948
			At divergence from Cache La Poudre River.	*4,952	*4,951
		Lemay Avenue Overflow (Lamayds).	Approximately 900 feet downstream of Lemay Avenue.	*4,932	*4,932
			At North Lemay Avenue	*4,934	*4,934
Maps are available for inspection at the Stormwater Utilities Department, City of Fort Collins, 235 Mathews, Fort Collins, Colorado. Send comments to The Honorable Ann Azari, Mayor, City of Fort Collins, P.O. Box 580, Fort Collins, Colorado 80522.					
Colorado	Larimer County (Unincorporated Areas).	Cooper Slough	Just upstream of State Highway 14	None	*4,928
			Shallow flooding north of State Highway 14.	None	#3
			Just upstream of Colorado & Southern Railroad.	None	*4,943
			Just downstream of Vine Drive	None	*4,954
		State Highway 14, Overflow.	Just upstream of Lake Canal	None	*4,913
			Just downstream of State Highway 14	None	*4,926
			Just upstream of State Highway 14	None	*4,628
			At the intersection of Weicke Drive and John Deere Road.	None	#3
		Sherry Drive Overflow	Approximately 80 feet upstream of Prospect Road.	None	*4,902
			Approximately 1,600 feet upstream of Prospect Road.	None	*4,904
			Approximately 500 feet downstream of Sherry Drive.	None	*4,916
			Approximately 750 feet upstream of Sherry Drive.	None	*4,920
		Spring Creek	Approximately 960 feet upstream of South Taft Hill Road.	None	*5,083
			Approximately 2,600 feet upstream of South Taft Hill Road.	None	*5,093
			Just downstream of West Horsetooth Road.	None	*5,137
			Approximately 1,900 feet upstream of West Horsetooth Road.	None	*5,155
		Cache La Poudre River South of Burlington Northern Railroad Embankment.	At Horsetooth Road	*4,855	*4,855
			Approximately 300 feet upstream of Horsetooth Road.	*4,858	*4,856
			Approximately 2,500 feet upstream of Horsetooth Road.	*4,866	*4,860
			Approximately 4,000 feet above confluence with Boxelder Creek.	*4,876	*4,872

State	City/town/ county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
		Cache La Poudre River North of Burlington Northern Railroad Embankment.	Approximately 300 feet upstream of Horsetooth Road.	*4,858	*4,856
			At confluence with Boxelder Creek	*4,869	*4,866
			Approximately 6,000 feet upstream of confluence with Boxelder Creek.	*4,880	*4,876
		Cache La Poudre River	Approximately 200 feet upstream of Boxelder Ditch Diversion Dam.	*4,884	*4,894
			At confluence of Lincoln Avenue Overflow	*4,918	*4,918
			Just upstream of Lemay Avenue	*4,933	*4,933
			Just upstream of Shields Street	*4,988	*4,986
			Approximately 300 feet upstream of Josh Ames Diversion Dam.	*4,993	*4,994
			Northeast of intersection of Taft Hill Road and Burlington Northern Railroad.	*5,012	*5,009
			Approximately 500 feet upstream of Taft Hill Road.	*5,017	*5,020
			Just upstream of Overland Trail	*5,059	*5,053
			Just upstream of N Dam	None	*5,078
			Just upstream of State Highway 28	None	*5,106
			Approximately 1,800 feet upstream of State Highway 28.	None	*5,116
		Cache La Poudre Lincoln Avenue Overflow (LINC).	Approximately 7,900 feet upstream of State Highway 14.	*4,941	*4,940
		Lemay Avenue Overflow (Lemayds).	At the intersection of Industrial Drive and Lincoln Avenue.	*4,920	*2
			Just downstream of Airpark Road	*4,924	*4,925
			Just upstream of Link Lane	*4,931	*4,930
			Just upstream of Lemay Avenue	*4,936	*4,935
		Cache La Poudre Left Flow Path (LPATH).	Just upstream of Prospect Road	*4,895	*4,891
			Approximately 5,300 feet upstream of Prospect Road.	*4,907	*4,906
			Approximately 6,250 feet upstream of Prospect Road.	*4,911	*4,909
			At confluence with Cache La Poudre River.	*4,917	*4,918
		Dry Creek	Just upstream of State Highway 14	*4,920	*4,920

Maps are available for inspection at the Larimer County Courthouse, Engineering Department, 218 West Mountain Street, Fort Collins, Colorado.

Send comments to The Honorable Janet S. Duvall, Chairperson, Larimer County Board of County Commissioners, P.O. Box 1190, Fort Collins, Colorado 80522.

Louisiana	Calcasieu Parish (Unincorporated Areas).	Kayouche Coulee	At Interstate Highway 10	*11	*11
			At Legion Street	*12	*12
		Addison Lateral	Approximately 100 feet downstream of Gauthier Road.	None	*14
			Approximately 4,300 feet upstream of Addison Lane.	None	*15
		Airport Lateral	At Gauthier Road	None	*11
			Approximately 100 feet downstream of Gulf Highway.	None	*13
			Approximately 3,000 feet upstream of Gulf Highway.	None	*14
		Belfield Lateral	At confluence with Little Indian Bayou	None	*22
			At Sharon Lane	None	*23
		Black Bayou	Just upstream of Gauthier Road	None	*12
			At confluence with Higgins Lateral	None	*15
			At Louisiana Highway 14	None	*20
		Greathouse Lateral	Approximately 100 feet downstream of Gauthier Road.	None	*12
			Approximately 3,200 feet upstream of Gauthier Road.	None	*15
		Higgins Lateral	At confluence with Black Bayou	None	*15
			Just downstream of Louisiana Highway 14.	None	*18
			Just upstream of Louisiana Highway 14	None	*19

State	City/town/ county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
		Kinner Gully	Approximately 4,600 feet downstream of Mark LeBleu Road.	None	*12
			At Claude Hebert Road	None	*17
			Approximately 7,100 feet upstream of State Highway 3059.	None	*19
		LeBleu Canal	Approximately 5,350 feet downstream of River Road.	None	*16
			At Bowman Road	None	*18
			At Parish Barn Road	None	*19
		Little Indian Bayou	Approximately 9,100 feet downstream of North Perkins Ferry Road.	None	*18
			Approximately 1,800 feet upstream of North Perkins Ferry Road.	None	*20
			At confluence with Belfield Lateral	None	*22
		McFillen Lateral	Approximately 100 feet downstream of Gauthier Road.	None	*15
			Approximately 50 feet upstream of Marty Lane.	None	*17
			Approximately 1,920 feet upstream of Marty Lane.	None	*17
Maps are available for inspection at the Calcasieu Parish Government Building, 1015 Pithon Street, Lake Charles, Louisiana. Send comments to The Honorable S. Mark McMurry, Calcasieu Parish Administrator, 1015 Pithon Street, Lake Charles, Louisiana 70601.					
Louisiana	Ruston (City), Lincoln Parish.	Chautauqua Creek	Just downstream of Jefferson Avenue	None	*1,176
			Approximately 100 feet upstream of Jefferson Avenue.	None	*1,179
			Approximately 100 feet upstream of Greenwood Drive.	None	*215
			Just upstream of south service road of Interstate Highway 20.	None	*247
		Colvin Creek	At northern corporate limits located approximately 1,130 feet downstream of Frazier Road.	*184	*183
			Approximately 50 feet upstream of Frazier Road.	*188	*188
			Just upstream of East Kentucky Avenue	*208	*207
			Just upstream of south service road of Interstate Highway 20.	None	*259
			Approximately 125 feet downstream of Florida Avenue.	None	*277
		Colvin Creek Tributary	Approximately 300 feet upstream of confluence with Colvin Creek.	None	*199
			Approximately 40 feet upstream of Cedar Creek Road.	*205	*205
			Approximately 1,350 feet upstream of East Kentucky Avenue.	None	*214
		Choudrant Creek	At eastern corporate limits located approximately 2,500 feet downstream of Illinois Central Gulf Railroad.	*202	*201
			Just downstream of Santiam Road	*218	*218
			Just upstream of Oak Park Road	None	*234
			Approximately 400 feet upstream of Oak Park Road.	None	*237
		Choudrant Creek Tributary	At confluence with Choudrant Creek	None	*209
			At McDonald Avenue	None	*219
Maps are available for inspection at the Department of Public Works, City Hall, City of Ruston, 401 North Trenton, Ruston, Louisiana. Send comments to The Honorable Hilda Taylor Perritt, Mayor, City of Ruston, P.O. Box 280, Ruston, Louisiana 71273–0280.					
Texas	Borger (City), Hutchinson County.	Hill Creek	At corporate limits located approximately 660 feet downstream of State Highway 136.	None	*3,125
			Approximately 40 feet upstream of State Highway 136.	None	*3,127
			Approximately 90 feet upstream of Quail Hollow Street.	None	*3,157
			At the western corporate limits located approximately 1,010 feet upstream of Quail Hollow Street.	None	*3,165

State	City/town/ county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
		Tributary 1	At corporate limits located approximately 1,560 feet downstream of confluence of Tributary 2.	None	*3,080
			Approximately 60 feet downstream of FM 1551.	None	*3,118
			At upstream corporate limits located approximately 2,540 feet upstream of FM 1551.	None	*3,170
		Tributary 2	Approximately 200 feet upstream of confluence with Tributary 1.	None	*3,095
			Approximately 40 feet upstream of Philview Avenue.	None	*3,117
			Approximately 850 feet upstream of Philview Avenue.	None	*3,122
		Tributary 3	Approximately 70 feet upstream of confluence with Tributary 1.	None	*3,102
			Approximately 50 feet downstream of FM 1551.	None	*3,123
		Tributary 4	Approximately 100 feet downstream of FM 1551.	None	*3,117
			Approximately 80 feet upstream of FM 1551.	None	*3,120
			Approximately 1,770 feet upstream of FM 1551.	None	*3,156

Maps are available for inspection at the City of Borger, Planning Department, City Hall, 600 North Main Street, Borger, Texas.
Send comments to The Honorable Judy Flanders, City of Borger, 600 North Main Street, Borger, Texas 79007.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: May 31, 1995.

Frank H. Thomas,

Deputy, Associate Director for Mitigation.

[FR Doc. 95–13906 Filed 6–6–95; 8:45 am]

BILLING CODE 6718–03–P

COMMISSION ON CIVIL RIGHTS

45 CFR Chapter VII

Semiannual Agenda of Regulations

June 2, 1995.

AGENCY: Commission on Civil Rights.

ACTION: Withdrawal of proposed agenda item.

SUMMARY: On May 8, 1995, on page 23922, item 3542, the CCR proposed to issue regulations for the officers and employees of the Commission that supplement the Standards of Ethical Conduct for Employees of the Executive Branch. Pending further review, the CCR is now withdrawing the proposal.

FOR FURTHER INFORMATION CONTACT: Miguel A. Sapp, Acting Solicitor, U.S. Commission on Civil Rights, 624 Ninth Street, NW., Suite 632, Washington, DC 20425, (202) 376–8351.

Miguel A. Sapp,

Acting Solicitor.

[FR Doc. 95–13943 Filed 6–6–95; 8:45 am]

BILLING CODE 6335–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 32

[CC Docket No. 95–60; FCC 95–182]

Uniform System of Accounts to Raise the Expense Limit for Certain Items of Equipment

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission has adopted a Notice of Proposed Rulemaking (''NPRM'') which proposes to amend its rules regarding Uniform System of Accounts for Class A and Class B Telephone Companies to Raise the Expense Limit for Certain Items of Equipment from $500 to $750. This action is taken to recognize the effects of inflation, the increased competitive environment, and the rapid technological changes that have occurred since the Commission last changed the expense limit in 1988.

DATES: Comments are to be filed on or before July 24, 1995; reply comments are to be filed on or before August 8, 1995.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Tom Petras, Common Carrier Bureau, Accounting and Audits Division, (202) 418–0809.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking in CC Docket No. 95–60, adopted May 2, 1995 and released May 31, 1995. The complete text of this NPRM is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, N.W., Washington, D.C. 20554, and may also be purchased from the Commission's copy contractor, International Transcription Service, Inc. at 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, or call (202) 847–3800.

Synopsis of Notice of Proposed Rulemaking

1. This NPRM proposes to amend Section 32.2000(a)(4), of Part 32, Uniform System of Accounts for Class A and Class B Telephone Companies by raising the expense limit for certain items of equipment from $500 to $750. The Commission seeks comments on this proposal.

2. The Commission also seeks comments on whether carriers should be permitted to amortize the undepreciated, embedded assets covered by such an amendment to our rules, and if so, over what period of time.

3. The Commission also seeks comments on whether the proposed expense limit change is an economic cost and what effect, if any, on carriers' cash flow it may have that would qualify this accounting change for exogenous treatment under Price Cap regulation.

4. Accordingly, it is ordered that, pursuant to Section 4(i), 4(j) and 220 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j) and 220, Notice is hereby given of the proposed amendment to Part 32 of the Commission's rules, 47 CFR part 32, as described below. In conjunction with this notice, we delegate authority to the Chief, Common Carrier Bureau to request and obtain from the Regional Bell Operating Companies and GTE any data necessary to evaluate the possible revenue requirement impact of the proposed change.

List of Subjects in 47 CFR Part 32

Uniform System of Accounts.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

Rule Changes

Part 32 of Title 47 of the CFR is proposed to be amended as follows:

PART 32—UNIFORM SYSTEM OF ACCOUNTS FOR TELECOMMUNICATIONS COMPANIES

1. The authority citation for part 32 continues to read as follows:

Authority: secs. 4(i), 4(j) and 220 as amended; 47 U.S.C. 154(i), 154(j) and 220 unless otherwise noted.

2. Paragraph 32.2000(a)(4) is revised to read as follows:

§ 32.2000 Instructions for telecommunications plant accounts.

(a) * * *

(4) The cost of individual items of equipment, classifiable to Accounts 2112, Motor Vehicles; 2113, Aircraft; 2114, Special Purpose Vehicles; 2115, Garage Work Equipment; 2116, Other Work Equipment; 2122, Furniture; 2123, Office Equipment; and 2124, General Purpose Computers, costing $750 or less or having a useful life less than one year shall be charged to the applicable Plant Specific Operating Expense accounts. If the aggregate investment in the items is relatively large at the time of acquisition, such amounts shall be maintained in an applicable material and supplies account until items are used.

* * * * *

[FR Doc. 95–13876 Filed 6–6–95; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 36

[CC Docket No. 80–286; FCC 95–189]

Establishment of a Joint Board

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Communications Commission proposes to change the separations rules applicable to local exchange carriers (''LECs'') for allocating the Other Billing and Collecting (''OB&C'') expenses [1] portion of Account 32.6623, Customer services,[2] between state and interstate jurisdictions. These permanent separations rules would replace the interim procedures that LECs currently use to allocate OB&C costs. The FCC proposes a fixed allocation method which would allocate a specified percentage of costs to the interstate jurisdiction. The FCC invited comment on four fixed allocation methodologies and it asked parties to suggest alternative approaches. The FCC also invited comment on the need for a contingency provision that would be triggered by one or more of the interexchange carriers substantially reducing their use of LEC billing and collection services. The FCC referred the issues involving the OB&C separations rules to the Federal State Joint Board established in the CC Docket 80–286 Joint Board proceeding for a recommendation.

DATES: Comments are due July 14, 1995; Reply Comments are due August 14, 1995.

ADDRESSES: FCC, 1919 M St., N.W., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, telephone number 202–418–0850.

SUPPLEMENTARY INFORMATION: This is a summary of the FCC's Notice of Proposed Rulemaking in Amendment of Part 36 of the Commission Rules and Establishment of a Joint Board, FCC 95–189, CC Docket No. 80–286, adopted May 4, 1995 and released May 15, 1995. The Commission has made the full text of the Notice of Proposed Rulemaking available for inspection and copying during normal business hours in the Commission's Reference Center, Room 239, 1919 M Street, N.W., Washington, DC 20554, and will publish it in the FCC Record. The full text of the Notice of Proposed Rulemaking may also be purchased from the commission's duplicating contractor, International Transcription Service, 2100 M Street, N.W., Suite 140, Washington, DC 20037, telephone number 202–857–3800.

Synopsis of Notice of Proposed Rulemaking

OB&C expenses are the costs incurred by LECs in preparing and rendering customer bills (other than carrier access charge bills), and in accounting for revenues generated by those billings. LECs allocate most of the interstate OB&C costs to nonregulated activities and recover these costs through untariffed charges for non-regulated services. The sole exception is the billing and collecting cost for the federal end user common line charge which LECs recover through the common line access rate element.

Prior to 1987, the FCC rules had complex and administratively-burdensome rules in place. In 1987 the FCC replaced those rules with a new approach which it expected to simplify the separation of OB&C expenses.[3] The new rules, however, applied a formula that inadvertently set the intestate share of OB&C expenses at thirty-three percent for LECs that continued to provide billing and collecting functions for AT&T. The interstate allocations had typically amounted to approximately twenty percent. This unanticipated result led the Commission, in 1988, on reconsideration to reinstate on an interim basis a portion of the allocation rules that were in effect prior to 1987.[4]

The FCC believes that LECs generally cannot attribute OB&C services to any specific service and, therefore, it proposes a fixed allocation factor to replace the interim OB&C allocation procedures. The FCC also believes that a fixed allocation factor would provide greater administrative simplicity, certainty and auditability than the interim rules. The FCC proposed four alternative fixed allocation methods and invited parties to propose other possible methods as well. The FCC requests that parties comment on (1) whether the allocation procedures should be based upon a fixed allocation factor, rather than on a direct measurement of actual interstate usage, and (2) whether the

[1] The phrase ''OB&C expenses'' refers to the Other Billing and Collecting Expenses described in 47 CFR 36.380 (1994).

[2] *See* 47 CFR 32.6623.

[3] MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket Nos. 78–72 and 80–286, 2 FCC Rcd 2078, 2083 (1987), 52 FR 18408, May 15, 1987; Amendment of Part 67 (New Part 36) of the Commission's Rules and Establishment of a Federal-State Joint Board, 2 FCC Rcd 2639 (1987), 52 FR 17228, May 6, 1987.

[4] Amendment of Part 67 (New Part 36) of the Commission's Rules and Establishment of a Federal-State Joint Board, 3 FCC Rcd 5518 (1988), 53 FR 33010, August 29, 1988.

allocation factor should be adjusted to reflect substantial changes in the interexchange carriers usage of LEC billing services.

The FCC also seeks comments on whether its permanent OB&C allocation rules should include a contingency provision that would alter separations procedures if interexchange carriers substantially reduce their use of LEC billing and collecting services, and if so, what form this ''trigger'' provision should take. The FCC proposes two possible adjustment triggers and invites comments on its proposals and related issues as well as suggestions for alternative approaches.

Finally, the FCC invites comments on the separations procedures applicable to OB&C expenses and refers this issue to the Docket 80–286 Joint Board for a recommendation for a permanent solution. It requests that interested parties address the extent to which the proposed procedures: (1) Would reflect cost-causation principles; (2) would affect the division of costs between the jurisdictions; and (3) would prove burdensome to implement and administer.

Accordingly, it is ordered that, pursuant to sections 1, 4(i), 4(j), 403, and 410(c) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 403, and 410(c), NOTICE IS HEREBY GIVEN of proposed permanent amendments to Part 36, Subpart D of the Commission's Rules, 47 CFR part 36, subpart D, as described in the Notice of Proposed Rulemaking.

It is further ordered, pursuant to Section 410(c) of the Communications Act of 1934, as amended, 47 U.S.C. 410(c), that the issues relating to permanent changes in the Commission's Part 36 Revenue Accounting Expense rules, 47 CFR 36.380, shall be and hereby are referred to the Federal State Joint Board established in the CC Docket No. 80–286 proceeding for a recommended decision regarding the issues raised herein.

List of Subjects in 47 CFR Part 36

Uniform System of Accounts.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 95–13849 Filed 6–6–95; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 60, No. 109
Wednesday, June 7, 1995

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. 95–041–1]

Receipt of Petition for Determination of Nonregulated Status for Genetically Engineered Corn

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from the Monsanto Company seeking a determination of nonregulated status for a corn line designated as MON 80100 that has been genetically engineered for insect resistance. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting public comments on whether this corn line presents a plant pest risk.

DATES: Written comments must be received on or before August 7, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 95–041–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1237. Please state that your comments refer to Docket No. 95–041–1. A copy of the petition and any comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing access to that room to inspect the petition or comments are asked to call in advance of visiting at (202) 690–2817.

FOR FURTHER INFORMATION CONTACT: Dr. Ved Malik, Biotechnologist, Biotechnology Permits, BBEP, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1237; (301) 734–7612. To obtain a copy of the petition, contact Ms. Kay Peterson at (301) 734–7601.

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,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for determination of nonregulated status must take and the information that must be included in the petition.

On April 3, 1995, APHIS received a petition (APHIS Petition No. 95–093–01p) from the Monsanto Company (Monsanto) of St. Louis, MO, requesting a determination of nonregulated status under 7 CFR part 340 for an insect-resistant corn line designated as MON 80100. The Monsanto petition states that the subject corn line should not be regulated by APHIS because it does not present a plant pest risk.

As described in the petition, corn line MON 80100 has been genetically engineered with the *cryIA(b)* gene that encodes for a CryIA(b) insect control protein derived from the common soil bacterium *Bacillus thuringiensis* subsp. *kurstaki* (*Btk*). This protein is a member of a class of insecticidal proteins, also known as delta-endotoxins, that are produced as parasporal crystals by *B. thuringiensis* in nature, and are known to be quite selective in their toxicity to specific organisms, while nontoxic to all other organisms. *Btk* proteins are effective against certain lepidopteran insects, including European corn borer (ECB). ECB is a major corn pest that reduces yield by disrupting normal plant physiology and causing damage to the leaves, stalks, and ears. Results of field tests conducted by Monsanto under permits and notifications granted by APHIS and under an experimental use permit obtained from the Environmental Protection Agency (EPA) indicate that corn plants producing the CryIA(b) protein were protected throughout the growing season from leaf and stalk feeding damage caused by ECB. In addition to expressing the CryIA(b) protein, the plants also express the selectable marker enzyme 5-enolpyruvylshikimate-3-phosphate synthase (CP4 EPSPS). The *cryIA(b)* gene and the CP4 EPSPS marker gene were introduced into the subject corn line by a particle acceleration method and their expression is under the control of the enhanced 35S promoter derived from the plant pathogen cauliflower mosaic virus.

Monsanto's MON 80100 corn line is currently considered a regulated article under the regulations in 7 CFR part 340 because it contains gene sequences derived from plant pathogenic sources. The subject corn line was evaluated in field trials conducted under APHIS permits or notifications from 1992 through 1994. In the process of reviewing the applications for field trials of the subject corn, APHIS determined that the vectors and other elements were disarmed and that the trials, which were conducted under conditions of reproductive and physical containment or isolation, would not present a risk of plant pest introduction or dissemination.

In the Federal Plant Pest Act, as amended (7 U.S.C. 150aa *et seq.*), ''plant pest'' is defined as ''any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured or other products of plants.'' APHIS views this definition very broadly. The definition covers direct or indirect injury, disease, or damage not just to agricultural crops, but also to plants in general, for example, native species, as

well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

This genetically engineered corn line is also currently subject to regulation by other agencies. The EPA is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136 *et seq.*). FIFRA requires that all pesticides, including insecticides, be registered prior to distribution or sale, unless exempted by EPA regulation. Accordingly, Monsanto has submitted to the EPA an application to register the transgenic plant pesticide *Btk* CryIA(b) insect control protein as produced in corn.

Under the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 301 *et seq.*), pesticides added to raw agricultural commodities generally are considered to be unsafe unless a tolerance or exemption from tolerance has been established. Foods containing unsafe pesticides are deemed to be adulterated. Residue tolerances for pesticides are established by the EPA under the FFDCA; the Food and Drug Administration (FDA) enforces the tolerances set by the EPA. Monsanto has also submitted to the EPA a pesticide petition (PP 5F4473) proposing to amend 40 CFR part 180 to establish a tolerance exemption for residues of the plant pesticide active ingredient *B. thuringiensis* delta-endotoxin as produced in corn by a *cryIA(b)* gene and its controlling sequences.

Consistent with the ''Coordinated Framework for Regulation of Biotechnology'' (51 FR 23302–23350, June 26, 1986), APHIS and the EPA are coordinating their review of this genetically engineered corn line to avoid duplication and ensure that all relevant issues are addressed.

The FDA published a statement of policy on foods derived from new plant varieties in the **Federal Register** on May 29, 1992 (57 FR 22984–23005). The FDA statement of policy includes a discussion of the FDA authority for ensuring food safety under the FFDCA, and provides guidance to industry on the scientific considerations associated with the development of foods derived from new plant varieties, including those plants developed through the techniques of genetic engineering.

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the Petition for Determination of Nonregulated Status from any interested person for a period of 60 days from the date of this notice. The petition and any comments received are available for public review, and copies of the petition may be ordered (see the **ADDRESSES** section of this notice).

After the comment period closes, APHIS will review the data submitted by the petitioner, all written comments received during the comment period, and any other relevant information. Based on the available information, APHIS will furnish a response to the petitioner, either approving the petition in whole or in part, or denying the petition. APHIS will then publish a notice in the **Federal Register** announcing the regulatory status of Monsanto's MON 80100 corn line and the availability of APHIS' written decision.

Authority: 7 U.S.C. 150aa–150jj, 151–167, and 1622n; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 1st day of June 1995.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–13919 Filed 6–6–95; 8:45 am]

BILLING CODE 3410–34–M

Commodity Credit Corporation

Secretary of Agriculture's Special Cotton Quota Announcement Number 1

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: Special import quota for upland cotton equal to 46,757,469 kilograms (103,082,657 pounds) is established in accordance with section 103B(a)(5)(F) of the Agricultural Act of 1949, as amended (1949 Act). This quota is established under Proclamation 6301 of June 7, 1991, and is referenced as the Secretary of Agriculture's Special Cotton Quota Announcement Number 1, chapter 99, subchapter III, subheading 9903.52.01 of the Harmonized Tariff Schedule (HTS).

DATES: The quota was established on April 12, 1995, and applies to upland cotton purchased not later than July 10, 1995 (90 days from the date the quota was established) and entered into the United States not later than October 8, 1995 (180 days from the date the quota was established).

FOR FURTHER INFORMATION CONTACT: Janise Zygmont, Consolidated Farm Service Agency, United States Department of Agriculture, room 3756–S, PO Box 2415, Washington, DC 20013–2415 or call (202) 720–8841.

SUPPLEMENTARY INFORMATION: The 1949 Act requires that a special import quota be determined and announced immediately if, for any consecutive 10-week period, the Friday through Thursday average price quotation for the lowest-priced U.S. growth, as quoted for Middling 1 3/32 inch cotton, C.I.F. northern Europe, (U.S. Northern Europe price), adjusted for the value of any cotton user marketing certificates issued, exceeds the Northern Europe price by more than 1.25 cents per pound. This condition was met during the consecutive 10-week period that ended April 6, 1995. The quota amount is equal to 1 week's consumption of upland cotton by domestic mills at the seasonally-adjusted average rate of the most recent 3 months for which data are available—December 1994 through February 1995. The special import quota identifies quantity of imports that is not subject to the over-quota tariff rate of a tariff-rate quota. The quota is not divided by staple length or by country of origin. The quota does not affect existing tariff rates or phytosanitary regulations. The quota does not apply to Extra Long Staple cotton.

Authority: 7 U.S.C. 1444–2(a) and U.S. Note 6(a), Subchapter III, Chapter 99 of the HTS.

Signed at Washington, DC, on May 25, 1995.

Dan Glickman,

Secretary.

[FR Doc. 95–13914 Filed 6–6–95; 8:45 am]

BILLING CODE 3410–05–M

Secretary of Agriculture's Special Cotton Quota Announcement Number 2

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: A special import quota for upland cotton equal to 46,757,469 kilograms (103,082,657 pounds) is established in accordance with section 103B(a)(5)(F) of the Agricultural Act of 1949, as amended (1949 Act). This quota is established under Proclamation 6301 of June 7, 1991, and is referenced as the Secretary of Agriculture's Special Cotton Quota Announcement Number 2, chapter 99, subchapter III, subheading 9903.52.02 of the Harmonized Tariff Schedule (HTS).

DATES: The quota was established on April 19, 1995, and applies to upland cotton purchased not later than July 17, 1995 (90 days from the date the quota was established) and entered into the United States not later than October 15, 1995 (180 days from the date the quota was established).

FOR FURTHER INFORMATION CONTACT: Janise Zygmont, Consolidated Farm Service Agency, United States Department of Agriculture, room 3756–S, PO Box 2415, Washington, DC 20013–2415 or call (202) 720–8841.

SUPPLEMENTARY INFORMATION: The 1949 Act requires that a special import quota be determined and announced immediately if, for any consecutive 10-week period, the Friday through Thursday average price quotation for the lowest-priced U.S. growth, as quoted for Middling 1 3/32 inch cotton, C.I.F. northern Europe, (U.S. Northern Europe price), adjusted for the value of any cotton user marketing certificates issued, exceeds the Northern Europe price by more than 1.25 cents per pound. This condition was met during the consecutive 10-week period that ended April 13, 1995. The quota amount is equal to 1 week's consumption of upland cotton by domestic mills at the seasonally-adjusted average rate of the most recent 3 months for which data are available—December 1994 through February 1995. The special import quota identifies a quantity of imports that is not subject to the over-quota tariff rate of a tariff-rate quota. The quota is not divided by staple length or by country of origin. The quota does not affect existing tariff rates or phytosanitary regulations. The quota does not apply to Extra Long Staple cotton.

Authority: 7 U.S.C. 1444–2(a) and U.S. Note 6(a), Subchapter III, Chapter 99 of HTS.

Signed at Washington, DC, on May 25, 1995.

Dan Glickman,

Secretary.

[FR Doc. 95–13915 Filed 6–6–95; 8:45 am]

BILLING CODE 3410–05–M

Secretary of Agriculture's Special Cotton Quota Announcement Number 3

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: A special import quota for upland cotton equal to 46,757,469 kilograms (103,082,657 pounds) is established in accordance with section 103B(a)(5)(F) of the Agricultural Act of 1949, as amended (1949 Act). This quota is established under Proclamation 6301 of June 7, 1991, and is referenced as the Secretary of Agriculture's Special Cotton Quota Announcement Number 3, chapter 99, subchapter III, subheading 9903.52.03 of the Harmonized Tariff Schedule (HTS).

DATES: The quota was established on April 26, 1995, and applies to upland cotton purchased not later than July 24, 1995 (90 days from the date the quota was established) and entered into the United States not later than October 22, 1995 (180 days from the date the quota was established).

FOR FURTHER INFORMATION CONTACT: Janise Zygmont, Consolidated Farm Service Agency, United States Department of Agriculture, room 3756–S, PO Box 2415, Washington, DC 20013–2415 or call (202) 720–8841.

SUPPLEMENTARY INFORMATION: The 1949 Act requires that a special import quota be determined and announced immediately if, for any consecutive 10-week period, the Friday through Thursday average price quotation for the lowest-priced U.S. growth, as quoted for Middling 1-3/32 inch cotton, C.I.F. northern Europe, (U.S. Northern Europe price), adjusted for the value of any cotton user marketing certificates issued, exceeds the Northern Europe price by more than 1.25 cents per pound. This condition was met during the consecutive 10-week period that ended April 20, 1995. The quota amount is equal to 1 week's consumption of upland cotton by domestic mills at the seasonally-adjusted average rate of the most recent 3 months for which data are available—December 1994 through February 1995. The special import quota identifies a quantity of imports that is not subject to the over-quota tariff rate of tariff-rate quota. The quota is not divided by staple length or by country of origin. The quota does not affect existing tariff rates or phytosanitary regulations. The quota does not apply to Extra Long Staple cotton.

Authority: 7 U.S.C. 1444–2(a) and U.S. Note 6(a), Subchapter III, Chapter 99 of the HTS.

Signed at Washington, DC on May 25, 1995.

Dan Glickman,

Secretary.

[FR Doc. 95–13916 Filed 6–6–95; 8:45 am]

BILLING CODE 3410–05–M

Secretary of Agriculture's Special Cotton Quota Announcement Number 4

AGENCY: Commodity Credit Corporation.

ACTION: Notice.

SUMMARY: A special import quota for upland cotton equal to 48,036,600 kilograms (105,902,662 pounds) is established in accordance with section 103B(a)(5)(F) of the Agriculture Act of 1949, as amended (1949 Act). This quota is established under Proclamation 6301 of June 7, 1991, and is referenced as the Secretary of Agriculture's Special Cotton Quota Announcement Number 4, chapter 99, subchapter III, subheading 9903.52.04 of the Harmonized Tariff Schedule (HTS).

DATES: The quota was established on May 3, 1995, and applies to upland cotton purchased not later than July 31, 1995 (90 days from the date the quota was established) and entered into the United States not later than October 29, 1995 (180 days from the date the quota was established).

FOR FURTHER INFORMATION CONTACT: Janise Zygmont, Consolidated Farm Service Agency, United States Department of Agriculture, room 3756–S, PO Box 2415, Washington, DC 20013–2415 or call (202) 720–8841.

SUPPLEMENTARY INFORMATION: The 1949 Act requires that a special import quota be determined and announced immediately if, for any consecutive 10-week period, the Friday through Thursday average price quotation for the lowest-priced U.S. growth, as quoted for Middling 1 3/32 inch cotton, C.I.F. northern Europe, (U.S. Northern Europe price), adjusted for the value of any cotton user marketing certificates issued, exceeds the Northern Europe price by more than 1.25 cents per pound. This condition was met during the consecutive 10-week period that ended April 27, 1995. The quota amount is equal to 1 week's consumption of upland cotton by domestic mills at the seasonally-adjusted average rate of the most recent 3 months for which data are available—January 1995 through March 1995. The special import quota identifies a quantity of imports that is not subject to the over-quota tariff rate of a tariff-rate quota. The quota is not divided by staple length or by country of origin. The quota does not affect existing tariff rates or phytosanitary regulations. The quota does not apply to Extra Long Staple cotton.

Authority: 7 U.S.C. 1444–2 (a) and U.S. Note 6(a), Subchapter III, Chapter 99 of the HTS.

Signed at Washington, DC on May 25, 1995.

Dan Glickman,

Secretary.

[FR Doc. 95–13917 Filed 6–6–95; 8:45 am]

BILLING CODE 3410–05–M

Secretary of Agriculture's Special Cotton Quota Announcement Number 5

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: A special import quota for upland cotton equal to 48,036,600 kilograms (105,902,662 pounds) is established in accordance with section 103B(a)(5)(F) of the Agricultural Act of 1949, as amended (1949 Act). This quota is established under Proclamation 6301 of June 7, 1991, and is referenced as the Secretary of Agriculture's Special Cotton Quota Announcement Number 5, chapter 99, subchapter III, subheading 9903.52.05 of the Harmonized Tariff Schedule (HTS).

DATES: The quota was established on May 10, 1995, and applies to upland cotton purchased not later than August 7, 1995 (90 days from the date the quota was established) and entered into the United States not later than November 5, 1995 (180 days from the date the quota was established).

FOR FURTHER INFORMATION CONTACT: Janise Zygmont, Consolidated Farm Service Agency, United States Department of Agriculture, room 3756–S, PO Box 2415, Washington, DC 20013–2415 or call (202) 720–8841.

SUPPLEMENTARY INFORMATION: The 1949 Act requires that a special import quota be determined and announced immediately if, for any consecutive 10-week period, the Friday through Thursday average price quotation for the lowest-priced U.S. growth, as quoted for Middling 1-3⁄32 inch cotton, C.I.F. northern Europe (U.S. Northern Europe price), adjusted for the value of any cotton user marketing certificates issued, exceeds the Northern Europe price by more than 1.25 cents per pound. This condition was met during the consecutive 10-week period that ended May 4, 1995. The quota amount is equal to 1 week's consumption of upland cotton by domestic mills at the seasonally-adjusted average rate of the most recent 3 months for which data are available—January 1995 through March 1995. The special import quota identifies a quality of imports that is not subject to the over-quota tariff rate of a tariff-rate quota. The quota is not divided by staple length or by country of origin. The quota does not affect existing tariff rates or phytosanitary regulations. The quota does not apply to Extra Long Staple cotton.

Authority: 7 U.S.C. 1444–2(a) and U.S. Note 6(a), Subchapter III, Chapter 99 of the HTS.

Signed at Washington, DC on May 25, 1995.

Dan Glickman,

Secretary.

[FR Doc. 95–13918 Filed 6–6–95; 8:45 am]

BILLING CODE 3410–05–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

ADAAG Review Advisory Committee; Meetings

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meetings.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) gives notice of the dates and locations of subcommittee meetings of the ADAAG Review Advisory Committee.

DATES: The subcommittees of the ADAAG Review Advisory Committee will meet as follows:

Accessible Routes Subcommittee, June 19 and 20, 1995.

Plumbing Subcommittee, June 27 and 28, 1995.

Special Occupancies Subcommittee, July 6 and 7, 1995.

ADDRESSES: The Accessible Routes Subcommittee and the Plumbing Subcommittee meetings will be held at the offices of the President's Committee on Employment of People with Disabilities, 1331 F Street, NW., Washington, DC in the training room on the third floor of the building. The Special Occupancies Subcommittee meetings will be held at the offices of the Paralyzed Veterans of America, 801 18th Street NW., Washington, DC in the conference room on the second floor of the building.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact Marsha Mazz, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street NW., suite 1000, Washington, DC 20004–1111. Telephone (202) 272–5434 ext. 21 (voice); (202) 272–5449 ext. 21 (TTY). This document is available in alternate formats (cassette tape, braille, large print, or computer disk) upon request.

SUPPLEMENTARY INFORMATION: In September 1994, the Access Board established an advisory committee to review the Americans with Disabilities Act Accessibility Guidelines (ADAAG) for buildings and facilities. 36 CFR part 1191, appendix A. The Advisory Committee will make recommendations to the Access Board for updating ADAAG to ensure that the guidelines remain a state-of-the-are document which is generally consistent with technological developments and changes in national standards and model codes, and continue to meet the needs of individuals with disabilities. The Advisory Committee is composed of organizations representing individuals with disabilities, model code organizations, professional associations, State and local governments, building owners and operators, and other organizations. The Advisory Committee has formed the following subcommittees to assist in its work: Editorial, Accessible Routes, Plumbing, Communications, and Special Occupancies. The subcommittees will present their recommendations to the full advisory committee in November 1995. The full advisory committee will review the subcommittee recommendations and present final recommendations to the Access Board by April 1996.

The Accessible Routes Subcommittee, Plumbing Subcommittee, and Special Occupancies Subcommittee will meet in June and July 1995 on the specific dates and at the locations announced in this notice. The meetings are open to the public. The meeting sites are accessible to individuals with disabilities. Individuals with hearing impairments who require sign language interpreters should contact Marsha Mazz at least three full business days prior to the meeting date by calling (202) 272–5434 ext 21 (voice) or (202) 272–5434 ext 21 (TTY).

Lawrence W. Roffee,

Executive Director.

[FR Doc. 95–13944 Filed 6–6–95; 8:45 am]

BILLING CODE 8150–01–M

DEPARTMENT OF COMMERCE

International Trade Administration, Commerce

Export Trade Certificate of Review

ACTION: Notice of Application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the application and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-482-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export

Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as ''Export Trade Certificate of Review, application number 95–00004.'' A summary of the application follows.

Summary of the Application

Applicant: United Products of America, Inc. (''UPA, Inc.''), P.O. Box 3264, Fredericksburg, Virginia 22402

Contact: Kindra Rokhsaz, Telephone: (703) 891-2645

Application No.: 95–00004

Date Deemed Submitted: April 30, 1995, United Products of America, Incorporated, (''UPA, Inc.'') seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operations.

Export Trade

1. Products
   All products
2. Services
   All Services
3. Technology Rights
   Technology rights, including, but not limited to, patents, trademarks, copyrights, and trade secrets, that relate to Products and Services.
4. *Export Trade Facilitation Services (as they relate to the Export of Products, Services and Technology Rights)*
   Export Trade Facilitation Services include professional services in the areas of export management, procurement management, market research and analysis, feasibility analysis, customer and supplier location, government relations and assistance with state and federal programs, foreign trade and business protocol, consulting, collection of information on trade opportunities, marketing, negotiations, joint ventures, shipping, export licensing, advertising, documentation and services related to compliance with customs requirements, insurance and financing, trade show exhibitions, organizational development, business management and labor strategies, technology transfer, transportation, and facilitating the formation of shippers associations.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

With respect to the sale of Products and Services, Licensing and Technology Rights and provisions of Export Trade Facilitation Services, UPA, Inc. may:

1. Provide and/or arrange for the provision of Export Trade Facilitation Services;
2. Engage in promotional and marketing activities and collect information on trade opportunities in the Export Markets and distribute such information to clients;
3. Enter into exclusive and/or non-exclusive licensing and/or sales agreements with Suppliers for the export of Products, Services, and/or Technology Rights in Export Markets;
4. Enter into exclusive and/or non-exclusive agreements with distributors and/or sales representatives in Export Markets;
5. Allocate export sales or divide Export Markets among Suppliers for the sale and/or licensing of Products, Services and/or Technology Rights;
6. Allocate export orders among Suppliers;
7. Establish the price for Products, Services, and/or Technology Rights for sale and/or licensing in Export Markets.
8. Negotiate, enter into, and/or manage licensing agreements for the export of Technology Rights;
9. Enter into contracts for shipping;
10. Exchange information on a one-to-one basis with individual Suppliers regarding inventories and near-term production schedules for the purpose of determining the availability of Products for export and coordinating exports with distributors.

Definitions

For the purposes of this certificate application, the following term is defined:

1. ''Supplier'' means a person who produces, provides, licenses, or sells a Product, Service, or Technology Right.

Dated: June 1, 1995.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 95–13865 Filed 6–6–95; 8:45 am]

BILLING CODE 3510–25–P

National Oceanic and Atmospheric Administration

[I.D. 050895E]

Marine Mammals and Endangered Species; Permits

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

ACTION: Issuance of scientific research permit no. 957 (P771 #71).

SUMMARY: Notice is hereby given that Dr. Howard Braham, National Marine Mammal Laboratory, Alaska Fisheries Science Center, National Marine Fisheries Service, 7600 Sand Pt. Way NE, Bin C15700, Seattle, WA 98115–0070, has been issued a permit to satellite tag 50 beluga whales (*Delphinapterus leucas*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment, in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221).

SUPPLEMENTARY INFORMATION: On April 11, 1995, notice was published in the **Federal Register** (60 FR 18395) that a request for a scientific research permit to satellite tag beluga whales had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972,

as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Dated: May 31, 1995.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–13859 Filed 6–6–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 053095D]

Small Takes of Marine Mammals Incidental to Specified Activities; Offshore Seismic Activities in Southern California

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

ACTION: Notice of receipt of application and proposed authorization for a small take exemption; request for comments.

SUMMARY: NMFS has received a request from the Exxon Company, U.S.A., Thousand Oaks, CA, for authorization to take small numbers of cetaceans by harassment incidental to conducting a three-dimensional (3–D) seismic survey in the Santa Ynez Unit (SYU), located in the western portion of the Santa Barbara Channel, offshore California, in Federal waters. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to authorize Exxon to incidentally take, by harassment, small numbers of cetaceans in the above mentioned area for a period of 1 year.

DATES: Comments and information must be received no later than July 7, 1995.

ADDRESSES: Comments on the application should be addressed to Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. A copy of the application and a list of references used in this document may be obtained by writing to this address or by telephoning one of the contacts listed below.

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, Office of Protected Resources at 301–713–2055, or Craig Wingert, Southwest Regional Office at 310–980–4021.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s); will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses; and the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

On April 30, 1994, the President signed Public Law 103–238, The Marine Mammal Protection Act Amendments of 1994. One part of this law added a new subsection 101(a)(5)(D) to the MMPA to establish an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The MMPA defines ''harassment'' as:

> * * * any act of pursuit, torment, or annoyance which (a) has the potential to injure a marine mammal or marine mammal stock in the wild; or (b) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

New subsection 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On May 11, 1995, NMFS received an application from Exxon requesting an authorization for the harassment of small numbers of cetaceans incidental to conducting a 3–D seismic survey within the SYU, located in the western portion of the Santa Barbara Channel, off Southern California, in U.S. waters. As described in their application (Exxon, 1995) Exxon's survey will cover an area of approximately 303 km^2 of the outer continental shelf and will require approximately 2 months, commencing in August 1995, to complete. The survey will provide subsurface data that will enable Exxon to more accurately assess the oil and gas reservoirs in order to optimally locate future development wells from existing platforms.

Deep seismic surveys obtain data about formations several thousands of meters deep, such as the hydrocarbon-bearing Monterery Formation in the SYU. These surveys are accomplished by transmitting sound waves into the earth, which are reflected off subsurface formations and recorded with detectors in the water column. A typical marine seismic source is an airgun array that releases compressed air into the water, creating an acoustical energy pulse that is directed into the earth. Hydrophones spaced along a streamer cable just below the surface of the water receive the reflected energy from the subsurface formations and transmit data to the seismic vessel. On board the vessel, the signals are amplified, digitized, and recorded on magnetic tape.

The contract survey vessel will transverse the SYU area along east-west lines, approximately 24.9 km in length parallel to the coastline, with a few south-north lines approximately 9.65 km in length to be acquired over key geological features. There will be approximately 64 east-west transects and 6 south-north transects over the 2-month period. Field operations will be conducted 24 hours a day, although about half of that time will be consumed by turning the vessel and maneuvering. The airgun arrays will be shut down during turning and maneuvering and will be powered up slowly over a 5-minute period when turned back on. Eighty to 90 percent of the proposed survey will be accomplished with a single vessel. A second vessel will be used to undershoot platform structures and some complex subsurface geological features of limited areal extent. Two vessels abreast each other will be used for undershooting. The survey is designed to acquire the maximum amount of data in the minimum amount of time. Exxon plans to initiate the survey around August 1, 1995, and complete data collection approximately October 1, 1995, prior to the onset of adverse weather and gray whale migration in the Santa Barbara Channel area.

Exxon will employ a 90-m seismic vessel to acquire the survey data. The seismic source will consist of dual airgun arrays deployed 37.5 m apart and fired alternately to acquire separate records. Each array will consist of 18 airguns of differing strengths producing a total of 8.62 megapascals peak to peak energy. The airguns will be sleeve type guns towed at a depth of 5 to 10 m below the water surface. Paravanes will be deployed to separate the airgun arrays.

The proposed survey could potentially affect marine mammals due

to disturbance by sound (i.e., acoustic harassment).

Description of Habitat and Marine Mammal Affected by the Activity

The Southern California Bight (SCB) including the Channel Islands, supports a diverse assemblage of marine mammals including cetaceans (whales, dolphins, and porpoises) and pinnipeds (seals and sea lions). A detailed description of the SCB and its associated marine mammals can be found in the **Federal Register** (56 FR 1606, January 16, 1991) and need not be repeated here.

Approximately 34 species of marine mammals inhabit the SCB. They include 6 species of pinnipeds and 27 species of cetaceans. The status of these species has been reviewed previously (NMFS, 1991 [1]). Recently, NMFS released draft revised stock assessment reports (59 FR 40527; August 9, 1994).[2] These reports include information on status and trends of marine mammals and an assessment of all human-caused mortality and serious injury of the various stocks of marine mammals.

It is possible that acoustic harassment by seismic survey operations could potentially occur for mysticete whales and possibly the sperm whale, since they represent the only species assumed to hear well the noise associated with airguns. Given the survey location and the time period within which the survey will be conducted, the species of whales that could be potentially affected are the following: (1) Blue whale (*Balaenoptera musculus*); (2) fin whale (*Balaenoptera physalus*); (3) humpback whale (*Megaptera novaeangliae*); (4) minke whale (*Balaenoptera acutorostrata*); (5) sperm whale (*Physeter macrocephalus;* (6) pygmy sperm whale (*Kogia breviceps*); (7) sei whale (*Balaenoptera borealis*); and (8) Bryde's whale (*Balaenoptera edeni*). In addition, because this proposed authorization may extend into the period of time when gray whales (*Eschrichtius robustus*) may be present, that species may also be affected. Detailed descriptions of the distribution and abundance of these species in California waters can be found in Barlow (1994, 1995), Forney (1994) Forney et al. (1995) and NMFS (1993).

Potential Effects of Seismic Surveys on Marine Mammals

The airguns emit pulsed energy primarily at frequencies in the 10 to 300 Hz range. Dolphin, porpoise, seal, and sea lion hearing is believed to be poor at frequencies less than 1,000 Hz, and thus it is unlikely that the airgun noise would significantly affect them. Acoustic harassment takes, therefore, need to be assessed only for mysticete whales and the sperm whale, because they represent the only group that is believed to be able to hear or possibly react to the sound associated with seismic activities.

To determine the numbers of whales that could potentially be subject to acoustic harassment, marine mammal densities were applied over the anticipated zone of potential disturbance (ZPD). The densities utilized (Barlow, 1995) were obtained along the California coast during the summer and fall seasons of the year, which is consistent with the time period of the proposed survey.

The ZPD was conservatively assumed to be the entire survey area (303 km^2) plus an additional area to account for the travel of sound outside the survey area perimeter. To determine the outer boundary of the affected area, it was concluded that the 160 dB level could be considered a conservative end point for potential marine mammal acoustic harassment. Tyack (1988) indicates that avoidance behavior occurs only at relatively close ranges at decibels greater than 160–170 dB for pulsed sounds such as those from airguns. It has been presumed that less than 10 percent of animals located beyond the 160 dB range would be subjected to acoustic harassment (Malme et al., 1984; LGL Assoc., 1991). Therefore, NMFS has adopted a level of 160 dB (re 1μPa) as an acceptable level for impulsive noise based upon the best scientific evidence available.

For the proposed survey, the 160 dB isopleth occurs at a radius of approximately 5.2 km from the seismic source (Exxon, 1995). The ZPD was calculated by expanding the entire perimeter of the SYU survey area by 5.2 km. This area was calculated to be 470 km^2, and when added to the survey area 303 km^2, resulted in a total ZPD of 773 km^2. However, at any instant of time, harassment would be limited to an area approximately 84.9 km^2, with a radius of 5.2 km around the airgun array when the array is generating sound.

Using the above information and assumptions, the number of marine mammals that could potentially be subject to acoustic harassment is as follows:

Whale species	Density [3] (number/km^2)	Number of animals [4] acoustic harassment
Blue whale	0.033	26
Fin whale	0.013	10
Humpback whale	0.009	7
Minke whale	0.008	6
Sperm whale	0.011	9
Pygmy sperm whale	0.013	10
Sei whale	0.001	1
Bryde's whale	0.001	1
Gray whale	0.014	11
Total		81

[3] From Barlow (1995).
[4] Density X ZPD=No. Animals.

[1] A list of references used in this document can be obtained by writing to the address provided above (see **ADDRESSES**).

[2] NMFS has established a bulletin board for electronic retrieval of marine mammal stock assessment reports. The reports are stored as Wordperfect 5.1 files and may be downloaded by a modem link to the following telephone number: (703) 218–2595. Within your communications software, specify 8 data bits, no parity, and 1 stop bit. Set up as an ANSI terminal and use your appropriate baud rate up to 19,200. Instructions to download files are available on screen.

However, because the potential exists that the survey schedule could be delayed and overlap with the southbound gray whale migration, some or all of the survey could also potentially result in harassing gray whales. To cover that possibility, a proposed authorization for harassment takes of gray whales has been included. Applying Forney et al.'s (1995) gray whale density from the winter/spring surveys (0.014) to the ZPD (773 km^2 indicates that 11 gray whales could potentially be subject to acoustic harassment.

Also, while the assumption can be made that a population of 70–81 cetaceans may be harassed during the SYU survey, because the 160 dB ZPH at any one instant of time is only a portion of the entire 773 km^2 ZPD, and because the seismic array is turned off while repositioning on the succeeding transect, these cetaceans, at least theoretically, may be harassed more than once during the course of the survey, unless they leave the area as a result of either normal transitting (migration) or seismic noise.

NMFS estimates that each east-west and south-north transect would have a ZPH approximately 344 km^2 and 147.3 km^2, respectively and each of the 64 east-west or 6 south-north transects comprise approximately 45 percent or 19 percent respectively, of the total ZPD. As a result, theoretically there is the potential for the SYU seismic survey to result in 2,360 harassment takings proportionally divided as follows:

Whale species	Density (No./km^2	Total ZPD (km^2)	Total number of harassment takes
Blue whale	0.033	22,900	756
Fin whale	0.013	22,900	298
Humpback whale	0.009	22,900	206
Minke whale	0.008	22,900	183
Sperm whale	0.011	22,900	252
Pygmy sperm whale	0.013	22,900	298
Sei whale	0.001	22,900	23
Bryde's whale	0.001	22,900	23
Gray whale	0.014	22,900	[5] 321

[5] As gray whales generally migrate from feeding grounds to breeding lagoons offshore Baja California from November–December, if the seismic survey is delayed from its anticipated commencement date, some harassment of this species may occur.

Mitigation

To avoid potential injury to marine mammals, NMFS proposes to: (1) Require airguns to be ramped-up to operating levels over a 5-minute period at the commencement of operations, when beginning a new trackline or anytime that the array is powered down; (2) recommend not turning the array off at times when restarting the array would occur during nighttime hours; and (3) if marine mammals are observed within the 195 dB isopleth (91.5 m (300 ft) of the source), starting operations must be delayed until all marine mammals are outside the 195 dB zone. It is proposed that NMFS-approved observers be required to make these observations.

Monitoring

NMFS proposes that the holder of the Incidental Harassment Authorization will monitor the impact of seismic activities on the marine mammal populations within the SYU. Monitoring will be conducted during daylight hours by NMFS-approved observers. In addition, monitoring will begin 30 minutes prior to any time the seismic array is turned on and will continue until turned off. Monitoring will consist of noting the numbers and species of all marine mammals seen within the ZPH, and any behavioral responses or modifications due either to the seismic array or by the vessel. A report on this monitoring program will be required to be submitted to NMFS within 90 days of completion of the survey. Specific monitoring and reporting requirements will be specified in the Incidental Harassment Authorizaion, if issued.

Consultation

Under section 7 of the Endangered Species Act, NMFS has begun consultation on the proposed issuance of this authorization. Consultation will be concluded upon completion of the comment period and consideration of those comments in the final determination on issuance of an authorization.

Conclusions

NMFS has determined preliminarily that the short-term impact from conducting a 3–D seismic survey within the SYU may result in a temporary modification in behavior by certain species of cetaceans. While behavioral modifications may be made by these species of cetaceans to avoid seismic noise, this behavioral change is expected to have only a negligible impact on the animals.

There is no known recent subsistence use of marine mammals in southern California.

Proposed Authorization

NMFS proposes to issue an incidental harassment authorization for 1 year for a 3–D seismic survey within the SYU provided the above mentioned monitoring and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed seismic activity would result in the harassment of only small numbers of mysticete cetaceans, sperm whales, and possibly pygmy sperm whales; will have a negligible impact on these cetacean stocks; and will not have an unmitigable adverse impact on the availability of this stock for subsistence uses.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning this request (see **ADDRESSES**).

Dated: June 2, 1995.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–13966 Filed 6–6–95; 8:45 am]

BILLING CODE 3510–22–W

[I.D. 060195A]

Shark Operations Team; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Shark Operations Team (OT) will hold a meeting on June 8, 1995, at NMFS in Silver Spring, MD.

DATES: The meeting will be held on June 8, 1995 from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at NMFS, 1315 East-West Highway, Room 12836, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: C. Michael Bailey, telephone: (301) 713-2347, Fax (301–713–0596).

SUPPLEMENTARY INFORMATION: The following topics will be discussed:

(1) 1995 Shark Evaluation Annual Report;

(2) First semi-annual fishing season for sharks;

(3) Results of recent management measures;

(4) Possible permit moratorium;

(5) Possible fishing season modifications;

(6) Data collections issues; and

(7) Possible changes in management measures of whale shark, *Rhincodon typus*, basking shark, *Cetorhinus maximus* and white shark, *Carcharodon carcharias*.

The meeting may be lengthened or shortened based on the progress of the meeting. The meeting is open for the public to attend. This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to C. Michael Bailey at least 5 days prior to the meeting date.

Dated: June 1, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–13858 Filed 6–2–95; 9:22 am]

BILLING CODE 3510–22–F

Patent and Trademark Office

Determination of New Expiration Dates of Certain Patents

AGENCY: Patent and Trademark Office, Commerce.

ACTION: final Determination.

SUMMARY: The Patent and Trademark Office (PTO) has determined the expiration date of patents that:

(1) Are in force on June 8, 1995, and, therefore, are entered to the greater of a term of 20 years from their relevant filing date, or 17 years from grant, and

(2) Have received a term extension under section 155 or 156 of title 35, United States Code, or will receive a term extension under section 156 in the future.

All patents falling in this category are entitled to the longer term of either (a) 17 years from grant, supplemented by the period of extension obtained under section 155 or 156, or (b) 20 years from their relevant filing date.

FOR FURTHER INFORMATION CONTACT: H. Dieter Hoinkes, by telephone at (703) 305–9300, by facsimile at (703) 305–8885, or by mail marked to his attention addressed to the Commissioner of Patents and Trademarks, Box 4, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: Under section 156 of title 35, United States Code, patent term extensions are issued for eligible patents from the original expiration date of the patent. Since this provision was enacted in 1984, the PTO has issued 195 certificates of patent term extension in accordance with section 156. Under the Uruguay Round Agreements Act (''URAA''), Public Law 103–465, patents in force on June 8, 1995, are entitled to a patent term of 17 years from grant or 20 years from their earliest filing date, whichever is greater (See 35 U.S.C. 154(c)(1)).

On February 16, 1995, the PTO held a public hearing to elicit comments on what action it should take regarding patents that are entitled to a longer patent term under the URAA and that had previsouly been extended under section 156. (See 60 FR 3398 (Jan. 17, 1995)). After having considered all the comments, both written and oral, the PTO requested public comments on its intent to publish the new expiration date of all patents that fall into the category mentioned above (See 60 FR 15748 (March 27, 1995)), using the following three criteria:

(1) A patent that would have expired under the original 17-year patent term before June 8, 1995, but that has received a patent term extension for a period beyond June 8, 1995, is a patent ''in force'' on June 8, 1995, even though the rights derived from that patent are circumscribed by section 156(b) of title 35.

(2) The ''original expiration date of the patent'' referred to in section 156(a) of title 35 is the date on which the patent would have expired if it had not been extended under section 156 to expire at a later date. Therefore, the ''original expiration date'' of the patents under consideration is the date on which the 20-year term from filing expires.

(3) The extension already issued on the basis of the 17-year term is added to the 20-year term, subject to the limitation by imposed by section 156(c)(3) of title 35. That provision limits the period remaining in the term of an extended patent to fourteen years counted from the date on which the product under review received approval for commercial marketing by the relevant regulatory authority.

After analyzing the written comments received regarding the PTO's proposed intent to determine the expiration dates of the relevant patents, taking into account the three criteria noted above, it has been concluded that criterion (2) is in error and that, therefore, the steps outlined in criterion (3) are not an appropriate course of action. The provisions of section 156 cannot be applied *in vacuo* without obtaining results that could not have been intended by the URAA or that are inconsistent with section 156 itself.

The entire argument in favor of adding an extension obtained under section 156 to a 20-year term obtained under the URAA, was the manner of interpreting the provision in section 156(a), requiring that the term of a patent be extended from its ''original expiration date''. The term ''original expiration date'' was proposed to be the date of a patent's expiration without the aid of an extension period, which was proposed to be the end of the 20-year term for those patents entitled to such term.

This narrow interpretation of section 156, however, did not take into account that the term ''original'' has several meanings, all of which must be taken into consideration to avoid an improper interpretation of the relationship between section 154(c)(1), added to title 35 by the URAA, and section 156, enacted in 1984. To that end, considering the expiration of the longer 20-year term to be *the* original expiration date, ignores the fact that when the patent was issued, it originally had an expiration date of 17 years from grant. That date must continue to be considered ''original'' for two reasons.

One is, that this was the date on which the patent, when granted, was set to expire. Accordingly, if a patent is now entitled to a longer 20-year term, such is merely an added time period beyond the original expiration date. The other reason is the impossibility of having more than one ''original expiration date'' without having to refer to one as the first ''original'' and to the other as the second or new ''original'', the latter being a contradiction in terms.

Had criteria (2) and (3) been adopted, additional anomalies would have arisen. For example, the term ''original expiration date'' means the date on which a patent would have expired without the extension added by section 156. In the case of many patents in question, their being in force on June 8, 1995, and their entitlement, therefore, to the longer term of 20 years from filing, was solely due to an extension of the

original patent term under section 156. In other words, their entitlement to a 20-year term rests on a patent term extension. It is not reasonable, therefore, to ascribe to the end of such 20-year term the appellation ''original expiration'' which under the provisions of section 156(a) was supposed to have been achieved without the aid of an extended term.

Moreover, in cases where the 17-year term expires before June 8, 1995, and the patent is kept in force on that date by virtue of an extension under section 156, transposing such extension to the end of the 20-year term would have resulted in applying at least some of the extended period twice to the term of the patent. This result would have been especially curious in instances where both the original 17 and the 20-year terms expired before June 8, 1995.

Another vexing problem that would have arisen had the PTO proposal been adopted, concerns the question of the rights that a patent holder derives during the period of extension under section 156. If this period had been added to the 20-year term, a patentee would have had full exclusionary rights until the end of the 17-year term, followed by rights only to equitable remuneration with respect to a certain class of infringers during the period from the end of the 17-year term to the end of the 20-year term, and followed by a restoration of full exclusionary rights with respect to the approved product during the continuing period of extension under section 156. A more reasonable solution, such as a continuation of limited patent rights during the period of extension, has no statutory foundation, because section 154(c)(2) added by the URAA does not address extensions under section 156, which itself contains an explicit provision regarding a patentee's rights during the period of extension.

In analyzing section 156(a), it must be remembered that at the time of its enactment in 1984, only one patent term—seventeen years from grant—was available and that all extensions granted under section 156 until now were added to that patent term. Because the URAA does not address the question of patent term extension under section 156, the extensions of all patents issued before June 8, 1995, must continue to be calculated by the PTO on the basis of the 17-year term from grant and added to that term. This is necessitated by the fact that all patents in that category have an original expiration of 17 years from grant, even though they may be entitled to a term of 20 years from filing under the URAA. Further, where the 20-year term from filing exceeds the original term of 17 years from grant, the provisions of the URAA are satisfied in cases where the extension under section 156, added to the 17-year term, expires later than 20 years from the filing date.

All patents in force on June 8, 1995, were originally issued with a term of 17 years from grant. The fact that on June 8, 1995, these patents are entitled to a term of 20 years from filing, if that term exceeds the 17-year term, does not move the original expiration date from which a period of extension continues, if granted under section 156. It only provides a new—albeit not original—expiration date. Accordingly, all patents in this category are entitled either to the 17-year term, as augmented by an extension under section 156, or to a 20-year term from the relevant filing date, whichever is longer. This determination is fully consistent with section 154(c)(1) of title 35, as added by the URAA, because extensions under section 156 are not addressed by section 154(c)(1) and are, therefore, left untouched.

Of course, all patents issued after June 8, 1995, on applications filed before that date, are also entitled to a term that is the greater of 17 years from grant or 20 years from their relevant filing date. Extensions under section 156 granted to these patents must be calculated with reference to whatever term is applicable at their time of issue and will then be added to that term. As these patents have only one term at issue, there is no question regarding their original expiration date.

Further, under the provisions of section 155 of title 35, 33 patents were extended, each for a length of time to be measured from the date a ''stay of regulation of approval was imposed'' (December 5, 1975) to the date commercial marketing was permitted (October 22, 1981). This time period amounts to 2,148 days. One of these 33 patents expired in 1992, leaving 32 in force on June 8, 1995.

Section 155 differs from section 156 in providing that ''the term of a patent * * * shall be extended * * * by a length of time * * *'', rather than that the term of a patent shall be extended ''from the original expiration date.'' This difference, however, has no practical effect because the 33 patents that originally were eligible for extension under section 155 already have been extended, as required by that provision. The provisions of section 154(c)(1), therefore, would only have had an effect, if the 20-year term to which 21 patents are entitled, exceeded the 17-year patent term, as extended by 2,148 days. Applying the provisions of section 154(c)(1) to these patents, however, reveals that its requirements are already satisfied, because all previously extended terms exceed a term of 20 years from the patents' relevant filing dates. Accordingly, section 154(c)(1) does not benefit any of the patents already extended under section 155.

Comments

Nine written comments were received in response to PTO's request for comments mentioned above. Responses to significant comments follow.

1. Comment: One comment urged that any period of patent term extension used to keep a patent in force on June 8, 1995, not be added to the 20-year term and that only the portion of the extended patent term past June 8, 1995, be added.

Response: The suggestion has not been adopted because neither section 156 of title 35, nor section 154(c)(1), as added by the URAA, contains a provision that would permit apportioning a term of patent extension in the manner suggested.

2. Comment: Two comments suggested that all patents that received an extension under section 156 prior to June 8, 1995, were extended from an ''original expiration date'' and that neither the URAA nor section 156 authorizes any alteration. It was suggested, therefore, that any patent in force on June 8, 1995, should expire either at the end of the term extension under section 156 as added to the 17-year term, or at the end of 20 years from filing, whichever is longer.

Response: The suggestion has been adopted for the reasons given above.

3. Comment: Four comments endorsed the PTO's proposal to move the term of extension from the original expiration date of the patent to its new expiration date, although two of the comments took issue with the proposal that the period of extension comply with the limitation proposed by section 156(c)(3).

Response: In light of the fact that the original PTO proposal has not been followed, the question of the applicability of section 156(c)(3) is moot. Nevertheless, it appears anomalous that some supporters of the original PTO proposal would have looked to section 156 for support of transposing the period of extension, while disclaiming the validity of other provisions in section 156 that materially affect that extension.

4. Comment: One comment suggested that the PTO certify the new patent expiration date upon the patentee's request.

Response: The suggestion has not been adopted, as this final determination of the expiration dates of

the relevant patents makes certification unnecessary.

It should be noted that any patent in force on June 8, 1995, and any patent issued on the basis of an application filed before June 8, 1995, are entitled to the longer term of 17 years from grant or 20 years from the relevant filing date. Because patents issued before June 8, 1995, were initially given a term of 17 years from grant, any extension under section 156 must begin from the original expiration date, which is the end of the 17-year term. If the term of 20 years from the relevant filing date exceeds the expiration of the extended term, the patent is entitled to such later expiration date. Patents issued after June 8, 1995, on the basis of applications filed before such date, are also entitled to the greater one of the two terms mentioned above. However, as this term attaches at the time of issue, the question of what term is extended under section 156 does not arise.

As the information to determine the applicable expiration dates of all these patents is readily available from relevant patent documents, publication of their expiration dates is not necessary for the purpose of clarification.

Dated: June 1, 1995.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 95–13848 Filed 6–2–95; 1:42 pm]

BILLING CODE 3510–16–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; Notice To Add a Record System

AGENCY: Office of the Secretary of Defense, DOD.

ACTION: Notice to Add a Record System.

SUMMARY: The Office of the Secretary of Defense proposes to add one system of records notices to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The addition will be effective on July 7, 1995, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Chief, Records Management and Privacy Act Branch, Washington Headquarter Services, Correspondence and Directives, Records Management Division, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Cragg at (703) 695–0970 or DSN 225–0970.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on May 23, 1995, to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated July 25, 1994 (59 FR 37906, July 25, 1994).

Dated: June 1, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DWHS P29

SYSTEM NAME:

Personnel Security Adjudications File.

SYSTEM LOCATION:

Directorate for Personnel and Security, Washington Headquarters Services, Consolidated Adjudications Facility, 1725 Jefferson Davis Highway, Suite 212A, Arlington, VA 22202–4191.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian employees of the Office of the Secretary of Defense, its components and supported organizations, the Defense Agencies (excluding the Military Departments, the Defense Intelligence Agency, the Defense Mapping Agency, the Office of the Joint Staff, the National Security Agency, and contractors), and certain personnel selected for assignment to the United States Mission to NATO.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to an individual's personnel security clearance/adjudication actions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. Section 301, Executive Order 12356, Executive Order 10450, Executive Order 9397.

PURPOSE(S):

To be used by officials of the Consolidated Adjudications Facility, Directorate for Personnel and Security, Washington Headquarters Services, to issue, deny, and revoke security clearances.

To be used by members of the Washington Headquarters Services Clearance Appeal Board to determine appeals of clearance denials and revocations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard copy files are maintained in file folders; computer files are stored on magnetic tape and disk.

RETRIEVABILITY:

Active personnel security adjudication files are maintained alphabetically by last name of subject, or by Social Security Number.

Inactive personnel security adjudication files are serially numbered and indexed alphabetically.

SAFEGUARDS:

Files are maintained under the direct control of office personnel in the Consolidated Adjudications Facility during duty hours. Office is locked and alarmed during non-duty hours. Computer media is stored in controlled areas. Dial-up computer terminal access is controlled by user passwords that are periodically changed.

RETENTION AND DISPOSAL:

Routine cases or those containing only minor derogatory information that result in a favorable determination for the individual are destroyed 15 years after completion date of the last investigative action for that file.

Files on persons who are considered for affiliation with the DoD will be destroyed after 1 year if the affiliation is not completed.

Cases containing significant derogatroy information are destroyed 25 years after the date of the last action, except those files deemed to be of historcial value and/or or widespread public or congressional interest, which

may be retired to the National Archives after 15 years..

SYSTEM MANAGER(S) AND ADDRESS:

Director for Personnel and Security, Washington Headquarters Services, 1155 Defense Pentagon, Room 3B347, Washington, DC 20301–1155.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Consolidated Adjudications Facility, Washington Headquarters Services, Personnel and Security Directorate, 1725 Jefferson Davis Highway, Suite 212A, Arlington, VA 22202–4191.

Requesters should provide full name and any former names used, date and place of birth, and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to Consolidated Adjudications Facility, Washington Headquarters Services, Personnel and Security Directorate, 1725 Jefferson Davis Highway, Suite 212A, Arlington, VA 22202–4191.

Requesters should provide full name and any former names used, date and place of birth, and Social Security Number.

Requests must be signed and notarized or, if the individual does not have access to notary services, preceded by a signed and dated declaration verifying the identity of the requester, in substantially the following form: *'I certify that the information provided by me is true, complete, and accurate to the best of my knowledge and belief and this request is made in good faith. I understand that a knowing and willful false, fictitious or fraudulent statement or representation can be punished by fine or imprisonment or both.' (Signature).*

CONTESTING RECORDS PROCEDURES:

The OSD's rules for accessing records, for contesting contents and appealing initial agency determinations are contained in OSD Administrative Instruction No. 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is received from individuals, their attorneys and other authorized representatives; investigative reports from Federal investigative agencies; personnel security records and correspondence; medical and personnel records, reports and evaluations; and correspondence from employing agencies, and DoD and other Federal organizations, agencies and offices.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system may be exempt from certain provisions of 5 U.S.C. 552a(k)(5), as applicable.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b) (1), (2), and (3), (c) and (e) and published in 32 CFR part 311. For additional information contact the system manager.

[FR Doc. 95–13971 Filed 6–6–95; 8:45 am]

BILLING CODE 5000–04–F

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review; Notice

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Control Number: DoD FAR Supplement, Part 244, Subcontracting Policies and Procedures; OMB Control Number 0704–0253

Type of Request: Extension

Number of Respondents: 375

Responses per Respondent: 1

Annual Responses: 375

Average Burden per Response: 80 hours

Annual Burden Hours: 30,000

Needs and Uses: In accordance with Subpart 244.305–70 of the DoD FAR Supplement, contractors are requested to submit plans for correction of deficiencies noted in Contractor Performance System Reviews (CPSRs) within 15 days following completion of the CPSR. The information collected hereby, is used to make decisions regarding purchasing system approval, as a result of the CPSR.

Affected Public: Businesses or other for-profit; Not-for-profit institutions

Frequency: On occasion

Respondent's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: Mr. Peter N. Weiss. Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 2, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–13970 Filed 6–6–95; 8:45 am]

BILLING CODE 5000–04–P

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review; Notice

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title; Applicable Forms; and OMB Control Number: Lock Performance Monitoring System (PMS) Waterway Traffic Report; ENG Forms 3102C and 3102D; OMB Control Number 0710–0008

Type of Request: Reinstatement

Number of Respondents: 3,000

Responses Per Respondent: 251.2

Annual Responses: 753,600

Average Burden Per Response: 2.5 minutes

Annual Burden Hours: 30,898

Needs and Uses: In accordance with 5 USC 554, owners, masters, and clerks of vessels arriving at or departing from certain localities submit waterway traffic log data on ENG Forms 3102C and 3102D. The information collected hereby, is used primarily by the Corps of Engineers in conducting a system-wide approach to planning and management of the waterways. It is additionally used in responding to requests for summary data from Federal, state, and local government agencies, and trade associations and publications.

Affected Public: Businesses or other for-profit; Small businesses or organizations

Frequency: On occasion

Respondent's Obligation: Mandatory

OMB Desk Officer: Mr. Matthew Mitchell. Written comments and recommendations on the proposed information collection should be sent to Mr. Mitchell at the Office of Management and Budget, Desk Officer for DoD, Room 10202, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 2, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–13969 Filed 6–6–95; 8:45 am]

BILLING CODE 5000–04–P

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review; Notice

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title: Terminal and Transfer Facilities Survey; WRSC Forms 1, 2, 3, 4, 5, 6, 7, 8, and 9; OMB Control Number 0710–0007

Type of Request: Reinstatement

Number of Respondents: 1,489

Responses per Respondent: 1

Annual Responses: 1,489

Average Burden per Response: 15 minutes

Annual Burden Hours: 372

Needs and Uses: The information collected hereby, is used by the Corps of Engineers (COE) to compile the annual Port Series Reports required by the Rivers and Harbors Act. It is additionally used within COE for navigation and planning functions, by the Coast Guard for marine safety inspections, by the Department of the Navy for guidance in providing safe passage in time of national emergency, by the Department of the Army for mission deployment planning, and by the public for general reference, planning, and various studies.

Affected Public: State of local governments, Businesses of other for-profit; Small businesses or organizations

Frequency: Annually

Respondent's Obligation: Voluntary

OMB Desk Officer: Mr. Matthew Mitchell

Written comments and recommendations on the proposed information collection should be sent to Mr. Mitchell at the Office of Management and Budget, Desk Officer for DoD, Room 10202, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 2, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–13967 Filed 6–6–95; 8:45 am]

BILLING CODE 5000–04–P

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review; Notice

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title: Intercontinental Ballistic Missile Hardened Intersite Cable System Right-of-Way Landowner/Tenant Questionnaire

Type of Request: Existing collection

Number of Respondents: 4,000

Responses per Respondent: 1

Annual Responses: 4,000

Average Burden per Response: 15 minutes

Annual Burden Hours: 1,000

Needs and Uses: The questionnaire is designed to report changes in ownership/lease information, conditions of missile cable route and associated appurtenances, and projected building/excavation projects. The information collected hereby, is used to ensure system integrity and to maintain a close contact public relations program with involved personnel and agencies.

Affected Public: Individuals or households; Farms

Frequency: Biennially

Respondent's Obligation: Voluntary

OMB Desk Officer: Mr. Edward C. Springer Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 2, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–13968 Filed 6–6–95; 8:45 am]

BILLING CODE 5000–04–P

Department of the Air Force

USAF Scientific Advisory Board Meeting

The Human Systems & Biotechnology Panel of the USAF Scientific Advisory Board will meet on 28 June 1995 at The University of Pennsylvania, PA from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to gather data in support of the 1995 Summer Study on New World Vistas.

The meeting will be opened to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–13841 Filed 6–6–95; 8:45 am]

BILLING CODE 3910–01–P

USAF Scientific Advisory Board Meeting

The Materials Panel of the USAF Scientific Advisory Board will meet on 29–30 June 1995 at Wright Patterson AFB, OH from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to gather data in support of the 1995 Summer Study on New World Vistas.

The meeting will be opened to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–13843 Filed 6–6–95; 8:45 am]

BILLING CODE 3910–01–P

USAF Scientific Advisory Board Meeting

The Materials Panel of the USAF Scientific Advisory Board will meet on 6–7 July 1995 at Palo Alto, CA from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to gather data in support of the 1995 Summer Study on New World Vistas.

The meeting will be opened to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–13840 Filed 6–6–95; 8:45 am]

BILLING CODE 3910–01–P

USAF Scientific Advisory Board Meeting

The Attack Panel of the USAF Scientific Advisory Board will meet on 7–8 July 1995 at Beckman Center, Irvine, CA from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to gather data in support of the 1995 Summer Study on New World Vistas.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–13842 Filed 6–6–95; 8:45 am]

BILLING CODE 3910–01–P

USAF Scientific Advisory Board Meeting

The USAF Scientific Advisory Board's 1995 Summer Study Meeting will meet on 10–21 July 1995 at The Beckman Center, Irvine, CA from 0730 to 5:00 p.m.

The purpose of the meeting is to produce a draft report, highlighting the results of the Technology and Application panels in support of New World Vistas.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–13844 Filed 6–6–95; 8:45 am]

BILLING CODE 3910–01–P

Department of the Army

Privacy Act of 1974; Notice To Delete Systems of Records

AGENCY: Department of the Army, DOD.

ACTION: Notice to delete systems of records.

SUMMARY: The Department of the Army proposes to delete six systems of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: The deletions are effective June 7, 1995.

ADDRESSES: U.S. Army Information Systems Command, ATTN: ASOP-MP, Fort Huachuca, AZ 85613–5000.

FOR FURTHER INFORMATION CONTACT: Ms. Pat Turner at (602) 538–6856 or DSN 879–6856.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The deletions are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: June 2, 1995.

Patricia Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

AAFES 0307.01

SYSTEM NAME:

Carpooling Program *(February 22, 1993, 58 FR 10005).*

Reason: The carpooling program is no longer in effect. Records have been destroyed.

AAFES 0403.05

SYSTEM NAME:

Employee Examination Records *(February 22, 1993, 58 FR 10007).*

Reason: This system is obsolete. AAFES does not require employee examination tests. Records have been destroyed.

AAFES 0408.05

SYSTEM NAME:

Individual Trainee Files *(February 22, 1993, 58 FR 10011).*

Reason: This system is obsolete and no longer maintained by AAFES. Records have been destroyed.

AAFES 0704.07

SYSTEM NAME:

Fidelity Bond Files *(February 22, 1993, 58 FR 10020).*

Reason: This system is obsolete. AAFES no longer requires fidelity bonds. Records have been destroyed.

AAFES 1300.01

SYSTEM NAME:

Resource Management and Cost Accounting Files *(February 22, 1993, 58 FR 10022).*

Reason: This system is obsolete. Records have been destroyed.

[FR Doc. 95–13972 Filed 6–6–95; 8:45 am]

BILLING CODE 5000–04–F

National Security Agency/Central Security Service

Privacy Act of 1974; Notice To Amend a Record System

AGENCY: National Security Agency/Central Security Service, DOD.

ACTION: Notice to amend a record system.

SUMMARY: The National Security Agency/Central Security Service proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendment will be effective on July 7, 1995, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Deputy Director of Policy, National Security Agency, 9800 Savage Road, Ft. Meade, MD 20755–6000.

FOR FURTHER INFORMATION CONTACT: Ms. Pat Schuyler at (301) 688–6527.

SUPPLEMENTARY INFORMATION: The National Security Agency/Central Security Service notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed amendment is not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety.

Dated: June 2, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

GNSA 08

SYSTEM NAME:

NSA/CSS Payroll and Claims *(February 22, 1993, 58 FR 10538).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete second paragraph and replace with 'Decentralized elements of this system may be located at the Defense Intelligence Agency (DIA) Headquarters and DIA field elements, DoD activities supported by DIA, and NSA field elements as authorized and appropriate. For official mailing addresses for any of the decentralized system locations, write to the Deputy Director of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755–6000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Civilian employees and applicants, military assignees, contractors, reemployed annuitants, and personnel under contract or traveling on invitational travel orders employed by NSA/CSS, DIA, and DoD activities supported by DIA.'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with 'National Security Agency Act of 1959, 50 U.S.C. 402 note (Pub. L. 86-36); 50 U.S.C. App. 2160; Titles 5, 10, 31, and 37 of the U.S.C.; Titles 2, 4, 5, and 6 GAO Policy and Procedures Manual for Guidance of Federal Agencies.'

PURPOSE(S):

Delete entry and replace with 'To maintain effective control over and accountability for all relevant appropriated funds; to provide accounting data to support budget requests and control the execution of budgets; to provide financial information required by the Office of Management and Budget; to provide financial information for agency management and payroll activities.'

* * * * *

SAFEGUARDS:

Delete last sentence.

* * * * *

GNSA 08

SYSTEM NAME:

NSA/CSS Payroll and Claims.

SYSTEM LOCATION:

Primary System - National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755–6000.

Decentralized elements of this system may be located at the Defense Intelligence Agency (DIA) Headquarters and DIA field elements, DoD activities supported by DIA, and NSA field elements as authorized and appropriate. For official mailing addresses for any of the decentralized system locations, write to the Deputy Director of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755–6000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian employees and applicants, military assignees, contractors, reemployed annuitants, and personnel under contract or traveling on invitational travel orders employed by NSA/CSS, DIA, and DoD activities supported by DIA

CATEGORIES OF RECORDS IN THE SYSTEM:

File may consist of records on time and attendance; overtime; shift and holiday work; absent without leave reports; payroll deductions, allotments and allowances; requests for leave; payments for travel performed in connection with permanent change of station, temporary duty, invitations, interviews, pre-employment interviews and initial entry on duty. Also included are Pay Adjustment Authorizations (DD Form 139) and Cash Collection Vouchers (DD Form 1131) and, in connection with pay claims, waivers, requests for waivers, documents, correspondence, background data, recommendations and decisions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Security Agency Act of 1959, 50 U.S.C. 402 note (Pub. L. 86-36); 50 U.S.C. App. 2160; Titles 5, 10, 31, and 37 of the U.S.C.; Titles 2, 4, 5, and 6 GAO Policy and Procedures Manual for Guidance of Federal Agencies.

PURPOSE(S):

To maintain effective control over and accountability for all relevant appropriated funds; to provide accounting data to support budget requests and control the execution of budgets; to provide financial information required by the Office of Management and Budget; to provide financial information for agency management and payroll activities.'

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Disclosures from this system may also be made to other federal entities as necessary to effectuate repayment of debts owed the Government.

To other governmental entities in connection with Social Security deductions, unemployment compensation claims, job-related injury and death benefits, tax audit and collections, claims or actions.

The 'Blanket Routine Uses' set forth at the beginning of the NSA/CSS' compilation of systems of records notices apply to this system.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a (f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701 (a) (3)). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal Government; typically, to provide an incentive for debtors to repay delinquent Federal Government debts by making these debts part of their credit records.

Disclosure of records is limited to the individual's name, address, Social Security Number, and other information necessary to establish the individual's identify, the amount, status, and history of the claim; and the agency program under which the claim arose. This disclosure will be made only after the procedural requirement of 31 U.S.C. 3711(f) has been followed.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; file cards; computer paper printouts; machine-readable cards; computer magnetic tapes, disks and other computer storage media.

RETRIEVABILITY:

By name, Social Security Number.

SAFEGUARDS:

For paper, computer printouts and microfilm - Secure limited access facilities, within those facilities secure

limited access rooms and within those rooms lockable containers. Access to information is limited to authorized individuals. For machine records stored on magnetic tape, disk or other computer storage media within the computer processing area - additional secure limited access facilities, specific processing requests from authorized persons only, specific authority to access stored records and delivery to authorized persons only. Remote terminals are secured, are available to authorized persons only, and certain password and other identifying information available to authorized users only is required.

RETENTION AND DISPOSAL:

Records are reviewed annually and retired or destroyed as appropriate. Permanent records are retired to the St. Louis Federal Records Center after completion of audit. Computer records are purged and updated consistent with these retention policies.

SYSTEM MANAGER(S) AND ADDRESS:

Director, National Security Agency/ Central Security Service, Ft. George G. Meade, MD 20755–6000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Deputy Director of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755–6000.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Deputy Director of Policy, National Security Agency/ Central Security Service, Ft. George G. Meade, MD 20755–6000.

CONTESTING RECORD PROCEDURES:

The NSA/CSS rules for contesting contents and appealing initial determinations are published at 32 CFR part 322 or may be obtained by written request addressed to the Deputy Director of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755–6000.

RECORD SOURCE CATEGORIES:

Forms, cards, requests and other documentation submitted by individuals, supervisors, claims officers, Personnel File data, Time, Attendance and Access File data, and other sources as appropriate and required.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Individual records in this file may be exempt pursuant to 5 U.S.C. 552a(k)(1) and (k)(2), as applicable.

An exemption rule for this record system has been promulgated according to the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 322. For additional information contact the system manager.

[FR Doc. 95–13973 Filed 6–6–95; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF EDUCATION

Intent To Repay to the Commonwealth of Pennsylvania Department of Education Funds Recovered as a Result of a Final Audit Determination

AGENCY: Department of Education.

ACTION: Notice of intent to award grantback funds.

SUMMARY: Under section 459 of the General Education Provisions Act (GEPA), the U.S. Secretary of Education (Secretary) intends to repay to the Commonwealth of Pennsylvania Department of Education, the State educational agency (SEA), an amount equal to 75 percent of the $210,000 recovered by the U.S. Department of Education (Department) as a result of a final audit determination. This notice describes the SEA's plan, submitted on behalf of the Philadelphia School District, the local educational agency (LEA), for the use of the repaid funds and the terms and conditions under which the Secretary intends to make those funds available. The notice invites comments on the proposed grantback.

DATES: All comments must be received on or before July 7, 1995.

ADDRESSES: Comments concerning the grantback should be addressed to Mary Jean LeTendre, Director, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 600 Independence Avenue SW (Portals Building, Room 4400), Washington, D.C. 20202–6132.

FOR FURTHER INFORMATION CONTACT: S. Colene Nelson, U.S. Department of Education, 600 Independence Avenue SW (Portals Building, Room 4400), Washington, D.C. 20202–6132. Telephone: (202) 260–0979. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

A. Background

The Department has recovered $210,000 from the SEA in satisfaction of claims arising from an audit of the LEA covering fiscal year (FY) 1987. The claims involved the SEA's administration of Chapter 1 of the Education Consolidation and Improvement Act of 1981 (Chapter 1, ECIA), a program that provided financial assistance to State and local agencies to address the special educational needs of educationally deprived children in areas with high concentrations of children from low-income families.

Specifically, the auditors found that for the period July 1, 1986 through March 18, 1987, the LEA's Office of Planning, Research and Evaluation (OPRE) prorated staff did not maintain time and effort reports properly to support $604,611 of allocable charges under Chapter 1. Alternative documentation in the form of sign-in sheets and evaluation reports was reviewed by the auditors and also found to be inadequate for allocating OPRE salaries to Chapter 1 because it did not demonstrate the actual time that prorated staff spent on Chapter 1 activities. The auditors therefore questioned $604,611 of salaries, fringe benefits, and indirect costs.

On March 19, 1987, the LEA implemented a time and effort reporting system to be used by the OPRE staff. However, the auditors found that for the period March 19, 1987 through June 30, 1987, the time and effort reports maintained by OPRE-prorated staff did not support the full amount of Chapter 1 claims submitted by the LEA. The auditors therefore questioned an additional $20,066 improperly charged to the Chapter 1 program for salaries, fringe benefits, and indirect costs for the remainder period of time. The auditors recommended a total refund to the Department in the amount of $624,677 for the first finding.

In a second finding, the auditors found that the LEA failed to retain documentation supporting student eligibility for the Chapter 1 Reading and English to Speakers of Other Languages (ESOL) projects. Therefore, the teachers' salaries and fringe benefits charged to the Chapter 1 program for the Reading and ESOL projects during the period July 1, 1986 through June 30, 1987 were unsupported. As a result, the auditors identified $137,661 of Chapter 1 salaries, fringe benefits, and indirect costs charged to the Chapter 1 program, for the Reading and ESOL teachers, for

which student eligibility documentation could not be located.

Based on these two findings, the Assistant Secretary for Elementary and Secondary Education (Assistant Secretary) issued a final determination on March 29, 1991, that concluded that salaries, fringe benefits, and indirect costs charged to the Chapter 1 program were unsupported or incorrectly calculated. The determination required a refund totaling $762,338.

The SEA appealed the final determination of the Assistant Secretary through the Office of Administrative Law Judges. Review of additional documentation submitted during this period of appeal and negotiations between the school district and the Department resulted in an order of dismissal issued on April 15, 1992, by the Department settling the audit at $210,000 in questioned costs. Subsequently, on June 4, 1992, the LEA submitted a check for $210,000.

B. Authority for Awarding a Grantback

Section 459(a) of GEPA, 20 U.S.C. 1234h(a), provides that whenever the Secretary has recovered program funds following a final audit determination, the Secretary may consider those funds to be additional funds available for the program and may arrange to repay to the SEA or LEA affected by the determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this grantback arrangement if the Secretary determines that—

(1) Practices or procedures of the SEA or LEA that resulted in the audit determination have been corrected, and the SEA or LEA is, in all other respects, in compliance with the requirements of the applicable program;

(2) SEA has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement that meets the requirements of the program, and, to the extent possible, benefits the population that was affected by the failure to comply or by the misexpenditures that resulted in the audit exception; and

(3) Use of funds to be awarded under the grantback arrangement in accordance with the SEA's plan would serve to achieve the purposes of the program under which the funds were originally granted.

C. Plan for Use of Funds Awarded Under a Grantback Arrangement

Pursuant to section 459(a)(2) of GEPA, the SEA has applied for a grantback of $157,500—75 percent of the principal amount recovered by the Department—and has submitted a plan on behalf of the LEA for use of the grantback funds to meet the special educational needs of educationally deprived children in programs administered under Chapter 1, ESEA (20 U.S.C. 2701 *et seq.* (1988)).

According to the plan, the LEA will use the grantback funds under Chapter 1 to provide six weeks of summer kindergarten to be held at eight schoolwide project sites, two classes per site for a total of 16 classrooms. Participating teachers will attend one planning meeting (2 hours) and a full day of staff development (5 hours) in June in preparation for the program that will begin for students on July 5 and end on August 15, 1995. The participating schools will be selected based on the following two factors: (1) A high concentration of students about to enter first grade who have not had a kindergarten experience, and (2) a high concentration of poverty. The Office of Accountability and Assessment will identify the targeted schools. If space is available, children who entered kindergarten after January 1995 will also be included. Teachers and classroom assistants will telephone parents to keep attendance high.

Each class will be staffed by a teacher and a classroom assistant. The teacher-student ratio will be one to fifteen. The standardized kindergarten curriculum for the LEA will be used as the basis for instruction. Schools will be invited to pilot some special materials to increase hands-on interactive, developmentally appropriate instruction. These materials will be selected by the principal and teachers at the school to coordinate with the instructional model in use at the school. For the sixth week, the first grade teachers to whom the students have been assigned will attend and work with the students. The Early Primary Progress Report (EPPR), a developmentally appropriate kindergarten checklist, will be administered to each participant at the completion of the summer program. Children will be rated as competent, making progress, or making improvement. The results will be summarized to determine attainment of objectives for each class and the program as a whole.

Also, the LEA staff, in consultation with nonpublic school authorities and parents of Chapter 1 students, decided to allocate grantback funds to support summer professional development for 20 teachers of Chapter 1 students, in order to provide these teachers with an opportunity to focus on the needs of the Chapter 1 children they teach and to align the regular education program with Chapter 1 support activities in their schools. Twenty nonpublic schools with the highest concentrations of Chapter 1 program students will be selected for participation. Attendance will be recorded at each staff development session and participating teachers will complete a workshop evaluation survey at the end of the two-week session.

D. The Secretary's Determinations

The Secretary has carefully reviewed the plan submitted by the SEA. Based upon that review, the Secretary has determined that the conditions under section 459 of GEPA have been met. These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary may take appropriate administrative action. In finding that the conditions of section 459 of GEPA have been met, the Secretary makes no determination concerning any pending audit recommendations or final audit determinations.

E. Notice of the Secretary's Intent To Enter Into a Grantback Arrangement

Section 459(d) of GEPA requires that, at least 30 days before entering into an arrangement to award funds under a grantback, the Secretary must publish in the **Federal Register** a notice of intent to do so, and the terms and conditions under which payment will be made.

In accordance with section 459(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the SEA under a grantback arrangement. The grantback award would be in the amount of $157,500.

F. Terms and Conditions Under Which Payments Under a Grantback Arrangement Would Be Made

The SEA and LEA agree to comply with the following terms and conditions under which payment under a grantback arrangement would be made:

(1) The funds awarded under the grantback must be spent in accordance with—

(a) All applicable statutory and regulatory requirements;

(b) The plan that the SEA submitted and any amendments to that plan that are approved in advance by the Secretary; and

(c) The budget that was submitted with the plan and any amendments to the budget that are approved in advance by the Secretary.

(2) All funds received under the grantback arrangement must be obligated by September 30, 1995, in accordance with section 459(c) of GEPA and the SEA's plan.

(3) The SEA, on behalf of the LEA, will, not later than December 31, 1995, submit a report to the Secretary that—

(a) Indicates that the funds awarded under the grantback have been spent in accordance with the proposed plan and approved budget; and

(b) Describes the results and effectiveness of the project for which the funds were spent.

(4) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

Dated: June 1, 1995.

Thomas W. Payzant,

Assistant Secretary for Elementary and Secondary Education.

(Catalog of Federal Domestic Assistance Number 84.010, Educationally Deprived Children—Local Educational Agencies)

[FR Doc. 95–13850 Filed 6–6–95; 8:45 am]

BILLING CODE 4000–01–P

[CFDA No. 84.116N]

Fund for the Improvement of Postsecondary Education—Special Focus Competition: North American Mobility in Higher Education

Notice inviting applications for new awards for fiscal year (FY) 1995.

Purpose of Program: To provide grants or enter into cooperative agreements to improve postsecondary education opportunities by focusing on problem areas or improvement approaches in postsecondary education.

Supplemental Information: This program is a targeted special focus competition under 34 CFR 630.11(b).

Eligible Applicants: Institutions of higher education or combinations of such institutions and other public and private nonprofit educational institutions and agencies.

Deadline for Transmittal of Applications: July 31, 1995.

Deadline for Intergovernmental Review: September 29, 1995.

Applications Available: June 7, 1995.

Available Funds: $1,200,000.

Estimated Range of Awards: $100,000–$150,000 for three years.

Estimated Average Size of Awards: $120,000 for three years.

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75 (except as noted in 34 CFR 630.4(a)(2)), 77, 79, 80, 82, 85, and 86; and (b) the regulations for this program in 34 CFR Part 630.

Priorities

Invitational Priorities

Under 34 CFR 75.105(c)(1) and 34 CFR 630.11(b)(1), the Secretary is particularly interested in applications that meet the following invitational priority. However, an application that meets this invitational priority does not receive competitive or absolute preference over other applications.

Invitational Priority: Projects that support trilateral consortia of institutions of higher education that promote institutional cooperation and student mobility among the United States, Mexico, and Canada.

Selection Criteria

In evaluating applications for grants under this program competition, the Secretary uses the following selection criteria chosen from those listed in 34 CFR 630.32:

(a) *Significance for Postsecondary Education.* The Secretary reviews each proposed project for its significance in improving postsecondary education by determining the extent to which it would—

(1) Achieve the purposes of the particular program competition as referenced in 34 CFR 630.11;

(2) Address the program priorities for the particular program competition;

(3) Address an important problem or need;

(4) Represent an improvement upon, or important departure from, existing practice;

(5) Involve learner-centered improvements;

(6) Achieve far-reaching impact through improvements that will be useful in a variety of ways and in a variety of settings; and

(7) Increase the cost-effectiveness of services.

(b) *Feasibility.* The Secretary reviews each proposed project for its feasibility by determining the extent to which—

(1) The proposed project represents an appropriate response to the problem or need addressed;

(2) The applicant is capable of carrying out the proposed project, as evidenced by, for example—

(i) The applicant's understanding of the problem or need;

(ii) The quality of the project design, including objectives, approaches, and evaluation plan;

(iii) The adequacy of resources, including money, personnel, facilities, equipment, and supplies;

(iv) The qualifications of key personnel who would conduct the project; and

(v) The applicant's relevant prior experience;

(3) The applicant and any other participating organizations are committed to the success of the proposed project, as evidenced by, for example—

(i) Contribution of resources by the applicant and by participating organizations;

(ii) Their prior work in the area; and

(iii) The potential for continuation of the proposed project beyond the period of funding (unless the project would be self-terminating); and

(4) The proposed project demonstrates potential for dissemination to or adaptation by other organizations, and shows evidence of interest by potential users.

(c) *Appropriateness of funding projects.* The Secretary reviews each application to determine whether support of the proposed project by the Secretary is appropriate in terms of availability of other funding sources for the proposed activities.

In accordance with 630.32 the Secretary announces the methods that will be used in applying the selection criteria.

The Secretary gives equal weight to the selection criteria on significance, feasibility, and appropriateness. Within each of these criteria, the Secretary gives equal weight to each of the subcriteria listed above. In applying the criteria, the Secretary first analyzes a preapplication or application in terms of each individual criterion and subcriterion. The Secretary then bases the final judgment of an application on an overall assessment of the degree to which the applicant addresses all selection criteria.

For Applications or Information Contact: Fund for the Improvement of Postsecondary Education (FIPSE), U.S. Department of Education, 600 Independence Avenue, S.W., Room 3100, ROB–3, Washington, D.C. 20202–5175. Telephone: (202) 708–5750 between the hours of 8 a.m. and 5 p.m., Eastern time, Monday through Friday, to order applications or for information. Individuals may request applications by submitting the name of the competition, their name, and postal mailing address to the e-mail address FIPSE@ED.GOV. Individuals may obtain the application text from Internet a ddress http://www.ed.gov/prog__info/FIPSE/. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339

between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 1135–1135a–3.

Dated: May 31, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 95–13851 Filed 6–6–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER94–1188–005, et al.]

LG&E Power Marketing Inc., et al.; Electric Rate and Corporate Regulation Filings

May 30, 1995.

Take notice that the following filings have been made with the Commission:

1. LG&E Power Marketing Inc.

[Docket No. ER94–1188–005]

Take notice that on May 1, 1995, LG&E Power Marketing Inc. tendered for filing certain information as required by the Commission's order dated August 19, 1994. Copies of the informational filing are on file with the Commission and are available for public inspection.

2. ACME Power Marketing, Inc.

[Docket No. ER94–1530–003]

Take notice that on May 18, 1995, ACME Power Marketing, Inc. (ACME), filed certain information as required by the Commission's October 18, 1994, order in Docket No. ER94–1530–000. Copies of ACME's informational filing are on file with the Commission and are available for public inspection.

3. IGI Resources, Inc.

[Docket No. ER95–1034–000]

Take notice that on May 11, 1995, IGI Resources, Inc., (IGI) tendered for filing a petition for waivers and blanket approvals under various regulations of the Commission, and for an order accepting its Rate Schedule No. 1, to be effective the earlier of July 10, 1995 or the date of a Commission order granting approval of this Rate Schedule.

IGI intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where IGI purchases power, including capacity and related services from electric utilities, qualifying facilities, and independent power producers, and resells such power to other purchasers, IGI will be functioning as a marketer. In IGI's marketing transactions, IGI proposes to charge rates mutually agreed upon by the parties. In transactions where IGI does not take title to the electric power and/or energy, IGI will be limited to the role of a broker and will charge a fee for its services. IGI is not in the business of producing nor does it contemplate acquiring title to any electric power transmission facilities.

Rate Schedule No. 1 provides for the sale of energy and capacity at agreed-upon prices.

Comment date: June 12, 1995, in accordance with Standard Paragraph E at the end of this notice.

3a. Madison Gas and Electric Company

[Docket No. ER95–1043–000]

Take notice that on May 15, 1995, Madison Gas and Electric Company (MGE) tendered for filing a service agreement with NorAm Energy Services, Inc., under MGE's Power Sales Tariff. MGE requests an effective date 60 days from the filing date.

Comment date: June 12, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. CINergy Services, Inc., The Cincinnati Gas & Electric Company and PSI Energy, Inc.

[Docket No. ER95–1056–000]

Take notice that on May 17, 1995, CINergy Services, Inc., on behalf of The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI) (together CINergy), filed, pursuant to § 205 of the Federal Power Act and Part 35 of the Commission's Regulations, Notices of Cancellation for CINergy Services to cancel the Interconnection Agreement, dated September 1, 1970, as amended, between CG&E and PSI.

CINergy Services has requested an effective date of October 24, 1994. Said date is the first day of operation of CINergy.

Copies of the filing were served on CG&E, PSI and the state regulatory commissions of Indiana, Ohio and Kentucky.

Comment date: June 12, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Northern States Power Company (Minnesota Company)

[Docket No. ER95–1057–000]

Take notice that on May 17, 1995, Northern States Power Company (Minnesota), (NSP-MIN), tendered for filing an Electric Services Agreement dated February 28, 1994, between NSP-MIN, Northern States Power Company (Wisconsin), (NSP-WI), and the City of Wisconsin Rapids. NSP-MIN files this agreement on behalf of NSP-WI, Wisconsin Rapids and itself.

The Electric Services Agreement provides for the interchange of electrical power and energy between the parties. NSP requests the Commission waive its Part 35 Notice requirements and accept this Agreement for filing effective July 1, 1995.

Comment date: June 12, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. New England Power Company

[Docket No. ER95–1058–000]

Take notice that on May 17, 1995, New England Power Company filed a Service Agreement and Certificate of Concurrence with Louis Dreyfus Electric Power, Inc. For sales and exchanges under NEP's FERC Electric Tariff, Original Volume No. 5.

Comment date: June 12, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Sierra Pacific Power Company

[Docket No. ER95–1059–000]

Take notice that on May 17, 1995, Sierra Pacific Power Company (Sierra), tendered for filing pursuant to § 205 of the Federal Power Act (the Act) and Part 35 of the Commission's Regulations, Amendment No. 1 to the General Transfer Agreement (GTA) between Sierra and Bonneville Power Administration (BPA). (Amendment No. 1 shall hereafter be referred to as the Amendment).

Sierra states that the purpose of the Amendment is to provide for increases in transmission service provided by Sierra under the existing GTA. The Amendment provides for various charges consistent with such increases in service. Sierra requests that the Amendment be accepted and made effective, without change, as of July 16, 1995, that being 60 days after its tender of filing at the Commission. While Sierra states its belief that no waivers of the Act or the Commission's Rules or Regulations are necessary to make effective the Amendment pursuant to its terms, Sierra requests any such waiver necessary or desirable for that purpose.

Sierra asserts that the filing has been served on BPA and on the regulatory commission of Nevada.

Comment date: June 12, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Wisconsin Power and Light Company

[Docket No. ER95–1060–000]

Take notice that on May 17, 1995, Wisconsin Power and Light Company (WPL), tendered for filing a supplement to the existing interconnection and interchange agreement between WPL and Dairyland Power Cooperative.

WPL requests that an effective date concurrent with the contract effective date be assigned. WPL states that copies of the agreement and the filing have been provided to Dairyland Power Cooperative and the Wisconsin Public Service Commission.

Comment date: June 12, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Florida Power & Light Company

[Docket No. ER95–1061–000]

Take notice that on May 17, 1995, Florida Power & Light Company (FPL), tendered for filing proposed Service Agreements with the Orlando Utilities Commission for transmission service under FPL's Transmission Tariff Nos. 2 and 3.

FPL requests that the proposed Service Agreement be permitted to become effective on April 18, 1995, or as soon thereafter as practicable. FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: June 12, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Century Power Corporation

[Docket No. ER95–1067–000]

Take notice that on May 19, 1995, Century Power Corporation (Century), filed an Assignment and Amendment No. 2 to the Assumption Agreement and an Assignment and Amendment No. 2 to the Amended and Restated Interconnection Agreement. Under these agreements, Tucson provides step-up transformation, transmission, exchange and ancillary services to Century and Century's permitted assignee for power produced at San Juan Unit to Tri-State Generation and Transmission Association, Inc., and the filed assignments and amendments transfer to Tri-State rights to service under the agreements. The assignments and amendments are to become effective upon the closing of the sale of the interest in the unit.

Century also has submitted (a) a Notice of Cancellation of the Assumption Agreement as Century FERC Rate Schedule No. 18 and of the Amended and Restated Interconnection Agreement as Century FERC Rate Schedule No. 17, and (b) a Notice of Cancellation of Service Agreement No. 25 under Century's FERC Electric Tariff Original Volume No. 1. These rate schedule cancellations are to become effective coincident with the assignments and amendments described above.

Comment date: June 12, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Public Service Company of New Mexico

[Docket No. ER95–1068–000 New Mexico]

Take notice that on May 19, 1995, Public Service Company of New Mexico (PNM) submitted for filing a copy of an Assignment and Assumption Agreement (Agreement) to be executed between Century Power Corporation (Century) and Tri-State Generation and Transmission Association, Inc. (Tri-State), in connection with Tri-State's intended purchase from Century of an interest in San Juan Generating Station Unit 3. PNM requests that the Agreement be effective the date of the closing of the said purchase transaction and that the Commission's notice requirements be waived.

Copies of this filing have been served upon Century, Tri-State, Tucson Electric Power Company and the New Mexico Public Utility Commission.

Comment date: June 12, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Southwestern Public Service Company

[Docket No. ER95–1069–000]

Take notice Southwestern Public Service Company (Southwestern) on May 19, 1995, tendered for filing a proposed amendment to its rate schedule for service to Central Valley Electric Cooperative, Inc. (Central Valley).

The proposed amendment reflects changes in the maximum commitment at several delivery points as well as adding an additional delivery point for service to Central Valley.

Comment date: June 12, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 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. 95–13881 Filed 6–6–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–509–000, et al.]

Northwest Pipeline Corporation, et al.; Natural Gas Certificate Filings

May 26, 1995.

Take notice that the following filings have been made with the Commission:

1. Northwest Pipeline Corporation

[Docket No. CP95–509–000]

Take notice that on May 23, 1995, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP95–509–000 a request pursuant to Sections 157.205, 157.216 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216, 157.211) for authorization to abandon certain facilities at the Moses Lake Meter Station in Grant County, Washington and to construct and operate replacement facilities at this station to provide existing delivery obligations at this point to Cascade Natural Gas Corporation (Cascade) under Northwest's blanket certificate issued in Docket No. CP82–433–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest proposes to modify the Moses Lake Meter Station, originally certificated in Docket No. G–8934, by replacing the two existing 4-inch orifice meters with two new 6-inch turbine meters and appurtenances to accommodate wide flow rate fluctuations. Northwest also proposes to install a new 750,000 Btu heater and electronic flow measurement equipment. Northwest states that the proposed modifications will not affect

the design capacity of the meter station which is limited by existing regulators to 9,300 Dth per day at 300 psig.

Northwest estimates the total cost of the proposed facility modification at the Moses Lake Meter Station to be approximately $312,350, including the cost of removing the old facilities. Northwest states that it will not require any cost reimbursement from Cascade.

Comment date: July 10, 1995, in accordance with Standard Paragraph G at the end of this notice.

2. Northwest Pipeline Corporation

[Docket No. CP95–510–000]

Take notice that on May 23, 1995, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP95–510–000 a request pursuant to Sections 157.205, 157.211, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211, and 157.216) for authorization to replace certain obsolete and undersized facilities at its Winlock Meter Station in Lewis County, Washington, in order to better accommodate its existing firm maximum daily delivery obligations (MDDO) to Washington Natural Gas Company (Washington Natural), under Northwest's blanket certificate issued in Docket No. CP82–433–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest states that it presently has firm obligations to deliver up to a total of 400 Dt per day (at 400 psig) under Rate Schedule TF–1, to Washington Natural at the Winlock delivery point. Northwest further states that the Winlock Meter Station has a maximum design delivery capacity of approximately 280 Dt per day (at 400 psig). Since the maximum design capacity of the Winlock Meter Station is less then Northwest's firm delivery obligation to Washington Natural, Northwest is proposing to upgrade the Winlock Meter Station by replacing the two existing undersized 1-inch regulators with two new 1-inch regulators, with 1/4-inch trim; and by replacing the obsolete 2-inch positive displacement meter with one new 2-inch turbine meter and one new 2-inch Roots meter and appurtenances. Northwest states that it is installing two replacement meters in order to more accurately measure the high and low flows through the meter station. It is stated that the proposed facility upgrade will increase the maximum design delivery capacity of the Winlock Meter Station from 280 Dt per day to approximately 425 Dt per day at a pressure of 400 psig.

Northwest has estimated the cost of the proposed facility upgrade at the Winlock Meter Station to be approximately $59,446 which includes the cost of removing the old facilities. Northwest avers that since this expenditure is necessary in order for Northwest to accommodate existing MDDO's at the Winlock Meter Station, Northwest will not require any cost reimbursement from Washington Natural.

Comment date: July 10, 1995, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–13880 Filed 6–6–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–514–000, et al.]

Northern Natural Gas Company, et al.; Natural Gas Certificate Filings

May 30, 1995

Take notice that the following filings have been made with the Commission:

1. Northern Natural Gas Company

[Docket No. CP95–514–000]

Take notice that on May 24, 1995, Northern Natural Gas Company (Northern), P.O. Box 3330, Omaha, Nebraska 68103–0330, filed in Docket No. CP95–514–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to upgrade an existing delivery point to accommodate increased natural gas deliveries to Northern States Power—Wisconsin (NSP–W), for delivery at the Hudson town border station, located in St. Croix County, Wisconsin, under the blanket certificate issued in Docket No. CP82–401–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern states that NSP–W has requested the upgrade of the delivery point to accommodate growth of gas requirements in this area. Northern asserts that the proposed peak day volumes will increase from 8,500 Mcf to 12,000 Mcf and the annual volumes will increase from 1,100,000 Mcf to 2,444,000 Mcf and will be used for residential, commercial and industrial consumption. Northern claims that the deliveries of the estimated volumes to NSP–W at the upgraded delivery point will be made pursuant to Northern's currently effective throughput service agreements with NSP–W.

Northern estimates that the proposed cost to upgrade the delivery point is $181,000 and NSP–W will reimburse Northern for the cost of upgrading the delivery point.

Northern states that the delivery of NSP–W's volumes will impact Northern's peak day and annual deliveries. Northern claims that the total volumes to be delivered to the customer after the request do not exceed the total volumes authorized prior to the request. Northern claims that the proposed activity is not prohibited by its existing tariff and that it has sufficient capacity to accommodate the proposed changes without detriment to Northern's other customers.

Comment date: July 14, 1995, in accordance with Standard Paragraph G at the end of this notice.

2. Questar Pipeline Company

[Docket No. CP95–520–000]

Take notice that on May 25, 1995, Questar Pipeline Company (Questar), 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP95–520–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for permission and approval to abandon a 12-inch meter run and a 12-inch meter located within the confines of Questar's jurisdictional Bonanza Measuring and Regulating Station (Bonanza M&R) in Uintah, Utah. Questar makes such request under its blanket certificates issued in Docket No. CP82–491–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Questar is proposing to abandon, by removal, a 12-inch meter run comprising approximately 40 feet of 12¾-inch diameter pipe and a 12 inch meter located at Questar's Bonanza M&R in Section 30, Township 9 South, Range 25 East, Uintah County, Utah. Questar explains that it has been 11 years since the Bonanza 12-inch meter run was last utilized as a custody-transfer point. Questar states that it proposes to remove the 12-inch meter run to provide space for the installation of a 100-barrel slug catcher required for the removal of liquids from Questar's Main Line No. 68. Questar states that the total investment associated with the Bonanza 12-inch meter run proposed to be abandoned is $8,575.

Comment date: July 14, 1995, in accordance with Standard Paragraph G at the end of this notice.

3. Equitrans, Inc.

[Docket No. CP95–523–000]

Take notice that on May 25, 1995, Equitrans, Inc. (Equitrans), 3500 Park Lane, Pittsburgh, Pa 15275, filed in Docket No. CP95–523–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, and 157.212) for approval to construct and operate a delivery tap located in the City of Waynesburg, Pa for delivery of natural gas to Equitable Gas Company (Equitable), an affiliate, for redelivery to its customer, Ralph D. Black, an individual, under the blanket certificate issued in Docket No. CP83–508–000 and transferred to Equitrans in Docket No. CP86–676–000, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Equitrans proposes to construct a delivery tap on its transmission line F–119 in the City of Waynesburg, Pennsylvania. Equitrans indicates that it will charge Equitable the applicable transportation rate contained in Equitrans' FERC Gas Tariff on file and approved by the Commission. Equitrans further indicates that it will offer the proposed service within the existing certificated transportation entitlement of Equitable under Equitrans' Rate Schedule FTS. Equitrans states that its tariff does not prohibit this type of service.

Equitrans projects that the quantity of gas to be delivered through the proposed delivery tap will be approximately one Mcf on a peak day. It is indicated that the total volumes to be delivered to Equitable after this request do not exceed the total volumes authorized prior to this request. It is further indicated that the one Mcf per day of peak service requested is within the entitlement of Equitable. Equitrans states that the new delivery tap will not impact its peak day and annual deliveries. Equitrans further state that it has sufficient capacity to accomplish the deliveries without detriment to its other customers.

Comment date: July 14, 1995, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs:

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–13882 Filed 6–6–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER95–571–000]

Central Vermont Public Service Corp.; Notice of Filing

June 1, 1995.

Take notice that on April 10, 1995, Central Vermont Public Service Corporation (Central Vermont) tendered for filing additional supporting cost data to its Transformer Joint Ownership Agreement.

Central Vermont requests the Commission to waive its notice of filing requirement to permit the amendment to become effective on the in-service date of the transformer. In support of its request Central Vermont states that allowing the Service Agreement to become effective as provided will enable the Company and its customers to achieve mutual benefits.

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 June 8, 1995. 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. 95–13855 Filed 6–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP94–342–001 and MT95–11–000]

Crossroads Pipeline Co.; Notice of Initial Tariff Filing

June 1, 1995.

Take notice that on May 19, 1995, Crossroads Pipeline Company (Crossroads), 801 East 86th Avenue, Merrillville, Indiana 46410, filed in Docket Nos. CP94–342–001 and MT95–11–000 its FERC Gas Tariff, Original Volume No. 1, with a proposed effective date of June 1, 1995.

Crossroads states that the initial tariff filing reflects the modifications made in the *pro forma* tariff and rates appended to Crossroads' original certificate application in compliance with the Commission's April 21, 1995, order granting Crossroads its certificate in Docket No. CP94–342–000, 71 FERC ¶61,076.

Any person desiring to be heard or to protest the subject 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 sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure: 18 CFR 385.211 and 385.214. All such motions and protests should be filed on or before June 12, 1995. 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. 95–13854 Filed 6–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 1986 Oregon]

Oregon Trail Electric Consumers Cooperative Inc.; Notice Soliciting Applications

June 1, 1995.

On July 1, 1991, Oregon Trail Electric Consumers Inc., licensee for the Rock Creek Hydroelectric Project No. 1986, filed a notice of intent to file an application for a new license, pursuant to Section 15(b)(1) of the Federal Power Act (Act). The original license for Project No. 1986 was issued effective June 30, 1946, and expires June 29, 1996. The project occupies 6.29 acres of lands of the United States within the Whitman National Forest.

The project is located on the Rock Creek, a tributary of the Powder River, in Baker County, Oregon. The principal project works consist of: (a) a low concrete diversion dam; (b) a 8,800-foot-long flume; (c) a regulating forebay of about 7-acre-feet; (d) a 2,720-foot-long penstock; (e) a powerhouse with a total installed capacity of 800 kW; (f) a transmission line; and (g) appurtenant facilities.

The licensee did not file an application for new license which was due by June 29, 1994. Pursuant to Section 16.25 of the Commission's Regulations, the Commission is soliciting applications from potential applicants other than the existing licensee. This is necessary because the deadline for filing an application for new license and any competing license applications, pursuant to Section 16.20 of the regulations, was June 29, 1994, and no other applications for license for this project were filed.

Pursuant to § 16.19 of the Commission's Regulations, the licensee is required to make available certain information described in Section 16.7 of the regulations. Such information is available from the licensee at 3275 Baker Street, Baker City, OR 97814.

A potential applicant that files a notice of intent within 90 days from the date of issuance of this notice: (1) may apply for a license under part I of the Act and part 4 (except Section 4.38) of the Commission's Regulations within 18 months of the date on which it files its notice; and (2) must comply with the requirements of Section 16.8 of the Commission's Regulations.

Lois D. Cashell,

Secretary.

[FR Doc. 95–13853 Filed 6–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2931, Maine]

S. D. Warren Co.; Notice of Intent To File an Application for a New License

June 1, 1995.

Take notice that the S. D. Warren Company, the existing licensee for the Gambo Power Station, Project No. 2931, filed a timely notice of intent to file an application for a new license, pursuant to 18 CFR 16.6 of the Commission's Regulations. The original license for Project No. 2931 was issued effective April 1, 1962, and expires April 31, 2000.

The project is located on the Presumpscot River in Cumberland County, Maine. The principal works of the Gambo Project include a 250-foot-long, 24-foot-high concrete overflow dam; a reservoir with a normal water surface elevation of 138.8 feet m.s.l.; a structure with sluice gates; a 15-foot-deep, 737-foot-long concrete lined canal; a concrete and brick powerhouse containing two 950-Kw generators; generator leads, step-up transformer, and an eight-mile-long transmission line; and appurtenant facilities.

Pursuant to 18 CFR 16.7, the licensee is required henceforth to make available certain information to the public. This information is now available from the licensee at 89 Cumberland Street, P.O. Box 5000, Westbrook, Maine 04098–1597.

Pursuant to 18 CFR 16.8, 16.9 and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 hours prior to the expiration of the existing license. All applications for license for this project must be filed by August 31, 1998.

Lois D. Cashell,

Secretary.

[FR Doc. 95–13852 Filed 6–6–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–140232; FRL–4953–4]

Syracuse Research Corporation and SRA Technologies, Inc.; Access to Confidential Business Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Syracuse Research Corporation (SRC) of Syracuse, New York, and SRC's subcontractor, SRA Technologies, Inc. (SRA) of Falls Church, Virginia, for access to information which has been submitted to EPA under sections 4, 5, 6, 8, and 21 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than June 21, 1995.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, TSCA Environmental Assistance Division (7408), 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: Under contract number 68–D5–0012, contractor SRC of Merrill Lane, Syracuse, NY 13210 and its subcontractor SRA of 8110 Gatehouse Rd., Suite 600, Falls Church, VA 22042 will assist the Office of Pollution Prevention and Toxics (OPPT) in performing hazard and exposure assessments, risk assessments, organizing review panels and workgroups, and assisting in developing test guidelines and standards.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–D5–0012, SRC and SRA will require access to CBI submitted to EPA under sections 4, 5, 6, 8, and 21 of TSCA to perform successfully the duties specified under the contract. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, 8, and 21 of TSCA that EPA may provide SRC and SRA access to these CBI materials on a need-to-know basis only. Access to TSCA CBI will take place at EPA Headquarters, at SRC's site at 1745 Jefferson Davis Highway, Arlington, VA and at SRA's Falls Church, VA site. The EPA TSCA Security Staff has inspected SRC's facility and has determined that the facility is in compliance with the *TSCA Confidential Business Information Security Manual.* The EPA TSCA Security Staff will also perform the required inspection of SRA's facility, and ensure that the facility is in compliance with the manual.

Clearance for access to TSCA CBI under this contract may continue until January 31, 2000.

SRC and SRA personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Access to confidential business information.

Dated: May 8, 1995.

George A. Bonina,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 95–13962 Filed 6–6–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–34077; FRL 4956–2]

Notice of Receipt of Requests for Amendments to Delete uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on September 5, 1995.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

II. Intent to Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in the 26 pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names, active ingredients and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before September 5, 1995 to discuss withdrawal of the applications for amendment. This 90–day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion.

TABLE 1.—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
000279–03014	Pounce 3.2 EC Insecticide	Permethrin, mixed CIS, trans	Cotton, pears (summer use only), fennel, mushrooms, sweet corn (fresh market use in FL)
000279–03051	Pounce 25 WP Insecticide	Permethrin, mixed CIS, trans	Cotton, pears (summer use only), fennel, mushrooms, sweet corn (fresh market use in FL)
000279–03083	Pounce WSB Insecticide	Permethrin, mixed CIS, trans	Cotton, pears (summer use only, fennel, mushrooms, sweet corn (fresh market use in FL)
000352–00400	Oxamyl Technical 42	Oxamyl	Ornamental uses
000499–00367	Whitmire PT 275 Dur-O-Cap Microencapsulated Chlorpyrifor Liquid Concentrate	Chlorpyrifos	Indoor pest control
002217–00765	Embark 1–L Plant Growth Regulator	Potassium mefluidide	Highway rights-of-way, utility rights-of-way, roads
002548–00027	Max Kill Malathion 57–WE	Malathion	Sunflower seed storage & processing facilities, vegetables grown in commercial greenhouses (cucumbers, endive, lettuce, radish, tomatoes, watercress), hogs, sheep, goats, horses, beef non-milking cattle, poultry (chicken ducks, geese, turkeys), domestic pets (dogs & cats), plants processing dry milk, crack & crevice treatment in food handling establish ments (food areas & non-food areas)
002724–00340	Zoecon RF–256 Aerosol	Propetamphos	Food processing (mills dairies), meat & poultry plants, food packing (canning, bottling), food and/or feed warehouses
004816–00628	PY-SY Concentrate	Pyrethrins, Resmethrin	Greenhouses
005549–00049	Cythion 5–EC		Stored grains, grains going into storage, residual storage treatments, indoor uses, pet & domestic animal uses
007501–00029	Lorsban 50 SL Seed Treatment	Chlorpyrifos	Field corn use against soil insects

TABLE 1.—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
007501–00031	Lorsban 30 Flowable	Chlorpyrifos	Field corn use against soil insects
010182–00018	Ambush Insecticide	Permethrin, mixed CIS, trans	Cotton, pears (summer use only, fennel, mushrooms, sweet corn (fresh market use in FL)
010182–00035	Ambush 25W Insecticide	Permethrin, mixed CIS, trans	Cotton, pears (summer use only, fennel, mushrooms, sweet corn (fresh market use in FL)
010182–00110	Ambush 25W Insecticide, Water Soluble Packet	Permethrin, mixed CIS, trans	Cotton, pears (summer use only, fennel, mushrooms, sweet corn (fresh market use in FL)
010182–00152	EPTAM 6–E Selective Herbicide	EPTC	Table beets flax, sweet potatoes, green peas
010182–00155	EPTAM 5–G Selective Herbicide	EPTC	Sweet potatoes
010182–00160	EPTAM 10–G Selective Herbicide	EPTC	Table beets, flax
010182–00199	EPTAM 20–G Selective Herbicide	EPTC	Table beets & flax
010182–00220	MPTAM 7–E Selective Herbicide	EPTC	Table beets, flax, sweet Potatoes, green peas
010370–00064	Ford's Dursban Insecticide Concentrate	Chlorpyrifos	Broad area mosquito control
010370–00256	Ford's Malathion 57% EC	Malathion	All vegetable crops, fruit & nut crops, vegetables grown in commercial greenhouses, field crops, pasture & range grasses, stored almonds, stored peanuts
045728–00024	UCB Thiram 65 WP	Thiram	Dust application on apples and strawberries
051036–00152	Chlorpyrifos 2E	Chlorpyrifos	Mosquito use
051036–00154	Chlorpyrifos 4E	Chlorpyrifos	Mosquito use
067517–00002	Purina Malathion Spray	Malathion	Buildings, poultry, poultry ranges, beef cattle, horses, hogs, sheep, goats, sugar beet tops, soybeans, stored grain (rice, grain sorghum, field or garden seed, wheat, oats, corn rye, barley), boxcars (packaged cereals, pet foods, bagged flour, feedstuffs), dogs & cats, cauliflower, beets, apples, peaches, cherries, plums pears, pecan, grapes, ornamental shrubs, grains going into storage, stored grain surfaces, melons

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2.—REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Company No.	Company Name and Address
000279	FMC Corp., Agricultural Chemical Group, 1735 Market St., Philadelphia, PA 19103.
000352	DuPont Agricultural Products, Walker's Mill, Barley Mill Plaza, P.O. Box 80038, Wilmington, DE 19880.
000499	Whitmire Research Laboratories Inc., 3568 Tree Court Industrial Blvd., St. Louis, MO 63122.
002217	PBI/Gordon Corp., P.O. Box 014090, 1217 West 12th St., Kansas City, MO 64101.
002548	Research Products Co., Div. of McShares, Inc., 1835 E. North St., P.O. Box 1460, Salina, KS 67402.
002724	Sandoz Agro, Inc., 1300 E. Touhy Ave., Des Plaines, IL 60018.
004816	Roussel Uclaf Corp., 95 Chestnut Ridge Road, Montvale, NJ 07645.
005549	Coastal Chemical Corp., P.O. Box 856, Greenville, NC 27834.
007501	Gustafson, Inc., P.O. Box 660065, Dallas, TX 75266.
010182	Zeneca Ag Products, P.O. Box 15458, Wilmington, DE 19850.

TABLE 2.—REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

Company No.	Company Name and Address
010370	Agrevo Environmental Health, 95 Chestnut Ridge Road, Montvale, NJ 07645.
045728	UCB Chemicals Corp., c/o Compliance Services International, 2001 Jefferson Davis Hwy., Suite 1010, Arlington, VA 22202.
051036	Micro Flo Co., P.O. Box 5948, Lakeland, FL 33807.
067517	PM Resources, Inc., 13001 St. Charles Rock Rd., Bridgeton, MO 63044.

III. Existing Stocks Provisions

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: May 25, 1995.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 95–13786 Filed 6–6–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2076]

June 2, 1995.

Petition for Reconsideration of Actions in Rulemaking Proceedings

Petition for reconsideration has been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to this petition must be filed June 22, 1995. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to the opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Price Cap Regulation of Local Exchange Carriers—Rate-of-Return Sharing and Lower Formula Adjustment. (CC Docket No. 93–179)

Number of Petition Filed: 1

Subject: Amendment of Section 73.606(b), Table of Allotments, Television Broadcast Stations. (Osage Beach, Missouri)

Number of Petition Filed: 1

Subject: Amendment of Section 73.202(b), Table of Assignments, FM Broadcast Stations. (Chatom, Alabama)

Number of Petition Filed: 1.

Federal Communication Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 95–13860 Filed 6–6–95; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1053–DR]

Illinois; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Illinois (FEMA–1053–DR), dated May 30, 1995, and related determinations.

EFFECTIVE DATE: May 30, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 30, 1995, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Illinois, resulting from severe storms and flooding on May 15, 1995 and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of Illinois.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas. Public Assistance may be added at a later date, if requested and warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Phil Zaferopulos of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Illinois to have been affected adversely by this declared major disaster:

The counties of Madison and St. Clair for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 95–13904 Filed 6–6–95; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1052–DR]

South Dakota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of South Dakota (FEMA–1052–DR), dated May 26, 1995, and related determinations.

EFFECTIVE DATE: May 26, 1995.

FOR FURTHER INFORMATION CONTACT:

Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 26, 1995, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of South Dakota, resulting from severe storms, flooding, and ground saturation due to high water tables on March 1, 1995, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of South Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Disaster Unemployment Assistance may be provided at a later date, if warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint David P. Grier, IV of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of South Dakota to have been affected adversely by this declared major disaster:

The counties of Aurora, Beadle, Brookings, Brown, Brule, Buffalo, Butte, Campbell, Charles Mix, Clark, Codington, Davison, Day, Deuel, Edmunds, Faulk, Gergory, Hamlin, Hand, Hanson, Hughes, Hyde, Jerauld, Jones, Kingsbury, Lawrence, Lyman, McPherson, Marshall, Meade, Pennington, Potter, Roberts, Sanborn, Spink, Stanley, Sully, and Tripp for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dated: May 30, 1995.

James L. Witt,

Director.

[FR Doc. 95–13905 Filed 6–6–95; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL RESERVE SYSTEM

First Citizens Bancorporation of South Carolina, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has 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)).

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 to the Reserve Bank indicated for that application 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.

Comments regarding this application must be received not later than July 3, 1995.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. First Citizens Bancorporation of South Carolina, Inc., Columbia, South Carolina; to merge with SNB Financial Corporation, Summerville, South Carolina, and thereby indirectly acquire Summerville National Bank, Summerville, South Carolina.

Board of Governors of the Federal Reserve System, June 1, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–13878 Filed 6–6–95; 8:45 am]

BILLING CODE 6210–01–F

Stewart Associates; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than June 21, 1995.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Stewart Associates, York, Pennslyvania; to retain 15 percent of the voting shares of Drovers Bancshares Corporation, York, Pennsylvania, and thereby indirectly retain Drovers and Mechanics Bank, York, Pennyslvania.

Board of Governors of the Federal Reserve System, June 1, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–13879 Filed 6–6–95; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRANSIT ADMINISTRATION

Environmental Impact Statement on the Metro-North Commuter Railroad Dover Plains Branch Improvement Program Between Dover Plains and Wassaic, Dutchess County, NY

AGENCY: Federal Transit Administration (FTA).

ACTION: Notice of Intent.

SUMMARY: The Federal Transit Administration (FTA) and Metro-North Commuter Railroad (Metro-North) intend to prepare an environmental impact statement (EIS), in accordance with the National Environmental Policy Act of 1969, on a proposal by Metro-North to extend commuter railroad service for approximately 5 miles on the Dover Plains Branch of the Harlem Line from the Village of Dover Plains to the Hamlet of Wassaic in the Town of Amenia, Dutchess County, New York.

The Proposed Action, also known as the Wassaic Extension Project, will extend north on the former Penn Central owned right-of-way from the existing Dover Plains Station, pass immediately to the west of the Wassaic Developmental Center (WDC) paralleling NYS Route 22/343, pass through the hamlet of Wassaic, and terminate approximately 3,200 feet (0.6 mile) north of the hamlet adjacent to NYS Route 22/343. The action also includes the construction of a rail yard, station, and 250 parking spaces (150 paved, 100 unpaved) to be located on a site along the alignment just north of Wassaic at the terminus of the proposed extension. A smaller passenger station will be constructed at the WDC with a parking lot of 50 spaces. The total length of the extension project is 5 miles.

The proposed project is intended to help relieve an existing congested parking situation at Dover Plains station, increase the operating efficiency of Metro-North and expand Metro-North's market.

In addition to the Proposed Action, the EIS will evaluate a No-Build alternative and two (2) Build alternatives, as well as any additional alternative(s) generated through the scoping process.

Scoping will be accomplished through correspondence with interested persons and organizations, as well as with federal, state, and local agencies. One (1) public scoping meeting will be conducted.

COMMENT DUE DATE: Written comments on the scope of alternatives and impacts should be submitted by July 20 to Ms. Janet Mainiero, Metro-North Commuter Railroad, 347 Madison Avenue, New York City, New York 10017. Verbal comments should be made at the scoping meeting scheduled below. Verbal comments made at the scoping meeting will be transcribed. Assistance will be provided for the hearing impaired.

SCOPING MEETING: The public scoping meeting concerning the proposed Wassaic Extension Project will be held on: June 20, 1995, 7:00 p.m., Town Hall, Amenia, New York.

FOR FURTHER INFORMATION CONTACT: Ms. Letitia A. Thompson, Deputy Regional Administrator, Federal Transit Administration, 26 Federal Plaza, New York, New York 10278 at 212–264–8162 or Janet Mainiero, Project Director, Metro-North Railroad, 347 Madison Avenue, New York, New York 10017 at 212–340–4834.

SUPPLEMENTARY INFORMATION: FTA and Metro-North Commuter Railroad invite all interested individuals and organizations, as well as federal, state, and local agencies, to participate in identifying the alternatives to be evaluated in the EIS and identifying any significant social, economic, and environmental issues related to the Proposed Action and Alternatives described below. During the scoping process, comments should focus on identifying specific social, economic, and/or environmental issues to be evaluated and suggesting alternatives which may be less costly or less environmentally damaging, while achieving similar transportation objectives. Scoping is not the appropriate forum in which to indicate preference for a particular alternative. Comments on preferences should be communicated after the draft EIS has been completed and issued for review and comment. If you wish to be placed on the mailing list to receive further information as the project develops, contact Ms. Mainiero as described above. Following the public scoping meeting a scoping document will be prepared that will contain the transcript from the public scoping meeting, any written comments received, an outline of the decisions that have been made during the scoping process, and a summary of the issues to be evaluated in a draft EIS.

Description of the Study Area and Project Need

The corridor is approximately 5 miles long, stretching between the village of Dover Plains and the Hamlet of Wassaic, in the Town of Amenia, Dutchess County, New York. It is oriented on a north-south axis. The proposed project is intended to provide service to people residing beyond the current Dover Plains terminus, expand Metro-North's market, help relieve an existing congested parking situation at the Dover Plains station, provide more frequent service to the area, and improve the quality of life in the region by implementing a transit project which conforms to the intent of the Clean Air Act Amendments (CAAA) of 1990. In addition, the proposed rail yard will allow Metro-North to increase the efficiency of its operation.

Previous Activity

Metro-North has performed some preliminary analysis on the feasibility of extending the Dover Plains Branch service. Meetings were held with locally elected officials regarding this work. Furthermore, the project has been discussed at public meetings conducted by the Poughkeepsie-Dutchess County Metropolitan Planning Organization (MPO) in 1993 and 1994.

Alternatives

The alternatives proposed for evaluation include:

(1) No Build—This alternative involves no change to transportation services or facilities in the corridor.

(2) The Proposed Action—The Proposed Action involves a 5-mile extension of the Dover Plains Branch on the Harlem Line to a point 3,200 feet (0.6 mile) north of the hamlet of Wassaic where a rail yard, passenger station, and a parking lot consisting of approximately 250 spaces will be constructed. In addition, a small passenger station will also be constructed at the WDC with a parking lot of 50 spaces.

(3) Alternative 1—Alternative 1 includes all the elements of the Proposed Action, except for one passenger station and parking lot. The passenger station and approximately 250-space parking lot will be constructed within the hamlet of Wassaic.

(4) Alternative 2—Alternative 2 involves the extension of the Dover Plains Branch on the Harlem Line to a point approximately 2,000 feet (0.4 mile) north of the existing terminus of Dover Plains. A rail yard and a 250-space parking lot will be constructed in an agricultural parcel immediately north of the Tenmile River. The parking lot will serve the existing station at Dover Plains.

In addition to the construction discussed above, the Build Alternatives will also require track replacement, bridge rehabilitation, and other improvements to bring the existing rail line up to operational standards. The extent of this work is dependent upon the distance of track required for each alternative.

The proposed project and alternatives are based upon the initial technical work performed to date and consultations with local and state officials.

Since the proposed action is preliminary, consideration will be given to modifications to it and the existing alternatives, as well as additional reasonable alternatives. Regard also would be provided to any relevant concerns.

Probable Effects

In the EIS, FTA/Metro-North will evaluate all significant social, economic, and environmental effects, or impacts, of the alternatives. Environmental and social impacts proposed for analysis include water quality, wetlands, cultural resources, community facilities, and traffic and parking impacts near

stations. Impacts on land use, aesthetics, hazardous waste sites, and noise and vibration will also be addressed. The impacts will be evaluated for the construction period and for the long-term period of operation. Measures to mitigate any significant adverse impacts will be considered.

FTA Procedures

The EIS process will be performed in accordance with Federal Transit Laws and FTA's regulations and guidelines for preparing an Environmental Impact Statement. The impacts of the project will be assessed and, if necessary, the scope of the project will be revised or refined to minimize and mitigate any adverse impacts. After its publication, the draft EIS will be available for public and private agency review and comment. One public hearing will be held. On the basis of the draft EIS and comments received, the project will be revised or further refined as necessary and the final EIS completed.

Issued on June 5, 1995.

Letitia A. Thompson,

Deputy Regional Administrator.

[FR Doc. 95–14069 Filed 6–5–95; 2:20 pm]

BILLING CODE 4910–57–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Members on Public Advisory Committees; Veterinary Medicine Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for members to serve on the Veterinary Medicine Advisory Committee in FDA's Center for Veterinary Medicine. Nominations will be accepted for vacancies that will or may occur during the next 16 months.

FDA has a special interest in ensuring that women, minority groups, and individuals with disabilities are adequately represented on advisory committees and, therefore, extends particular encouragement to nominations for appropriately qualified female, minority, or disabled candidates.

DATES: No cutoff date is established for receipt of nominations.

ADDRESSES: All nominations for membership should be submitted to Gary E. Stefan (address below).

FOR FURTHER INFORMATION CONTACT: Gary E. Stefan, Center for Veterinary Medicine (HFV–244), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1769.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for members to serve on the committee. The function of the committee is to review and evaluate available data concerning safety and effectiveness of marketed and investigational new animal drugs, feeds, and devices for use in the treatment and prevention of animal disease and increased animal production.

Criteria for Members

Persons nominated for membership on the Veterinary Medicine Advisory Committee shall have adequately diversified experience appropriate to the work of the committee in such fields as companion animal medicine, food animal medicine, avian medicine, microbiology, biometrics, toxicology, pathology, pharmacology, animal science, and chemistry. The specialized training and experience necessary to qualify the nominee as an expert suitable for appointment is subject to review, but may include experience in medical practice, teaching, and/or research relevant to the field of activity of the committee. The term of office is 4 years.

Nomination Procedures

Any interested person may nominate one or more qualified persons for membership on the committee. Nominations shall state that the nominee is willing to serve as a member of the committee and appears to have no conflict of interest that would preclude committee membership. FDA will ask the potential candidates to provide detailed information concerning such matters as employment, financial holdings, consultancies, and research grants or contracts to permit evaluation of possible sources of conflict of interest.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: May 25, 1995.

Linda A. Suydam,

Interim Deputy Commissioner for Policy.

[FR Doc. 95–13829 Filed 6–6–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95M–0121]

EP Technologies, Inc.; Premarket Approval of EPT–1000 Cardiac Ablation System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by EP Technologies, Inc., Sunnyvale, CA, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the EPT–1000 Cardiac Ablation System. After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of October 28, 1994, of the approval of the application.

DATES: Petitions for administrative review by July 7, 1995.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mark Massi, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8609.

SUPPLEMENTARY INFORMATION: On September 28, 1992, EP Technologies, Inc., Sunnyvale, CA 94086, submitted to CDRH an application for premarket approval of the EPT–1000 Cardiac Ablation System. The device is a radio frequency-powered cardiac catheter ablation system and is indicated for interruption of accessory atrioventricular (AV) conduction pathways associated with tachycardia, treatment of AV nodal re-entrant tachycardia, and for creation of complete AV block in patients with a rapid ventricular response to an atrial arrhythmia-typically chronic, drug refractory atrial fibrillation.

On May 2, 1994, the Circulatory System Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On October 28, 1994, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the

Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before July 7, 1995, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: May 26, 1995.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 95–13827 Filed 6–6–95; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Grants to Improve Emergency Medical Services and Trauma Care in Rural Areas

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of extension of application due date.

SUMMARY: This notice extends the application due date for grants to improve emergency medical services (EMS) and trauma care in rural areas. The application due date for the EMS/trauma care grants in rural areas is extended to July 19, 1995. All other aspects of the April 20, 1995, **Federal Register** notice (60 FR 19753) remain the same.

Dated: June 1, 1995.

Ciro V. Sumaya

Administrator.

[FR Doc. 95–13883 Filed 6–6–95; 8:45 am]

BILLING CODE 4160–15–P

National Practitioner Data Bank: Change in User Fee

The Health Resources and Services Administration (HRSA), Public Health Service (PHS), Department of Health and Human Services (DHHS), is announcing a change in the fee charged to entities authorized to request information from the National Practitioner Data Bank (Data Bank).

The user fee of $6.00 for queries submitted by diskette or telecommunications network, with a $4.00 surcharge added for queries submitted on paper, was announced in the **Federal Register** on June 1, 1993 (58 FR 31215).

The Data Bank is authorized by the Health Care Quality Improvement Act of 1986 (the Act), title IV of Public Law 99–660, as amended (42 U.S.C. 11101 *et seq.*). Section 427(b)(4) of the Act authorizes the establishment of fees for the costs of processing requests for disclosure and of providing such information.

Final regulations at 45 CFR part 60 set forth the criteria and procedures for information to be reported to and disclosed by the Data Bank. Section 60.3 of these regulations should be consulted for the definition of terms used in this announcement.

A reassessment of the full operating costs related to processing requests for disclosure of Data Bank information, as required by the DHHS Appropriations Act of 1994 (title II of Pub. L. 103–112, dated October 21, 1993), as well as the comparative costs of the various methods for filing and paying for queries, has resulted in a decision to further reduce fees for users when they both query and receive responses via the telecommunications network as well as pay query fees by credit card, electronic funds transfer or such other electronic transfer options as may be offered in the future. The options to query and pay user fees by these means facilitate the querying process and make it less costly to both users and the Data Bank than all other available options.

Accordingly, the Department is reducing the basic user fee to $3.00 per name per query submitted and paid via the method described above, with receipt by electronic method. A $3.00 surcharge will be charged for queries submitted electronically on diskette to pay for the extra handling and mailing costs for these queries. A $4.00 surcharge will be charged for all queries which are paid for by check or money order to cover the cost of debt management. Paper queries will no longer be accepted except practitioner self-queries. These changes are effective June 26, 1995.

The criteria set forth in § 60.12(b) of the regulations and allowable costs as required in the Appropriations Act of 1994 were used in determining the amount of this new fee. The criteria include such cost factors as: (1) Electronic data processing time, equipment, materials, computer programmers and operators or other employees; and (2) preparation of reports—materials, photocopying, postage, and administrative personnel.

When a request is for information on one or more physician, dentist, or other health care practitioner, the appropriate total fee will be $3.00 (plus a $3.00 and/or a $4.00 surcharge for submission and payment as described above) times the number of individuals about whom information is being requested. For examples, see the table below.

The fee charged will be reviewed periodically, and revised as necessary, based upon experience. Any changes in the fee, and the effective date of the change, will be announced in the **Federal Register**.

Query method	Fee per name in query, by method of payment	Examples
Electronic (Telecom network)	$3.00 (if paid electronically via credit card or other electronic means and response received electronically).	10 names in query. 10×$3=$30.00
Electronic (Diskette)	$6.00 (if paid electronically via credit card or other electronic means and response received on paper).	10 names in query. 10×$6=$60.00
Electronic (Telecom network)	$7.00 (if not paid via credit card or other electronic means)	10 names in query. 10×$7=$70.00
Electronic (Diskette)	$10.00 (if not paid via credit card or other electronic means)	10 names in query. 10×$10=$100.00

*Paper queries will no longer be accepted except practitioner self-queries

Dated: June 1, 1995.

Ciro V. Sumaya,

Administrator.

[FR Doc. 95–13884 Filed 6–6–95; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Committee Name: National Institute of General Medical Sciences, Special Emphasis Panel—Instrumentations.

Date: June 29–30.

Time: 8:30 a.m.–5 p.m.

Place: 45 Center Drive, Conference Room B, Bethesda, MD 20892–6200.

Contact Person: Dr. Richard Martinez, Scientific Review Administrator, NIGMS, 45 Center Drive, Room 1AS–19b, Bethesda, MD 20892–6200.

Purpose: To review grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers [MARC]; and 93.375, Minority Biomedical Research Support [MBRS]).

Dated: May 31, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–13872 Filed 6–6–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Aging; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Subcommittee: Biological and Clinical Aging Review Subcommittee A.

Date: July 11, 1995.

Time: 1:00 p.m. to adjournment.

Place: The Bethesda Gateway Building, 7201 Wisconsin Avenue, 5th Floor Conference Room, Bethesda, Maryland 20852–9205.

Contact Person: Dr. Arthur Schaerdel, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

Purpose/Agenda: For the review, discussion, and evaluation of individual research grant applications.

The meeting will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health.)

Dated: May 31, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

Division of Research Grants; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Clinical Sciences.

Date: June 21–23, 1995.

Time: 8:00 a.m.

Place: Holiday Inn, Bethesda, MD.

Contact Person: Dr. Daniel McDonald, Scientific Review Admin., 6701 Rockledge Drive, Room 4214, Bethesda, MD 20892, (301) 435–1215.

Name of SEP: Microbiological and Immunological Sciences.

Date: June 21–23, 1995.

Time: 8:30 a.m.

Place: Holiday Inn, Chevy Chase, MD.

Contact Person: Dr. Lynwood Jones, Scientific Review Admin., 6701 Rockledge Drive, Room 4192, Bethesda, MD 20892, (301) 435–1153.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 31, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–13871 Filed 6–6–95; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given to amend the notice of the National Cancer Institute Board of Scientific Counselors, Division of Cancer Etiology meeting which was published in the **Federal Register** (60–FR–19600) on April 19, 1995.

The Board was originally scheduled to be open on June 15 from 9 am to recess and closed on June 16 from 9 am to adjournment. The Board meeting will now be open from 8:30 am to approximately 3 pm on June 15. The meeting will be closed on June 15 from approximately 3 pm to recess and from 8:30 am to adjournment on June 16.

Dated: May 31, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–13869 Filed 6–6–95; 8:45 am]

BILLING CODE 4140–01–M

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) (NIH) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 60 FR 18607, April 12, 1995), is amended to reflect the reorganization of the Office of Administration, Office of the Director, NIH (OA/OD/NIH) (HNAB). This reorganization is consistent with Administration objectives related to the National Performance Review (NPR) and the Continuous Improvement Program (CIP)—specifically, streamlining, delayering, and decreasing the ratio of supervisors to employees in accordance with effective management practices. The reorganization consists of the following: (1) Retitle three division-level components of the OA to offices to ensure consistent nomenclature (2) consolidate the small and disadvantaged business function (currently in two OA divisions, the Division of Procurement and the Division of Contracts and Grants) into open office in the Office of Contracts and Grants Management; and (3) consolidate the ADP support function (from the Division of Contracts and Grants and the Division of Logistics) and move it to the Office of the Director, OA.

Specifically, the reorganization will: (1) rename the Division of Contracts and Grants to the Office of Contracts and Grants Management (OCGM); (2) rename the Division of Logistics to the Office of Logistics Management (OLM); (3) rename the Division of Procurement to the Office of Procurement Management (OPM); (4) revise the functional statements for NIH/OD/OA/OD, OCGM, and OPM.

Section HN–B, Organization and Functions, is amended as follows:

Under the heading *Office of the Director, Office of Administration (HNAB1),* revise the functional statement to the following: (1) Plans and directs the activities of the Office of Administration; (2) conducts audit follow-ups for reviews conducted by the Office of Management Assessment's Division of Program Integrity and the OIG Office of Investigations; (3) provides ADP support to OA components; and (4) provides administrative management support to all OA subcomponents in human resource relations, organization development, and other administrative services.

Under the heading *Office of the Director, Division of Contracts and Grants (HNAB2),* change the title to Office of Contracts and Grants Management and revise the functional statement to the following: (1) Advises the NIH Director and staff and provides leadership and direction for NIH contracting and grants management activities; (2) plans, develops, and recommends NIH-wide research and development negotiated contracting policies, procedures, and practices; (3) provides contracting officer services to those NIH components which have a small volume of research contracts; (4) maintains a continuing review of contracting operations in those Institutes, Centers, and Divisions (ICDs) with decentralized authority to ensure adherence to FPR, DHHS, PHS, and NIH policies and standards; (5) provides NIH research contracting operating units with price/cost analysis services and comprehensive advice on the financial responsibility of prospective contractors; (6) participates with other offices in the Office of the Director, NIH, and with NIH awarding components in the formulation, coordination, and implementation of DHHS, PHS, and NIH policies and procedures pertaining to grants administration, and serves as focal point of liaison with the management staffs of grantee institutions; (7) in coordination with PHS, maintains liaison with the Audit Agency, Office of the Assistant Secretary Comptroller, and the Office of Grants and Procurement Management, OS, on contracts and grants management policy, procedural, and operating matters including the resolution of audit reports; (8) conducts and monitors NIH-wide programs in Small and Minority Businesses in accordance with applicable Small Business and Civil Rights Legislation; (9) provides technical assistance in specification preparation in Small and Disadvantaged Business opportunities; (10) analyzes requirements for and coordinates NIH IMPAC and higher-level research and development contract data systems for the NIH; and (11) analyzes, develops, and coordinates DHHS, PHS, and NIH initiatives in automated data and documentation systems, procurement planning and control, contract forms management, and contract closure.

Under the heading *Office of the Director, Division of Logistics (HNAB3),* change the title to Office of Logistics Management.

Under the heading *Office of the Director, Division of Procurement (HNAB4),* change the title to Office of Procurement Management (HNAB4) and revise the functional statement to the following: (1) Responsible for all aspects of station support and intramural procurement; (2) manages the program using small purchases, formal advertisement, and negotiated contracting procedures; (3) provides for follow-up on orders and for continuing contract administration; (4) formulates and disseminates policies and procedures to implement Federal and Departmental regulations (meeting needs for guidance in the procurement function); and (5) provides oversight and technical assistance (manuals and training guides) to decentralized station support procurement operations.

Dated: May 25, 1995.

Harold Varmus,

Director, NIH.

[FR Doc. 95–13873 Filed 6–6–95; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–921–05–1320–01–P; MTM 83997]

Coal Leases, Exploration Licenses, etc.: Montana; Correction

AGENCY: Bureau of Land Management, Montana State Office.

ACTION: Correction.

SUMMARY: In notice document 95–12074 on page 26453 in the issue of Wednesday, May 17, 1995, make the following correction:

On page 26453, in the first column in the twenty-second line from the top, the description previously published in the **Federal Register** was Sec. 23: NE¼NE¼SE¼NW¼. This should be changed to Sec. 23: NE¼NE¼, SE¼NW¼.

Dated: May 31, 1995.

Howard A. Lemm,

Acting State Director.

[FR Doc. 95–13950 Filed 6–6–95; 8:45 am]

BILLING CODE 4310–DN–P

[NM–030–1220–00]

Establishment of Visitor Restrictions for Designated Sites, Special Recreation Management Areas, and Other Public Land in the Las Cruces District, New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Proposed Visitor Restrictions; Request for Comment.

SUMMARY: The proposed visitor restrictions are necessary for the management of actions, activities, and use on public land including those which are acquired or conveyed to the BLM. Supplementary rule making is provided for under Title 43 CFR Subpart 8365. These proposed regulations establish rules of conduct for the protection of persons, property, and public land resources. As a visitor to public land, the user is required to follow certain rules designed to protect the land and the natural environment, to ensure the health and safety of visitors, and to promote a pleasant and rewarding outdoor experience.

This notice supersedes previous notices published in the **Federal Register**, December 15, 1988 (Vol. 53, No. 241); July 24, 1989 (Vol. 54, No. 140); August 17, 1989 (Vol. 54, No. 158); August 31, 1989 (Vol. 54, No. 168); May 10, 1990 (Vol. 55, No. 91); July 9, 1991 (Vol. 56, No. 131); January 22, 1991 (Vol. 56, No. 14); and correction to Supplementary Rules No. 2., February 1, 1991 (Vol. 56, No. 28), establishing Supplementary Rules for Designated Recreation Sites, Special Recreation Management Areas and Other Public Land in New Mexico.

More specifically, the purpose falls into the following categories:

• Implementation of Management Plans—Certain prohibited activities have been recommended as rules for designated recreation sites and Special Recreation Management Areas (SRMAs). In order to implement these recommendations, they must be published as specific prohibited acts in the **Federal Register**. Use of the Supplementary Rules Section of 43 CFR, Subpart 8365, is the most appropriate way of implementation. Rationale for these recommendations is presented in its entirely in the resource management plan or recreation management plan for the specific area.

• *Mitigation of User Conflict*—Certain other rules are recommended because of specific user conflict problems. Prohibiting the reservation of camping space in developed campgrounds will allow such space to be available on a first-come, first-served basis. This will prevent people from monopolizing the use of limited developed camping space. Prohibition of motorized vehicle free-play (operation of any 2-, 3-, or 4-wheel motor vehicle for purposes other than accessing a campsite) is necessary to minimize the noise and nuisance factors that such activities represent in developed recreation sites.

• *Public Health and Safety*—The erection and maintenance of unauthorized toilet facilities or other containers for human waste on the public land could represent a major threat to public safety and health. It should be noted that shooting restrictions recommended do not prohibit legitimate hunting activities except within ½ mile of developed sites. Recreational shooters will be encouraged to use public land where such shooting restrictions do not apply and this use does not significantly conflict with other uses.

• *Complementary Rules*—Some rules, such as parking or camping near water sources, are recommended to complement those of State and local agencies. Because these rules provide for the protection of persons and resources in the interest and spirit of cooperation with the responsible agencies, these rules are deemed necessary.

Definitions

As used in these supplementary rules, the term:

—*A SRMA*—means an area where special or more intensive types of resource and user management are needed.

—*A developed recreation site and area* means sites and areas that contain structures or capital improvements primarily used for recreation purposes by the public. Development may vary from limited development for protection of the resource and the safety of users to a distinctly defined site in which developed facilities that meet the Land and Water Conservation Fund Act of 1965 (as amended) criteria for a fee collection site are provided for concentrated public recreation use.

—*Public Land* means any land, interest in land, or related waters owned by the United States and administered by the BLM. Related waters are waters which lie directly over or adjacent to public land and which require management to protect Federally administered resources or to provide for enhanced visitor safety and other recreation experiences.

—*Camping* means the erecting of a tent or shelter of natural or synthetic material, preparing a sleeping bag or other bedding material for use, or the parking of a motor vehicle, motor home, or trailer for the apparent purpose of overnight occupancy. Occupying a developed camp site or an approved location within developed recreation areas and sites during the established night period of 10:00 p.m. to 6:00 a.m. will be considered overnight camping for fee collection and enforcement purposes.

—*Campfire* means a controlled fire occurring outdoors for cooking, branding, personal warmth, lighting, ceremonial, or aesthetic purposes.

—*Abandonment* means the voluntary relinquishment of control of property for longer than a period specified with no intent to retain possession.

—*Administrative activities* means those activities conducted under the authority of the BLM for the purpose of safeguarding persons or property, implementing management plans and policies developed in accordance and consistent with regulations or repairing or maintaining facilities.

—*Pet* means a dog, cat, or any domesticated companion animal.

—*Occupancy* means the taking or holding possession of a camp site, other location, or residence on public land.

—*Vehicle* means any motorized or mechanized device, including bicycles, hang gliders, ultra lights, and hot air balloons which is propelled or pulled by any living or other energy source, and capable of travel by any means over ground, water, or air.

—*Authorized Officer* means any employee of the BLM who has been delegated the authority to perform under Title 43.

—*Stove fire* means a fire built inside an enclosed stove or grill, a portable brazier, or a pressurized liquid or gas stove, including space-heating devices.

—*Weapon* means a firearm, compressed gas or spring-powered pistol or rifle, bow and arrow, crossbow, blowgun, spearguns, slingshot, explosive device, or any other implement designed to discharge missiles or projectiles; hand-thrown spear, edged weapons, nun-chucks, clubs, billy-clubs, and any device modified for use or designed for use as a striking instrument; and includes any weapon the possession of which is prohibited under New Mexico law.

—*Historic or prehistoric structure or ruin site* means any location at least 50 years old which meets the standards for inclusion on the National Register of Historic Places as

defined in 36 CFR 60.4, without regard to whether the site has been nominated or accepted.

Supplementary Rules—All Public Lands

In addition to regulations contained in 43 CFR 8365.1, the following supplementary rules apply to all public land including those lands acquired or conveyed to the BLM and related waters. The following are prohibited unless authorized by written permit or for administrative use:

Sanitation

- To construct or maintain any unauthorized toilet facility.
- The dumping or disposal of sewage or sewage treatment chemicals from self-contained or containerized toilets except at facilities provided for that purpose.
- To shower or bathe at any improved or developed water source, outdoor hydrant pump, faucet or fountain, or rest room water faucet unless such water source is designated for that purpose.

Occupancy and Use

- To camp or occupy any site on public land or any approved location, including those in developed recreation areas and sites or SRMA, for a period longer than 14 days within any period of 28 consecutive days. Exceptions, which will be posted, include areas closed to camping and areas or sites with other designated camping stay limits. The 28-day period begins when a camper initially occupies a specific location on public land. The 14-day limit may be reached either through a number of separate visits or through 14 days of continuous occupation. After the 14 days of occupation, campers must move beyond a 25-mile radius from the previous location. When a camping limit has been reached, use of any public land site within the 25-mile radius shall not occur again until at least 30 days have elapsed from the last day of authorized use.
- To park any motor vehicle for longer than 30 minutes, or camp within 300 yards of any spring, manmade water hole, water well, or watering tank used by wildlife or domestic stock. Hunters with valid hunting licenses may not park within 300 yards of these water sources.
- To dispose of any burning or smoldering material except at sites or falicities provided for that purpose.
- Unauthorized cutting, removing, or transporting woody materials including, but not limited to:

1. Any type or variety of vegetation (excluding dead and downed),
2. Fuelwood or firewood, either green or standing deadwood or,
3. Live plants (except for consumption, medicinal purposes, study or personal collection).

- Removing or transporting any mineral resources including rock, sand, gravel, and other minerals on or from public land without written consent, proof of purchase, or a valid permit. Collection of specimens and samples in reasonable amounts for personal noncommercial use, under 43 CFR 8365.1–5(b) is not affected by this section.
- Failure to prevent a pet from harassing, molesting, injuring, or killing humans, wildlife or livestock.
- Violation of the terms, stipulations, or conditions of any permit or use authorization.
- Failure to show a permit or use authorization to any BLM employee upon request.
- Camp or occupy or build any fire on, or in, any historic or prehistoric structure or ruin site.
- Competitive or commercial operations or events without a Special Recreation Permit.

Vehicles

- Operation of an off-road vehicle without full time use of an approved spark arrester and muffler.
- Failure to display the required State off-road vehicle registration.
- Lubricating or repairing any vehicle, except repairs necessitated by emergency.
- Operate, park, or leave a motorized vehicle in violation of posted restrictions or in such a manner or location as to:

1. Create a safety hazard,
2. Interfere with other authorized users or uses,
3. Obstruct or impede normal or emergency traffic movement,
4. Interfere with or impede administrative activities,
5. Interfere with the parking of other vehicles, or
6. Endanger property or any person.

Public Health and Safety

- Possession or use of fireworks.
- Leaving a campfire unattended, or failing to completely extinguish a fire after use.
- The sale or gift of an alcoholic beverage to a person under 21 years of age.
- The possession of an alcoholic beverage by a person under 21 years of age.
- Ignition or burning of any material containing or producing toxic or hazardous material.
- Carrying of weapons in violation of State or Federal law.
- Abandonment of animals.

State and Local Laws

- Failure to comply with all applicable State of New Mexico regulations for boating safety, equipment, and registration.

Supplementary Rules—Developed Recreation Sites/Areas and Special Recreation Management Areas

In addition to the regulations contained in 43 CFR 8365.1, 8365.2 and those listed above, the following rules will be applied in accordance with 43 CFR 8365.2 The following activities are prohibited unless authorized by written permit or for administrative uses:

- Failure to pay use fees at Aguirre Spring Campground, Dripping Springs Natural Area, Datil Well Campground, or Three Rivers Recreation Area.
- Failure to immediately remove and dispose of in a sanitary manner, all pet fecal material, trash, garbage or waste created.
- Failing to physically restrain a pet at all times within developed campsites and picnic areas. Pets are prohibited where posted on all designated nature or interpretive trails and from entering caves. Animals trained to assist handicapped persons are exempt from this rule.
- Reserving space, except within established guidelines for group facility reservations at Aguirre Spring Campground or Dripping Springs Natural Area. Camping and picnicking space is available on a first-come, first-served basis.
- Failure to maintain quiet between the hours of 10:00 p.m. to 6:00 a.m. or other hours posted. During this period, no person shall create noise which disturbs other visitors.
- Vehicles off existing or designated roads and trails unless facilities have been specifically provided for such use. Motorized vehicles will be operated for access to and from developed facilities only.
- To park or occupy a parking space posted or marked for handicapped use without displaying an official identification tag or plate.
- Posting or distribution of any signs, posters, printed material, or commercial advertisements.
- The discharge of firearms or other weapons, hunting and trapping within ½ mile of developed recreation sites and areas.

• Using, displaying, or carrying loaded weapons within developed campsites or picnic areas.

• Disposing of any waste or grey water except where facilities are provided.

• Bringing equine stock, llama, cattle, or other livestock within campgrounds or picnic areas unless facilities have been specifically provided for such use.

• Unauthorized gathering or collecting woody plants or any other natural resource, minerals, cultural, or historical artifacts that require permits.

• Not adhering to fire danger ratings issued by Government.

• Climbing, walking on, ascending, descending or traversing on the earthwork of Fort Craig National Historic Site, or historic structures within the Dripping Springs Natural Area, the Lake Valley Historic Site, or Fort Cummings.

• Wood fires are prohibited within the Dripping Springs Natural Area unless the firewood is provided by the BLM.

• Aguirre Spring Campground use is limited to overnight campers after 10:00 p.m. The entrance gate will be closed at 8:00 p.m. during summer hours (approximately April 1 to September 30) and at 6:00 p.m. during winter hours (approximately October 1 to March 31).

• The Dripping Springs Natural Area will be managed as a day-use area (no overnight camping). The entrance gate located in T. 23 S., R. 3 E., Section 3 on the Dripping Springs road (controlling access to La Cueva Picnic Area, A.B. Cox Visitor Center, and Dripping Springs Natural Area) will be locked at sunset.

• Pets are prohibited on the Dripping Springs Trail uphill (southeast) of the Crawford Trail junction (located in T. 23 S., R. 3 E., Section 12, NW¼SE¼NE¼). All hikers beyond this point are required to stay on trails or in established use areas in order to reduce damage to the Dripping Springs Ruins and to protect endangered plants in the area.

• Swimming, wading, and bathing are prohibited at the pond at the Dripping Springs Natural Area.

• Discharge of firearms, walking off established trails, or unauthorized overnight camping are prohibited within the fenced enclosure at Fort Cummings, Lake Valley, or the Fort Craig National Historic Site.

• Overnight camping, discharge of firearms, and wood fires are prohibited within The Box Special Management Area.

• Lake Valley Historic Site use is limited to posted hours.

• Pets are prohibited on the Petroglyph Trail and the Pit House Village Trail within the Three Rivers Recreation Area.

List of Developed Recreation Sites/ Areas and Special Recreation Management Areas

1. Aguirre Spring Campground (Mimbres Resource Area)

T. 22 S., R. 4 E., NMPM
Sec. 29.

2. Dripping Springs Natural Area (Mimbres Resource Area)

T. 23 S., R. 3 E., NMPM
Secs. 1, 2.
T. 23 S., R. 4 E., NMPM
Sec. 7.

3. Three Rivers Recreation Area (Caballo Resource Area)

T. 11 S., R. 9½ E., NMPM
Secs. 17, 20, 21, 28.

4. Datil Well Campground (Socorro Resource Area)

T. 2 S., R. 10 W., NMPM
Secs. 10, 11.

5. Fort Craig National Historic Site (Socorro Resource Area)

T. 8 S., R. 2 W., NMPM
Secs. 10, 11.

6. Paleozoic Trackways (Mimbres Resource Area)

T. 22 S., R. 1 E., NMPM
Sec. 19.

7. Organ Mountains Recreation Lands SRMA (Mimbres Resource Area)

T. 22–26 S., R. 3–4 E., NMPM

8. Gila Lower Box SRMA (Mimbres Resource Area)

T. 19 S., R. 19 W., NMPM
Secs. 7–10, 15–19, 30.
T. 19 S., R. 20 W., NMPM
Secs. 13–17, 20–29.

9. Fort Cummings SRMA (Mimbres Resource Area)

T. 21 S., R. 8 W., NMPM
Secs. 22, 23.

10. The Box Special Management Area (Socorro Resource Area)

T. 3 S., R. 1 W., NMPM
Sec. 31.

11. Lake Valley Historic Site (Caballo Resource Area)

T. 18 S., R. 7 W., NMPM
Sec. 28.

DATES: Comments on the proposed rule will be accepted until July 7, 1995. Comments received or postmarked after this date may not be considered in the decision-making process on the final rulemaking.

ADDRESSES: Comments should be sent to the New Mexico State Director (933), BLM, P.O. Box 27115, Santa Fe, New Mexico 87502–0115. All written comments made pursuant to this action will be made available for public inspection during normal business hours (8 a.m. to 4 p.m., MST) at 1474 Rodeo Road, Santa Fe, New Mexico 87505.

FOR FURTHER INFORMATION CONTACT:

• Mark Hakkila, Outdoor Recreation Planner, BLM Mimbres Resource Area, 1800 Marquess, Las Cruces, NM 88005, (505) 525–4341.

• Kevin Carson, Outdoor Recreation Planner, BLM Socorro Resource Area, 198 Neel Ave. NW, Socorro, NM 87801, (505) 835–0412.

• Joe Sanchez, Outdoor Recreation Planner, BLM Caballo Resource Area, 1800 Marquess, Las Cruces, NM 88005, (505) 525–4391.

SUPPLEMENTARY INFORMATION: The Las Cruces District Manager is establishing these supplementary rules, which are necessary for the protection of persons, property, and public land and resources currently under the Bureau's administration within the Las Cruces District, New Mexico and those lands acquired for inclusion within the administrative jurisdiction of the BLM as provided for in 43 CFR 8365.1–6. These supplementary rules apply to all persons using public land. Violations of these rules are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

Exceptions to these visitor restrictions may be permitted by the authorized officer subject to limits and restrictions of controlling Federal and State law. Persons granted use exemptions must possess written authorization from the BLM Office having jurisdiction over the area. Users must further comply with the zoning, permitting, rules, or regulatory requirements of other agencies, where applicable.

Dated: May 24, 1995.

Richard A. Whitley,

Acting State Director.

[FR Doc. 95–13949 Filed 6–6–95; 8:45 am]

BILLING CODE 4310–FB–M

[NV–930–1430–01; NVN–59399]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following described public lands in Lander County, Nevada, have been examined and found suitable for conveyance (patent) to Lander

County under the provisions of the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C 869 *et seq.*). Lander County proposes to use the lands for a municipal solid waste disposal site to serve Austin, Nevada, and the surrounding area.

Mount Diablo Meridian, Nevada

T. 19 N., R. 43 E.,
Sec. 26, NW¼SE¼.
Containing 40 acres, more or less.

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 provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 945);

2. All mineral deposits shall be reserved to the United States, together with the right to prospect for, mine, and remove such deposits under applicable laws and regulations as the Secretary of the Interior may prescribe;

will contain the following provisions:

1. Lander 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 Mount Diablo Meridian, Nevada, T. 19 N., R. 43 E., sec. 26, NW¼SE¼, regardless of whether such claims shall be attributable to: (1) The concurrent, contributory, or partial fault, failure, or negligence of the United States, or (2) the sole fault, failure, or negligence of the United States;

2. Provided, that the 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 land 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 circumstances 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;

3. If, at any time, the patentee transfers to another party ownership of any portion of the land not used for the purpose 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;

4. The above described land has been conveyed for utilization as a solid waste disposal site by Lander County, Nevada. Upon closure, the site may contain small quantities of commercial and household hazardous waste as determined in the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6901), and defined in 40 CFR 261.4 and 261.5. Although there is no indication these materials pose any significant risk to human health or the environment, future land uses should be limited to those which do not penetrate the liner or final cover of the landfill unless excavation is conducted subject to applicable State and Federal requirements;

and will be subject to valid existing rights.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Battle Mountain District, 50 Bastian Road, Battle Mountain, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed conveyance or classification of the lands to the District Manager, Battle Mountain District, P.O. Box 1420, Battle Mountain, Nevada 89820.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a municipal solid waste disposal site. Comments on the classification are restricted to whether the land is physically suited for the proposal, 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 municipal solid waste disposal site.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be conveyed until after the classification becomes effective.

Dated: May 26, 1995.

Michael C. Mitchel,

Acting District Manager.

[FR Doc. 95–13957 Filed 6–6–95; 8:45 am]

BILLING CODE 4310–HC–P

[NV–930–1430–01; NVN–58945]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following described public lands in Eureka County, Nevada, have been examined and found suitable for conveyance (patent) to Eureka County under the provisions of the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C 869 *et seq.*). Eureka County proposes to use the lands for a municipal solid waste disposal site to serve Eureka, Nevada, and the surrounding area.

Mount Diablo Meridian, Nevada

T. 19 N., R. 53 E.,
Sec. 13, NE¼NW¼.
Containing 40 acres, more or less.

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 provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority

of the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 945);

2. All mineral deposits shall be reserved to the United States, together with the right to prospect for, mine, and remove such deposits under applicable laws and regulations as the Secretary of the Interior may prescribe;

will contain the following provisions:

1. Eureka 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 Mount Diablo Meridian, Nevada, T. 19 N., R. 53 E., sec. 13, NE¼NW¼, regardless of whether such claims shall be attributable to: (1) the concurrent, contributory, or partial fault, failure, or negligence of the United States, or (2) the sole fault, failure, or negligence of the United States;

2. Provided, that the 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 land 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 circumstances 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;

3. If, at any time, the patentee transfers to another party ownership of any portion of the land not used for the purpose 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;

4. The above described land has been conveyed for utilization as a solid waste disposal site by Eureka County, Nevada. Upon closure, the site may contain small quantities of commercial and household hazardous waste as determined in the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6901), and defined in 40 CFR 261.4 and 261.5. Although there is no indication these materials pose any significant risk to human health or the environment, future land uses should be limited to those which do not penetrate the liner or final cover of the landfill unless excavation is conducted subject to applicable State and Federal requirements;

and will be subject to valid existing rights.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Battle Mountain District, 50 Bastian Road, Battle Mountain, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed conveyance or classification of the lands to the District Manager, Battle Mountain District, P.O. Box 1420, Battle Mountain, Nevada 89820.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a municipal solid waste disposal site. Comments on the classification are restricted to whether the land is physically suited for the proposal, 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 municipal solid waste disposal site.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be conveyed until after the classification becomes effective.

Dated: May 26, 1995.

Michael C. Mitchel,

Acting District Manager.

[FR Doc. 95–13958 Filed 6–6–95; 8:45 am]

BILLING CODE 4310–HC–P

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service Clearance Officer and the Office of Management and Budget, Paperwork Reduction Project (1018–XXXX), Washington, D.C. 20503, telephone 202–395–7340.

Title: 1996 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation

OMB Approved Number: New collection

Abstract: The Bureau of the Census is conducting the 1996 National Survey of Fishing, Hunting, and Wildlife Associated Recreation for the Fish and Wildlife Service. The Service has sponsored national surveys of fishing and hunting at 5-year intervals since 1965 at the request of the States through the International Association of Fish and Wildlife Agencies. The 1996 national survey will be a comprehensive data base of fish and wildlife-related recreation activities and expenditures that are needed for identifying and developing management priorities at both national and state levels. This survey is the only comprehensive national data base of uses and users of fish and wildlife resources. It will provide national and state level statistics that are not available from other sources. The survey data are needed to help the Service effectively administer the fish and wildlife restoration grant programs, and to help the states develop project proposals and conservation programs. It provides essential information on present recreation demands and a basis for projecting future demands. Data are needed to identify trends in fish and wildlife-related recreation. This

information is used in formulating policies and developing programs.

Service Form Number(s): FH–2, FH–3 and FH–4

Frequency: Once every 5 years

Description of Respondents: Individuals and households

Estimated Completion Time: The reporting burden is estimated to average 15 minutes per response for hunters and/or fishers and 11 minutes for the nonconsumptive users

Annual Responses: 172,010

Annual Burden Hours: 36,037

Service Clearance Officer: Phyllis H. Cook, 703–358–1943

Mail Stop—224 Arlington Square, U.S. Fish and Wildlife Service, Washington, D.C. 20240

Dated: May 18, 1995.

Daniel M. Ashe,

Deputy Director—External Affairs.

[FR Doc. 95–13846 Filed 6–6–95; 8:45 am]

BILLING CODE 4310–55–M

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–803186

Applicant: International Center for Gibbon Studies, Santa Clarita, CA

The applicant requests a permit to import one male captive-held dark-handed gibbon (*Hylobates agillis agillis*) from Primates Preservation and Education Centre, Eindhoven, Netherlands for the purpose of enhancement of the species through captive-propagation and scientific research.

PRT–63110

Applicant: St. Louis Zoological Park, St. Louis, MO

The applicant requests a permit to import up to 30 tissue samples taken from captive born banteng (*Bos javanicus brimanicus*) held at the Khao Kheow Open Zoo, Sriracha, Chonburi, Thailand, for the purpose of enhancement of the species through scientific research.

PRT–802771

Applicant: U.S. Fish and Wildlife Service, Concord, NH

The applicant requests a permit to export four captive hatched, preserved specimens of the American burying beetle (*Nicrophorus americanus*) to the Osaka Museum of Natural History, Osaka, Japan, for the purpose of enhancement of the species through scientific research.

PRT–801464

Applicant: Ron & Joy Holiday & Charles Lizza, Alachua, FL

The applicant requests a permit to export/reimport one captive-born clouded leopard (*Neofelis nebulosa*), and progeny of the animal currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers the activities conducted by the applicant over a three year period.

PRT–798403

Applicant: Tarzan Zerbini Circus, Webb City, MO

The applicant requests a permit to export/reimport one captive-held Asian elephant (*Elephas maximus*), and progeny of the animal currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers the activities conducted by the applicant over a three year period.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: June 2, 1995.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 95–13960 Filed 6–6–95; 8:45 am]

BILLING CODE 4310–55–P

National Biological Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project, Washington, D.C. 20503, telephone (202) 395–7340, with copies of Anne Frondorf, Information and Technology Services, MS 3660, National Biological Service, 1849 C St. N.W., Washington, D.C. 20240.

Title: Information Surveys for the National Biological Information Infrastructure.

Abstract: The National Biological Service is developing a National Biological Information Infrastructure (NBII) which will provide increased electronic (Internet) access to data and information on biological resources that are available from many different sources around the U.S. NBS works with public agencies and private organizations that wish to make the biological data and information they maintain more accessible through the NBII by helping them prepare, describe, and electronically serve their data and information. NBS wishes to collect information, through a set of three related surveys, to better identify prospective sources of biological data and information that could be made electronically accessible to the public through the NBII. Information will be collected through surveys in the following three areas: identifying and describing State-level biological data and information bases, identifying and describing sources of taxonomic expertise, and identifying and describing research systematics collections.

Bureau form number: none.

Frequency: Three related surveys will each be completed one time. Resulting information will be made electronically accessible via the National Biological Information Infrastructure.

Description of respondents: Individuals, Federal, State, and local government agencies, non-profit institutions, and businesses and other for-profits.

Estimated completion time: 1 hour for the survey of State biological data and information bases; .5 hour for the survey of taxonomic expertise; 1 hour for the survey of systematics collections.

Annual responses: 500 for the survey of State biological data and information bases; 500 for the survey of taxonomic expertise; 500 for the survey of systematics collections.

Annual burden hours: 500 for the survey of State biological data and information bases; 250 for the survey of taxonomic expertise; 500 for the survey of systematics collections.

Bureau clearance officer: Don W. Minnich, (202) 482–4838.

Dated: May 25, 1995.

Doyle G. Frederick,

Assistant Director.

[FR Doc. 95–13847 Filed 6–6–95; 8:45 am]

BILLING CODE 4310–DP–M

INTERNATIONAL TRADE COMMISSION

[Investigation 332–363]

Chemicals and Chemical Products: Probable Effect of Certain Modifications to North American Free Trade Agreement Rules of Origin Pertaining to Such Products

AGENCY: International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: May 31, 1995.

SUMMARY: Following receipt on May 5, 1995, of a request from the United States Trade Representative (USTR), the Commission instituted investigation No. 332–363, Chemicals and Chemical Products: Probable Effect of Certain Modifications to North American Free Trade Agreement Rules of Origin Pertaining to Such Products, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

FOR FURTHER INFORMATION CONTACT: Information on industry sectors may be obtained from Edmund Cappuccilli, Office of Industries (202–205–3368) or Elizabeth Nesbitt, Office of Industries (202–205–3355); and on legal aspects, from William Gearhart, Office of the General Counsel (202–205–3091). The media should contact Margaret O'Laughlin, Office of Public Affairs (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202–205–1810).

BACKGROUND: Chapter 4 and Annex 401 of the North American Free Trade Agreement (NAFTA), which entered into force on January 1, 1994, contain the rules of origin for application of the tariff provisions of the Agreement to trade in goods.

Section 202(q) of the North American Free Trade Agreement Implementation Act authorizes the President, subject to the consultation and layover requirements of section 103 of the Act, to proclaim such modifications to the rules as may from time to time be agreed to by the NAFTA countries. One of the requirements set out in section 103 is that the President obtain advice, regarding any proposed modification in the Rules contained in Annex 401, from the United States International Trade Commission.

In its report the Commission will, as requested by the USTR in his letter of May 5, 1995, seek to provide advice on the probable effect of the proposed revised rules of origin attached to the letter. As requested, the Commission will seek to provide such advice by September 5, 1995. Copies of the proposed revised rules, which cover the goods described in Chapters 28 through 38 of the Harmonized Tariff Schedule of the United States, will be available from the Office of the Secretary at the Commission or from the Commission's Internet web server (http://www.usitc.gov).

PUBLIC HEARING: A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC, beginning at 9:30 a.m. on July 11, 1995. All persons shall have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC, 20436, no later than 5:15 p.m. on June 28, 1995. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., June 28, 1995; the deadline for filing post-hearing briefs or statements is 5:15 p.m., July 18, 1995. In the event that, as of the close of business on June 28, 1995, no witnesses are scheduled to appear at the hearing, the hearing will be cancelled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary to the Commission (202–205–2000) after June 28, 1995, to determine whether the hearing will be held.

WRITTEN SUBMISSIONS: In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of section § 201.6 of the Commission's *Rules of Practice and Procedure* (19 C.F.R. 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on July 18, 1995. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Issued: May 31, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–13903 Filed 6–6–95; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–349]

Certain Diltiazem Hydrochloride and Diltiazem Preparations; Notice of Commission Decisions Affirming in Part, Taking No Position in Part, and Vacating in Part an Initial Determination; Granting of a Joint Motion To Terminate Certain Respondents on the Basis of a Settlement Agreement; Denial of a Motion To Intervene

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to affirm the claim interpretation and infringement findings and to take no

position on the issues of validity and unenforceability in the initial determination (ID) issued by the presiding administrative law judge (ALJ) on February 1, 1995, in the above-captioned investigation in accordance with *Beloit Corporation* v. *Valmet Oy, TVW Paper Machines, Inc. and the United States International Trade Commission,* 742 F.2d 1421 (Fed. Cir. 1984). The Commission has also vacated as moot ALJ Order No. 52. Finally, the Commission has determined to grant a joint motion to terminate certain respondents on the basis of a settlement agreement, and to deny a motion to intervene in the investigation.

FOR FURTHER INFORMATION CONTACT: Cynthia P. Johnson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3098.

SUPPLEMENTARY INFORMATION: On February 1, 1993, Tanabe Seiyaku Co., Ltd. (Tanabe) and Marion Merrell Dow, Inc. (MMD) (collectively ''complainants'') filed a complaint under section 337 alleging unfair acts in the importation and sale of diltiazem hydrochloride and diltiazem preparations (''diltiazem'') by nine proposed respondents: (1) Abic Ltd. of Netanya, Israel (''Abic''); (2) Gyma Laboratories of America, Inc. of Garden City, New York (''Gyma''); (3) Profarmaco Nobel SRL of Milan, Italy; (4) Mylan Pharmaceuticals, Inc. of Morgantown, West Virginia; (5) Mylan Laboratories, Inc. of Pittsburgh, Pennsylvania (collectively referred to as the ''Profarmaco respondents''); (6) Orion Corporation Fermion of Espoo, Finland; (7) Interchem Corporation of Paramus, New Jersey; (8) Copley Pharmaceuticals, Inc. of Canton, Massachusetts; and (9) Rhone-Poulenc Rorer, Inc. of Collegeville, Pennsylvania (collectively referred to as the ''Fermion respondents''). Complainants alleged infringement of claim 1 of U.S. Letters Patent 4,438,035 (''the '035 patent''). On March 25, 1993, the Commission voted to institute an investigation of the complaint of Tanabe and MMD. 58 FR 16846 (March 31, 1993).

On May 6, 1993, complainants moved to amend the complaint and notice of investigation to add Plantex U.S.A., Inc. as a respondent. On May 20, 1993, the ALJ issued an ID amending the complaint and notice of investigation to add Plantex as a respondent. Plantex participated in the investigation with respondent Abic, Inc.

On February 1, 1995, the presiding ALJ issued his final ID finding that there was no violation of section 337. He found that claim 1 of the '035 patent was not infringed by any of respondents' processes, that claim 1 was invalid as obvious under 35 U.S.C. 103, and that the '035 patent was unenforceable because of complainants' inequitable conduct during reexamination proceedings before the U.S. Patent and Trademark Office. In a separate order (Order No. 52), issued on the same date, the ALJ granted respondents' motion for evidentiary sanctions against complainants.

On March 30, 1995, the Commission determined to review the following issues in the ID: (1) Claim interpretation; (2) whether claim 1 of the '035 patent is infringed by respondents' processes; (3) whether claim 1 of the '035 patent is invalid as obvious under 35 U.S.C. 103; (4) whether the '035 patent is unenforceable; and (5) Order No. 52. Order No. 52 was considered to be part of the ID. The Commission posed several specific questions for the parties. The Commission also requested information on the status of the Abic respondents.

On April 13, 1995, complainants and Abic Ltd. and Plantex U.S.A. (''the Abic respondents'') filed a joint motion to terminate the investigation as to the Abic respondents on the basis of a settlement agreement. Additionally, on April 13, 1995, Mr. James Gambrell filed a motion to intervene in the investigation.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission interim rule 210.56 (19 CFR 210.56).

Copies of the Commission's Order, the Commission Opinion in support thereof, the nonconfidential version of the ID, and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: June 1, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–13902 Filed 6–6–95; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[No. 41573 [1]]

Anacomp, Inc.; Crest Manufacturing Incorporated; Godfrey Marine; Harrison International Incorporated; Health and Personal Care Distribution Conference, Inc.; National Small Shipments Traffic Conference, Inc.; and Truckpro Parts & Service, Inc.—Petition for Declaratory Order—Certain Rates and Practices of Churchill Truck Lines, Inc. (Trans-Allied Audit Company, Inc.)

AGENCY: Interstate Commerce Commission.

ACTION: Institution of declaratory order proceeding.

SUMMARY: The Commission is instituting a proceeding under 49 U.S.C. 10321 and 5 U.S.C. 554(e) to determine whether the collection of undercharges by or on behalf of Churchill Truck Lines, Inc. (Churchill) or Trans-Allied Audit Company, Inc. (Trans-Allied), based on recharacterization of the service provided by Churchill as regular route instead of irregular route, constitutes an unreasonable practice under 49 U.S.C. 10701(a).

DATES: Comments by or on behalf of Churchill or Trans-Allied and any person desiring to submit comments in support of their position are due June 27, 1995. Petitioners' replies and any comments from all other interested persons are due July 7, 1995.

ADDRESSES: The original and 10 copies of comments and replies, which should refer to No. 41573, must be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, DC 20423. One copy of comments by or on behalf of Churchill or Trans-Allied must be served simultaneously on petitioners' representatives: Richard H. Streeter, 1401 Eye Street, N.W., Suite 500, Washington, DC 20005; and Daniel J. Sweeney, 1750 Pennsylvania Ave., NW., Washington, DC 20006.

[1] This notice embraces docket Nos. 41561, 41567, 41574, and 41575, which involve separately filed petitions seeking declaratory relief from undercharges sought by Churchill Truck Lines, Inc., so that the parties in those proceedings may be served with a copy of this notice. Those proceedings are not consolidated with this one, but parties to those proceedings may request that their proceedings be held in abeyance pending resolution of this proceeding. In No. 41561, a procedural schedule was established by decision served April 18, 1995; in No. 41567, a procedural schedule was established by decision served April 28, 1995; and in Nos. 41574 and 41575, procedural schedules will be established unless the parties request otherwise.

FOR FURTHER INFORMATION CONTACT: Marty Schwimmer, (202) 927–6289. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: On May 11, 1995, Anacomp, Inc.; Crest Manufacturing Incorporated; Godfrey Marine; Harrison International Incorporated; Health and Personal Care Distribution Conference, Inc.; National Small Shipments Traffic Conference, Inc.; and Truckpro Parts & Service, Inc. (petitioners) jointly filed a petition for declaratory order pursuant to the provisions of 5 U.S.C. 554(e). Petitioners request that the Commission take expedited or emergency action in order to bring an immediate halt to what they characterize as an aggressive undercharge campaign being waged by Trans-Allied on behalf of Churchill against the petitioners and hundreds of other shippers.

For many years, Churchill maintained discount tariffs applicable to services provided to points for which it held irregular route authority. Petitioners state that prior to ceasing operations in early 1994, Churchill filed tariffs with this Commission [ICC CHTL 681, ICC CHTL 604 and ICC CHTL 627 series] that included a note providing that ''* * * the discounts named herein apply only to and from irregular route points actually served direct by CHTL.''

Beginning in January 1995, petitioners, who had previously used Churchill's services, began receiving dunning letters from Trans-Allied accompanied by ''balance due freight bills.'' Subsequently, further letters were received from Trans-Allied claiming: that the discounts provided to shippers by Churchill's Tariff ICC CHTL 682 contain an unambiguous provision that restricted their application to shipments moving to and/or from irregular route service points only; that legal effect must be given to every provision of a tariff; that the movements covered by the balance due bills were less-than-truckload shipments moving to points specified in Churchill's regular route certificate and to which Churchill provided a regular less-than-truckload service; that under the filed rate doctrine reaffirmed in *Maislin Indus.* v. *Primary Steel*, 497 U.S. 116 (1990), Churchill must seek payment of the undiscounted rates on shipments to regular route shipping points; and that shippers are not entitled to discounts off the applicable class rates.

The facts as presented by petitioners suggest that the services involved could have been performed under either Churchill's regular route or its irregular route authority. Petitioners point out that, during its many years of service, Churchill never contended that the discounts did not apply to shipments moving to and from all points for which it held irregular route authority, regardless of whether or not they also happen to be points for which it held regular route authority. Only after Churchill ceased operations did its auditor assert that the published discounts were not applicable to shipments moving to irregular route points that were also named in Churchill's regular route certificates.

Petitioners contend that Trans-Allied's theory of recovery is fatally flawed. They claim, that, under the Supreme Court's decision in *Hewitt-Robins, Incorporated* v. *Eastern Freight-Ways*, 371 U.S. 84 (1962), if two routes are available (in that case, one interstate and the other intrastate), the carrier is legally obligated to use the lower-rated route. The Court, according to petitioners, specifically condemned the use of principles of misrouting to collect a higher tariff charge as being an unlawful practice under the Interstate Commerce Act and the common law. Petitioners argue that Churchill's shippers are entitled to the lowest published tariff rate between two points.

Citing *Hewitt-Robins, Inc.* v. *Eastern Freight-Ways*, 302 I.C.C. 173, 174 (1957), petitioners conclude that ''when no routing instructions are given, a motor carrier has a duty to select the least expensive route, unless it is an unreasonable one.'' 302 I.C.C. at 174. *See also Great Atlantic & Pacific Tea Co.* v. *Ontario Frt. Lines*, 46 M.C.C. 237, 239, 242–243 (1946); *Mentzner Stove Repairs Co.* v. *Ranft*, 47 M.C.C. 151, 154 (1947); *Murray Co. of Texas, Inc.* v. *Marron, Inc.*, 54 M.C.C. 442, 444 (1952). They urge that the application of the *Hewitt-Robins* principles to the Churchill situation leaves no room for Trans-Allied to argue that Churchill is entitled to a non-discounted rate because, if it handled shipments in regular route service, rather than its irregular route service, it did so without consulting the shipper. Petitioners, therefore, ask the Commission to declare that Churchill had an affirmative duty to route its shippers' movements in irregular route service in order to take advantage of its published tariff discounts, and that, if it routed them in non-discounted regular route service, Churchill engaged in an unreasonable practice.

Petitioners also argue that Trans-Allied's position is not supported by the literal wording of the tariff note cited above. They contend that Trans-Allied's rationale must be rejected because it erroneously reads into the note the nonexistent words ''in irregular route service.'' They emphasize that there is no such qualification within the four corners of Churchill's tariff rule and that, as numerous courts have reasoned, tariff construction requires that ''the four corners of the instrument must be visualized and all the pertinent provisions considered together, giving effect so far as possible to every word, clause, and sentence therein contained.'' *United States* v. *Missouri-Kansas-Texas R. Co.*, 194 F.2d 777, 778 (5th Cir. 1952).

Petitioners contend that the shipper is entitled to the benefit of the doubt if the tariff is ambiguous, and that, because there are no such qualifying words to alert the potential shipper to the possibility that it would be forced to pay higher rates for shipments handled pursuant to Churchill's regular route certificates, rather than its irregular route certificate, Trans-Allied's construction must be rejected. ''[A]ny ambiguity or reasonable doubt as to their meaning must be resolved against the carriers.'' *Id.* at 778. Citing *Carrier Service, Inc.* v. *Boise Cascade Corp.*, 795 F.2d 640, 642 (8th Cir. 1986), petitioners argue that, to the extent that Churchill's tariffs ''would lend themselves to misinterpretation by the ordinary users of such tariffs,'' they must be construed in favor of the shippers.

Finally, petitioners submit copies of correspondence to shippers in which Churchill's representatives adopted an interpretation consistent with petitioners' position that the published discount ''applies only on shipments either originating at or destined to all of Churchill's direct interstate points.'' Petitioners argue that such representations clearly indicate that Churchill intended that shippers would receive the discount, and that without such competitive rates these shipments would have been shipped via other carriers.

Because it appears that a controversy exists within the meaning of 5 U.S.C. 554(e), the petition will be granted and a declaratory order proceeding instituted. Churchill and Trans-Allied will be directed to file comments on the issues presented, and the petitioners will be directed to file reply comments. All other interested persons may also file comments. The parties are specifically directed to address whether the collection of undercharges by or on behalf of Churchill Truck Lines, Inc. or Trans-Allied Audit Company, Inc., based on recharacterization of the service provided by Churchill, as regular route instead of irregular route, constitutes an unreasonable practice under 49 U.S.C. 10701(a).

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. A declaratory order proceeding is instituted to consider the issues raised in this proceeding.

2. Comments by or on behalf of Churchill or Trans-Allied are due June 27, 1995.

3. Petitioners' replies and any comments from all other interested persons are due July 7, 1995.

4. A copy of this notice will be served on the parties in Nos. 41561, 41567, 41574, and 41575.

Decided: May 25, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–13934 Filed 6–6–95; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–402 (Sub-No. 3X)]

Fox Valley & Western Ltd.—Abandonment Exemption—in Portage and Waupaca Counties, WI; Exemption and Notice of Interim Trail Use or Abandonment

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, under 49 U.S.C. 10505, exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by Fox Valley & Western Ltd. of an 18.5-mile rail line extending between milepost 61.0 in Scandinavia and milepost 79.5 in Plover, in Portage and Waupaca Counties, WI, subject to standard labor protective conditions, environmental conditions, and, between mileposts 61.0 and 78.6, a trail use condition.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 7, 1995. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by June 19, 1995; petitions to stay must be filed by June 22, 1995; requests for a public use condition must be filed by June 27, 1995; and petitions to reopen must be filed by July 3, 1995.

ADDRESSES: Send pleadings referring to Docket No. AB–402 (Sub-No. 3X) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, NW., Washington, DC 20423, and (2) Janet H. Gilbert, P. O. Box 5062, Rosemont, IL 60017–5062.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Interstate Commerce Commission Building, 1201 Constitution Avenue, NW., Room 2229, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5271.]

Decided: May 24, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–13933 Filed 6–6–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32696]

Northern Ohio & Western Railway, L.L.C.—Operation Exemption—Line of Sandusky County-Seneca County-City of Tiffin Port Authority

Northern Ohio & Western Railway, L.L.C. (NOWRR), a noncarrier, has filed a notice of exemption to operate over 25.5 miles of rail line presently owned by Sandusky County-Seneca County-City of Tiffin Port Authority (Port of Tiffin), from milepost 41.5 near Tiffin, Seneca County, OH to milepost 67.0 near Woodville Township, Sandusky County, OH.[1] NOWRR's operation of the line was expected to be consummated on May 16, 1995, and will result in NOWRR becoming a class III carrier.

Any comments must be filed with the Commission and served on: Louis E. Gitomer, Ball, Janik & Novack, Suite 1035, 1101 Pennsylvania Ave., N.W., Washington, DC 20004.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: May 31, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–13947 Filed 6–6–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32701]

Portage Private Industry Council, Inc., and Akron Barberton Cluster Railway Company—Acquisition and Operation Exemption—Consolidated Rail Corporation

Portage Private Industry Council, Inc. (PPIC), a noncarrier ''non-profit coalition of business and professional leaders engaged in economic development activities in Portage County, Ohio,'' and Akron Barberton Cluster Railway Company (ABCR), a class III rail carrier, have jointly filed a verified notice under 49 CFR Part 1150, Subpart D—*Exempt Transactions* for PPIC to acquire from Consolidated Rail Corporation and for ABCR to operate a 7.23-mile rail line between milepost 182.82±, at Ravenna, and milepost 190.05±, at Kent, in Portage County, OH. The transaction was to have been consummated on or about May 15, 1995.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to reopen will not stay the exemption's effectiveness. An original and 10 copies of all pleadings, referring to Finance Docket No. 32701, must be filed with the Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423. In addition, a copy of each pleading must be served on Norman L. Christley, 215 West Garfield Road, Suite 230, Aurora, OH 44202, and Terence M. Hynes, Sidley & Austin, 1722 Eye Street, N.W., Washington, DC 20006.

Decided: May 30, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–13948 Filed 6–6–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[1] The Port of Tiffin acquired the line segment from Consolidated Rail Corporation through a feeder line application in *Sandusky County, et al.—Feeder Line Appl.—Conrail,* 6 I.C.C.2d 568 (1990).

for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 *And* to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer *And* the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, *And* to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

New Collection

(1) Albania Claims Program.

(2) FCSC Form 1–95. Foreign Claims Settlement Commission, United States Department of Justice.

(3) Primary: Individuals or households. Others: Not-for-profit institutions. Information collected will be used as the basis for determining entitlement of claimants to awards payable by the Department of the Treasury out of Albania Compensation Fund in claims of U.S. nationals against the Albanian government for expropriation of property.

(4) 500 annual respondents at 2 hours per response.

(5) 1,000 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–13857 Filed 6–6–95; 8:45 am]

BILLING CODE 4410–01–M

Federal Bureau of Investigation

DNA Advisory Board Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given that the DNA Advisory Board (DAB) will meet on June 22, 1995, from 11 am until 5 pm at the Arlington Renaissance Hotel, Master's Ballroom, 950 North Stafford Street, Arlington, VA 22203. All attendees will be admitted only after displaying personal identification which bears a photograph of the attendee.

The DAB's objectives and scope are: To develop, and if appropriate, periodically revise, recommended standards for quality assurance to the Director of the FBI, including standards for testing the proficiency of forensic laboratories, and forensic analysts, in conducting analyses of DNA; To recommend standards to the Director of the FBI which specify criteria for quality assurance and proficiency tests to be applied to the various types of DNA analyses used by forensic laboratories; and, To make recommendations to the Director of the FBI for a system for grading proficiency testing performance to determine whether a laboratory is performing acceptably.

The topics discussed at this meeting include: clarification of the range of topics which may be considered within the scope of the DAB; discussion of by-laws and procedures related to the administration of the DAB; relationship of the DAB to the Technical Working Group on DNA Analysis Methods; and, background presentations on the status of forensic DNA analysis in the United States, including accreditation and certification programs.

The meeting is open to the public on a first-come, first seated basis. Anyone wishing to address the DAB must notify the Designated Federal Employee (DFE) in writing at least twenty-four hours before the DAB meets. The notification must include the requestor's name, organizational affiliation, a short statement describing the topic to be addressed, and the amount of time requested. Oral statements to the DAB will be limited to five minutes and limited to subject matter directly related to the DAB's agenda, unless otherwise permitted by the Chairman.

Any member of the public may file a written statement for the record concerning the DAB and its work before or after the meeting. Written statements for the record will be furnished to each DAB member for their consideration and will be included in the official minutes of a DAB meeting. Written statements must be type written on 8½″ × 11″ xerographic weight paper, one side only, and bound only by a paper clip (not stapled). All pages must be numbered. Statements should include the Name, Organizational Affiliation, Address, and Telephone number of the author(s). Written statements for the record will be included in minutes of the meeting immediately following the receipt of the written statement, unless the statement is received within three weeks of the meeting. Under this circumstance, the written statement will be included with the minutes of the following meeting. Written statements for the record should be submitted to the DFE.

Inquiries may be addressed to the DFE, Mr. James J. Kearney, Chief, Scientific Analysis Section, Laboratory Division, Tenth Street Northwest, Washington, DC 20535, (202) 324–4416, FAX (202) 324–1462.

Dated: June 2, 1995.

James J. Kearney,

Chief, Scientific Analysis Section, Federal Bureau of Investigation.

[FR Doc. 95–13868 Filed 6–6–95; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 95–40; Exemption Application No. D–09694, et al.]

Grant of Individual Exemptions; General Motors Hourly-Rate Employees Pension Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the

Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

General Motors Hourly-Rate Employees Pension Plan; General Motors Retirement Program for Salaried Employees; Saturn Individual Retirement Plan for Represented Team Members; and Saturn Personal Choices Retirement Plan for Non-Represented Team Members (collectively, the Plans) Located in New York, New York; Exemption

[Prohibited Transaction Exemption 95–40; Application Nos. D–09694 thru D–09697]

The restrictions of section 406(b)(2) of the Act shall not apply to the stock index ''exchange of futures for physicals'' (EFP) transaction between the General Motors Retirement Program for Salaried Employees (the Salaried Plan) and the General Motors Hourly-Rate Employees Pension Plan, Saturn Individual Retirement Plan for Represented Team Members, and Saturn Personal Choices Retirement Plan for Non-Represented Team Members (together, the Hourly Plan) which occurred on November 30, 1993 in the amount of approximately $730 million, provided the following conditions were met:

(a) The terms of the EFP transaction were at least as favorable to the Plans as the terms which would have been available in an arm's-length EFP transaction involving unrelated parties;

(b) Each Plan received a price in the EFP transaction which was equal to the midpoint between the highest independent bid and lowest independent offer for buying and selling the futures involved on November 30, 1993, based on EFP quotations obtained from at least six independent broker-dealers capable of engaging in such an EFP at the time of the transaction;

(c) Wells Fargo Institutional Trust Company, N.A. (WFITC), as an independent fiduciary for the Salaried Plan, determined that the EFP transaction was prudent and in the best interests of the Salaried Plan and its participants and beneficiaries at the time of the transaction;

(d) WFITC monitored the EFP transaction on behalf of the Salaried Plan and took whatever action was necessary to safeguard the interests of the Salaried Plan at the time of the transaction;

(e) General Motors Investment Management Corporation (GMIMCo), as the fiduciary for the Hourly Plan, determined that the EFP transaction was prudent and in the best interests of the Hourly Plan and its participants and beneficiaries at the time of the transaction; and

(f) GMIMCo monitored the EFP transaction on behalf of the Hourly Plan and took whatever action was necessary to safeguard the interests of the Hourly Plan at the time of the transaction.

EFFECTIVE DATE: The exemption is effective November 30, 1993.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Proposal) published on March 13, 1995, at 60 FR 13467.

WRITTEN COMMENTS: The Department received three comment letters on the Proposal.

Two of the comment letters, submitted by individuals who are participants in the Salaried Plan, objected to the granting of an exemption for the EFP transaction. However, these individuals subsequently withdrew their adverse comments after a discussion of the issues involved with a representative of the Department.

The third letter received by the Department was a general inquiry from representatives of the GM Alumni Club in San Diego, California, requesting clarification of the EFP transaction. The Department responded to this inquiry by telephone and answered the particular questions raised by these commenters.

No other comment letters were received by the Department on this matter.

Accordingly, the Department has determined to grant the exemption.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department at (202) 219–8194. (This is not a toll-free number.)

Analex Corporation (Analex), Analex Corporation Retirement Plan (the Plan) Located in Brook Park, OH; Exemption

[Prohibited Transaction Exemption 95–41; Application No. D–09786]

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply retroactively to the past loan (the Past Loan) made by the Plan to Analex (the Employer) in accordance with the following conditions:

(1) The terms and conditions of the Past Loan were at least as favorable to the Plan as those obtainable by the Plan under similar circumstances in arm's-length transactions with unrelated parties;

(2) The amount of the Plan's assets involved in the Past Loan did not exceed 15% of the Plan's total assets at any time during the transaction;

(3) The Past Loan was at all times secured by collateral which was valued at not less than 200% of the value of the Past Loan;

(4) Prior to the disbursement under the Loan agreement, an independent, qualified fiduciary determined on behalf of the Plan that the Past Loan was in the best interests of the Plan as an investment for the Plan's portfolio, and protective of the Plan and its participants and beneficiaries;

(5) The independent, qualified fiduciary reviewed the terms and conditions of the exemption and the Past Loan, including the applicable interest rate, the sufficiency of the collateral, the financial condition of the

Employer and compliance with the 15% of Plan assets maximum loan amount, prior to approving the disbursement under the Loan agreement;

(6) The fiduciary is monitoring the Past Loan to ensure compliance with the terms and conditions of the exemption and the Loan agreement;

(7) The Plan suffers no loss as a result of the Past Loan; and

(8) The Past Loan will be fully repaid by May 31, 1995.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 7, 1995 at 60 FR 17821.

TEMPORARY NATURE OF EXEMPTION: This exemption is effective for the period from July 12, 1994 through May 31, 1995, the date by which the Past Loan will be repaid.

FOR FURTHER INFORMATION CONTACT: Virginia J. Miller of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

Washington Mortgage Corporation, Inc. (WMC) Located in Seattle, Washington; Exemption

[Prohibited Transaction Exemption 95–42; Exemption Application No. D–09814]

I. The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to: 1) the sale, exchange or transfer between WMC and its affiliates and certain employee benefit plans (the Plans) of certain construction loans or participation interests therein to non-party in interest entities; and 2) the sale, exchange or transfer between WMC and its affiliates and the Plans of any construction or permanent loan made by a Plan to a party in interest, and the resulting extension of credit therefrom, provided that:

(a) The terms of the transactions are not less favorable to the Plans than the terms generally available in arm's-length transactions between unrelated parties;

(b) Such sales, exchanges or transfers are expressly approved by a Plan fiduciary independent of WMC and its affiliates who has authority to manage or control those Plan assets being invested in mortgages or participation interests therein;

(c) No investment management, advisory, underwriting fee or sales commission or similar compensation is paid to WMC or any of its affiliates with regard to such sale, exchange or transfer;

(d) The decision to invest in a loan or a participation interest therein is not part of an arrangement under which a fiduciary of a Plan, acting with the knowledge of WMC or its affiliate, causes a transaction to be made with or for the benefit of a party in interest (as defined in section 3(14) of the Act) with respect to the Plan;

(e) At the time of its acquisition of a loan or participation interest therein, no Plan will have more than 25% of its assets invested in construction and permanent mortgages;

(f) WMC and its affiliates do not and will not act as fiduciaries with regard to any Plan investing in permanent and construction loans and interests therein as described in this exemption; and

(g) WMC shall maintain or will cause to be maintained, for the duration of any loan or participation interest therein sold to a Plan pursuant to this exemption, such records as are necessary to determine whether the conditions of this exemption have been met. The records mentioned above must be unconditionally available at their customary location for examination for purposes reasonably related to protecting rights under the Plans, during normal business hours, by: Any trustee, investment manager, employer of Plan participants, employee organization whose members are covered by a Plan, participant or beneficiary of a Plan.

II. The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975 (c)(1)(A) through (D) of the Code shall not apply to any transactions to which such restrictions would otherwise apply merely because WMC or any of its affiliates is deemed to be a party in interest with respect to a Plan by virtue of providing services to the Plan in connection with the subject loan transactions (or because it has a relationship to such service provider described in section 3(14)(F), (G), (H), or (I) of the Act), solely because of the ownership of a loan or participation interest therein as described in this exemption by such Plan.

III. Definitions. For purposes of this exemption,

(a) An ''affiliate'' of WMC includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with WMC,

(2) Any officer, director, employee, relative of, or partner in any such person, and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(b) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 7, 1995 at 59 FR 38205.

TEMPORARY NATURE OF EXEMPTION: This exemption is effective only for those transactions entered into within eight years of the date on which the Final Grant of this exemption is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Welborn Clinic Employees' Retirement Plan (the Plan) Located in Evansville, Indiana; Exemption

[Prohibited Transaction Exemption 95–43; Exemption Application No. D–09890]

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale by the Plan of certain improved real property (the Property) located in Evansville, Indiana, to WANC Leasing Company, a party in interest with respect to the Plan; provided the following conditions are satisfied:

(A) All terms and conditions of the transaction are no less favorable to the Plan than those which the Plan could obtain in an arm's-length transaction with an unrelated party;

(B) The Plan receives a cash purchase price of no less than the greater of (1) $8,555,000, or (2) the Property's fair market value as of the sale date; and

(C) The Plan does not incur any expenses with respect to the transaction.

For a more complete statement of the facts and representations supporting this exemption, refer to the notice of proposed exemption published on March 13, 1995 at 60 FR 13473.

WRITTEN COMMENTS: The Department received one written comment, submitted by a Plan participant, and no requests for a hearing. The Department forwarded the comment to the applicant, the Citizens National Bank of Evansville as trustee of the Plan (the Trustee), for responses to the points raised therein. The points raised by the comment, and the Trustee's responses, are summarized as follows:

(1) The commenter states that improvements have been made to the Property since December 31, 1993, the date of one of the two appraisals utilized by the parties to determine the

minimum purchase price for the Property. The commenter believes that a reappraisal of the Property should be required before the exemption is granted.

The Trustee responds that the Property will be reappraised prior to final determination of the purchase price, as described in the Summary. The Trustee and the representatives of WANC Leasing Company (WANC) have agreed that as part of the sale transaction the Property is to be reappraised by both C. David Matthews and William R. Bartlett II, and if the mean of the two reappraisals is higher than $8,555,000 the purchase price will be increased to such higher mean. As part of the application for the proposed exemption, the Trustee explained that the agreement with respect to the purchase price for the Property resulted from arm's-length negotiations between the Trustee and WANC over a two-month period.

(2) The commenter states that a recently-approved casino river boat project will affect values of real estate in downtown Evansville in ways which should be taken into consideration in establishing the purchase price of the Property.

The Trustee again notes that the Property will be reappraised by Matthews and Bartlett prior to final determination of the purchase price. The Trustee states that any increase in the Property's value attributable to the casino river boat project will be reflected in the reappraisals. The Trustee further maintains, however, that its own investigation into the matter indicates that the site of the river boat development, in the southwest corner of downtown, is too far from the Property's location, in the northeast section of downtown, to affect the value of the Property.

(3) The commenter, referring to the Summary's description of WANC as a partnership with 65 general partners, states that the actual number of general partners is in excess of 65.

The Trustee responds that the comment is correct and that the actual number of general partners is 80.

After careful consideration of the entire record, the Department has determined to grant the exemption.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

The Neiman Marcus Group, Inc., Employee Savings Plan (the Plan), Located in Chestnut Hill, Massachusetts; Exemption

[Prohibited Transaction Exemption 95–44; Exemption Application No. D–09917]

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) Loans to the Plan (the Loans) by The Neiman Marcus Group, Inc., the sponsor of the Plan, with respect to guaranteed investment contract number 62638 (the GIC) issued by Confederation Life Insurance Company (Confederation Life); and (2) the Plan's potential repayment of the Loans (the Repayments); provided that the following conditions are satisfied:

(A) No interest and/or expenses are paid by the Plan;

(B) The Loans are made in lieu of amounts due the Plan under the terms of the GIC;

(C) The Repayments are restricted to cash proceeds paid to the Plan by Confederation Life and/or any state guaranty association or other responsible third party making payment with respect to the GIC (the GIC Proceeds), and no other Plan assets are used to make the Repayments; and

(D) The Repayments will be waived to the extent the Loans exceed the GIC Proceeds.

For a more complete statement of the facts and representations supporting this exemption, refer to the notice of proposed exemption published on April 14, 1995 at 60 FR 1909.

WRITTEN COMMENTS: The Department received one written comment and no requests for a hearing. The comment was submitted by a Plan participant who expressed support for the proposed exemption. After consideration of the entire record, the Department has determined to grant the exemption.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 2nd day of June, 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 95–13911 Filed 6–6–95; 8:45 am]

BILLING CODE 4510–29–P

[Application No. D–09909, et al.]

Proposed Exemptions; Phillips Petroleum Company

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone

number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Phillips Petroleum Company (Phillips), Located in Bartlesville, OK; Proposed Exemption

[Application No. D–09909]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) The proposed making of interest-free loans to the Thrift Plan of Phillips Petroleum Company (the Plan) by Phillips, the Plan sponsor pursuant to the terms of a credit facility arrangement; and (2) the proposed repayment of such loans by the Plan to Phillips.

This proposed exemption is conditioned on the following requirements:

(a) Each loan executed under the proposed credit facility arrangement provides short-term funds to the Plan in connection with inter-fund transfers, withdrawals and participant loans and permits the orderly disposal of Phillips common stock.

(b) Each loan made under the proposed credit facility arrangement is unsecured and no interest, commissions or expenses are paid by the Plan.

(c) In the event of a loan default or delinquency, Phillips has no recourse against the Plan.

(d) Each loan is initiated, accounted for and administered by an independent fiduciary who monitors the terms and conditions of the exemption, if granted.

Summary of Facts and Representations

1. Phillips, which maintains its principal place of business in Bartlesville, Oklahoma, was incorporated in the State of Delaware on June 13, 1917. Phillips is engaged in various business activities ranging from worldwide petroleum exploration and production to the production and distribution of chemicals. Phillips is also a leader in research and development and it holds 3,400 patents in technology that support company business lines. As of December 31, 1993, Phillips had assets of approximately $10.9 billion, liabilities of approximately $7.8 billion, annual revenues totaling $12.5 billion and net income of $243 million. As of September 30, 1994, Phillips had 74,300 shareholders and 18,796 employees.

2. The Plan, of which Phillips is the sponsor, is a defined contribution plan having 15,394 participants and total assets of $1.27 billion as of May 16, 1994. The trustee of the Plan (the Trustee) is Bankers Trust Company of New York, New York.

3. The Plan permits participants to direct the investment of their account balances among several investment funds (the Funds) and to receive participant loans from their accounts. Generally, any regular employee on the payroll of Phillips is eligible to participate in the Plan except non-managerial retail outlet marketing employees. Plan participants may have up to 15 percent of their pay deposited in the Plan each month. The first 5 percent is designated as regular deposits with any excess being designated as supplemental deposits. Deposits may be further designated by a participant as ''before-tax'' or ''after-tax'' deposits. Before-tax deposits represent participant contributions made pursuant to an election by the participant under section 401(k) of the Code to have his or her salary reduced in exchange for the contribution. Before-tax deposits are participant contributions to the Plan that are made from participant earnings prior to the payment of Federal or state taxes. After-tax deposits are Plan contributions made by a participant from the participant's pay after Federal and state taxes have been paid. Plan participants are allowed to change their investment directions and deposit rates only during designated enrollment periods.

4. Employee deposits are placed in a special investment fund called the ''Temporary Investment Fund.'' The deposits are initially invested in certain short-term securities for up to 45 days after receipt by the Trustee. Then, the deposits and earnings thereon are paid into four other Funds, namely, Funds A, B, E or F as directed by the participant, and invested as follows:

a. In Fund A, a commingled trust government/corporate bond index fund held by Wells Fargo Institutional Trust Company.

b. In Fund B which holds Phillips common stock.

c. In Fund E, a Standard and Poor's equity index commingled fund held by the Trustee.

d. In Fund F, a commingled money market fund managed by the Trustee.[1]

[1] The applicant represents that investments by the Plan in Fund E and Fund F are covered by and comply with section 408(b)(8) of the Act. However,

Continued

In addition to the above, there are two other Funds that comprise the trust funds. They are Fund C and Fund D. Fund C is composed primarily of Phillips common stock. Fund D, which is closed to new deposits, holds guaranteed investment contracts.

Phillips contributes 25 percent of an employee's regular deposits to Fund B and 15 percent of regular deposits to any of the other investment Funds. The interest of a participant in each Fund is represented by units allocated to such participant.

5. The Plan allows a participant to elect a direct rollover of most distributions to an individual retirement account (the IRA) or to another tax qualified plans. The Plan also provides for participant loans as well as for transfers among certain of the Funds. In this regard, the Plan does not permit transfers to Fund C, Fund D or the Temporary Investment Fund.[2] However, it does allow transfers from these Funds with limited exceptions.[3]

6. Phillips represents that the right to transfer monthly from Fund to Fund and to borrow from the Plan has given participants greater control of their plan investments. Thus, for any valuation date (the Valuation Date) (i.e., the first working day for the Trustee and The New York Stock Exchange following the 14th of each month), participants may elect (to the extent permitted by the Plan) to transfer their account balances from one investment alternative to another, to withdraw funds or to borrow a portion of their account. As of the Valuation Date, Phillips common stock will be valued based on the closing sales prices for such stock. The steps that a participant may undertake in effecting transfers, withdrawals or participant loans are described as follows:

a. Inter-Fund Transfers. In order to transfer assets from one Fund to another, a participant must complete a standard transfer form applicable to all transfers or withdrawals. The transfer form must be delivered to the Plan Administrator by the last business day before the monthly Valuation Date. The transfer will be effective on the next Valuation Date.

b. Withdrawals from Funds. If the participant wishes to withdraw assets from a Fund, the procedure for withdrawal is essentially the same as that to transfer Funds. The participant must complete a withdrawal form and deliver it to the Plan Administrator by the last business day before the monthly Valuation Date. The withdrawal is effective as of the Valuation Date and it is usually paid within two weeks. If the participant intends to have the assets paid to an IRA or a qualified plan, the participant must provide the Plan Administrator with descriptive information concerning such plan or IRA, including the name and address. The participant must also verify that the recipient plan or IRA will accept the direct payment from the Plan.

c. Participant Loans. Assuming the participant requests a participant loan, such participant must be an active employee of Phillips with a vested account in the Plan of $2,000 or more. A participant may have up to two regular loans (any loan except a home loan) and one home loan outstanding at any one time. The maximum amount of any loan is limited to the lesser of: $50,000 less the highest loan balance in the last 12 months (determined as of the previous month's Valuation Date) or 50 percent of the vested account balance less the current outstanding loan balance for all loans, with values determined as of the previous month's Valuation Date. A participant may not apply for a loan if he or she has the maximum number of loans outstanding, has borrowed the maximum amount in the last 12 months or has an outstanding loan that is delinquent. The minimum amount of any single loan is $1,000.[4]

A participant may apply for a participant loan by telephone, then sign a transaction authorization form approved by the Plan Administrator and consent to irrevocable payroll deductions that will provide the amount necessary to repay the loan. Loan applications can be made only by telephone during the first 10 calendar days of each month. Loans will be processed once a month on the applicable Valuation Date. Proceeds will be paid within two to three weeks after the date the loan is processed. Participants may not make a withdrawal on the same Valuation Date that the loan is processed, even if the withdrawal form is submitted first.

7. To effect the aforementioned transfers, withdrawals or participant loans, the Trustee is required to liquidate assets held in the Fund or Funds from which the proceeds are needed. In this regard, the Plan document provides that the Trustee must take reasonable steps to invest deposits received for Funds B and C in Phillips common stock as soon as reasonably possible provided, however, that up to $10 million of cash equivalent investments may be maintained in the Funds to effect transfers, withdrawals and loans on the next regular Valuation Date. The Trustee must take reasonable steps to effect transfers, withdrawals or participant loans from Funds B and C[5] within 5 business days (on which both the Trustee and The New York Stock Exchange are in business) following the appropriate Valuation Date. The Trustee is also required to spread the sales of Phillips common stock that will be used to effect the transfers, withdrawals or participant loans ratably over the remaining trading days before the next regular Valuation Date.[6] However, if the number of shares which are to be sold would result in ratable sales of less than 10,000 shares a day, the Trustee is not required to sell less than 10,000 shares per day.

To the extent that the cash necessary to effect the transfers, withdrawals and participant loans within the 5 day trading period exceeds $10 million, the Trustee is permitted to borrow funds to provide sufficient liquidity to Funds B and C. Expenses and other costs attributable to such borrowings will be allocated to Funds B and C.

8. To bridge the gap between the immediate need for assets to fund transfers, withdrawals or participant loans and the disposal of Phillips common stock, the Trustee entered into a one-year, renewable revolving credit facility arrangement with NationsBank of Dallas, Texas on July 14, 1993. By its terms, the credit facility arrangement initially permitted the Trustee, on behalf of the Plan, to borrow up to $50

the Department expresses no opinion herein on whether such investments satisfy the terms and conditions of section 408(b)(8) of the Act.

[2] For example, with respect to the Temporary Investment Fund, the applicant represents that its purpose is to hold participant contributions until they are transferred to the elected investment Fund. Due to the short-term nature of this Fund, the applicant explains that participants are not entitled to transfer deposits to the Temporary Investment Fund from any other Fund.

[3] In the case of Fund C, the applicant explains that participants may make a one-time transfer from Fund C after retirement. In the case of Fund D, the applicant represents that a participant may not transfer from Fund D except to transfer upon the expiration of such participant's Class Year (guaranteed investment contract) Account.

[4] The applicant represents that the Plan's participant loan provisions are designed and administered to comply with section 408(b)(1) of the Act and applicable regulations. However, the Department expresses no opinion herein on whether such loans satisfy the terms and conditions of section 408(b)(1) of the Act and the regulations promulgated thereunder.

[5] Although transfers are restricted from Fund C, withdrawals are permitted of vested company contributions. Loans can be taken from Fund C after all of the other Funds have been depleted subject to the loan limitation rules in the Plan.

[6] Although the Department expresses no opinion herein on the requirement that the Trustee spread the sales of Phillips common stock over the remaining trading days before the next regular Valuation Date, it notes that Trustee's decision to spread stock sales should be in the interests of the Plan and consistent with the provisions of section 404 of the Act.

million on a short-term and unsecured basis. Interest is charged on a sliding scale margin above the London Interbank Offered Rate. The Plan is required to repay each loan in cash within 30 days of its making with proceeds from the sale of Phillips common stock. In addition, NationsBank charges the Plan a commitment fee of .10 percent of any unused amount of funds and a margin of .25 percent over NationsBank's actual cost of funds.

The Trustee has drawn upon the credit facility arrangement three times, resulting in loans to the Plan in the following amounts over the following time frames: (a) $3.3 million for 10 days; (b) $850,000 for 12 days; and (c) $10,000 for 8 days. As of March 10, 1995, the Plan had repaid all principal for the loans, including interest and expenses totaling $94,144. Although the credit facility arrangement was expected to expire in July 1994, it has been extended by NationsBank until July 12, 1995. However, the credit facility amount has been reduced from $50 million to $25 million.

9. The Plan wishes to terminate its credit facility arrangement with NationsBank. Therefore, Phillips requests an administrative exemption from the Department in order that it may provide the Plan with a similar lending arrangement. Phillips represents that it is aware that Prohibited Transaction Exemption (PTE) 80–26 (45 FR 28545, April 29, 1980) permits interest-free loans to a plan by a party in interest. In this regard, Phillips notes that PTE 80–26 permits an unsecured loan by a party in interest to a plan for a purpose incidental to the ordinary operation of the plan and for a period not exceeding 3 days. If the loan proceeds are used only for the payment of operating expenses of the plan, including the payment of benefits, Phillips explains that no time limit is imposed under PTE 80–26.

In view of the foregoing, Phillips represents that the extent to which PTE 80–26 would cover the proposed credit facility arrangement is unclear. Phillips believes that the inter-fund transfers and participant loans that would be initially funded by its proposed extension of credit may not be viewed as ordinary operating expenses of the Plan under PTE 80–26. Even if viewed as ordinary operating expenses, Phillips states that it is not clear whether the loans could be repaid within 3 days inasmuch as the Plan documents require the Trustee to spread sales of stock ratably over a Plan month to prevent sales from negatively impacting the market.

10. Under its proposed credit facility arrangement, Phillips will extend an initial line of credit of $25 million. The line of credit may be renewed annually by Phillips and the Plan. Each loan made thereunder will be unsecured and no administrative fees or interest will be charged to the Plan in connection with any of the loans. Each loan will be repaid within 31 days of its making. Funds for repaying the loans will be derived from the Trustee's sale of stock held in Funds B and C. Assets held in the other investment Funds will not be utilized for such repayments. Further, Phillips will have no recourse against the Plan or against any participant in the event of a loan default or delinquency and it will also not charge any late fees.

11. The Trustee will serve on behalf of the Plan as the independent fiduciary and, in such capacity, it will activate and administer the proposed credit facility arrangement. The Trustee represents that it is a leading provider of global financial services and that it has been providing services to employee benefit plans since 1927. As of March 10, 1995, the Trustee represents that it had employee benefit plan assets under management of over $165 billion and serves as a trustee for more than $115 billion in defined contribution plan assets. As of December 31, 1994, the Trustee states that it provided trust/custody services to 575 clients with total assets under administration of approximately $394 billion.

The Trustee represents that it is familiar with the Plan and its investment portfolios since it has access to information regarding Plan assets and can ascertain the extent to which the proposed credit facility arrangement will affect the Plan's investment needs. The Trustee also represents that it is independent of Phillips. In this regard, the Trustee states that during 1994, the fees paid to it by Phillips represented less than one percent of its total fiduciary and funds management revenues.

The Trustee explains that the Plan and its trust document were amended in 1993 to permit the credit facility arrangement with NationsBank. In view of its experience in negotiating and monitoring the NationsBank credit facility on behalf of the Plan, the Trustee states that it is fully familiar with the terms and costs associated with such arrangements. The Trustee points out that it has had to resort to the NationsBank credit facility arrangement on only a small number of occasions in the past 18 months. However, the costs associated with using the facility and assuring its continued availability could be avoided if Phillips were permitted to make similar, short-term extensions of credit to the Plan on an interest-free basis.

Consistent with relevant Plan provisions, the Trustee states that it will be responsible for determining when and how much to borrow and to cause the Plan to repay each loan within a 31 day period. The Trustee represents that it will not receive an additional fee or other compensation from the Plan as the result of the proposed credit facility arrangement between the Phillips and the Plan.

In view of the above, the Trustee concludes that the proposed interest-free loan program is in the best interest of the Plan and its participants and beneficiaries. The Trustee believes that such arrangement will result in cost savings to the Plan and enable the Plan to complete transactions in a timely manner. Further, the Trustee asserts that its ongoing, independent involvement in and oversight of the program will provide protection for the Plan and its participants and beneficiaries.

12. In summary, it is represented that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) Each loan executed under the proposed credit facility arrangement will provide short-term funds to the Plan in connection with inter-fund transfers, withdrawals and participant loans and it will permit the orderly disposal of Phillips common stock.

(b) Each loan made under the proposed credit facility arrangement will be unsecured and no interest, commissions or expenses will be paid by the Plan.

(c) In the event of a loan default or delinquency, Phillips will have no recourse against the Plan.

(d) Each loan will be initiated, accounted for and administered by the Trustee, which will also monitor the terms and conditions of the exemption, if granted.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Universal Underwriters Group Thrift Plan (the Plan), Located in Overland Park, Kansas; Proposed Exemption

[Application No. D–09947]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If

the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to (1) the proposed extensions of credit (the Loans) to the Plan from Universal Underwriters Insurance Company (the Employer), with respect to a guaranteed investment contract (the GIC) issued by Confederation Life Insurance Company (Confederation); (2) the Plan's potential repayment of the Loans upon the receipt by the Plan of payments under the GIC; and (3) the assignment by the Plan to the Employer of all claims or causes of action it may have against the Plan's former GIC placement advisor for recommending that the Plan purchase the GIC; provided the following conditions are satisfied:

(A) All terms and conditions of such transaction are no less favorable to the Plan than those which the Plan could obtain in arm's-length transactions with unrelated parties;

(B) No interest or expenses are paid by the Plan in connection with the proposed transaction;

(C) The Loans will be repaid only out of amounts paid to the Plan by Confederation, its successors, or any other responsible third party;

(D) Repayment of the Loans will be waived to the extent that the Loans exceed GIC proceeds;

(E) A qualified independent fiduciary will represent the interests of the Plan throughout the duration of the proposed transaction; and

(F) The Employer's recovery resulting from a cause of action assigned to the Employer by the Plan will be limited to the amount necessary to pay for litigation expenses and to pay off the Plan's outstanding Loan balance and any excess recovery will be transferred back to the Plan.

Summary of Facts and Representations

1. The Plan is a defined contribution 401(k) plan which provides for individual participant accounts and participant-directed investments. The Plan had approximately 1,100 participants as of December 30, 1993 and $45,924,914.96 in assets as of June 30, 1994. The Plan trustee is United Missouri Bank, N.A. (UMB), located in Kansas City, Missouri. The Employer is a Missouri corporation that provides insurance protection for automobile dealerships and other businesses. Under the terms of the Plan, participants have the option of investing in any of six investment funds, including the Stable Interest Fund, which invests primarily in interest-paying contracts with insurance companies. As of December 31, 1994, the Stable Interest Fund held ten guaranteed investment contracts and several other interest bearing contracts, as well as approximately $74,413 in a deposit account. The GIC, which was issued on February 10, 1994, is part of the Stable Interest Fund. The GIC is a single-deposit non-participating contract which allows the Plan to make benefit-responsive withdrawals to fund benefit payments, investment fund transfers, hardship withdrawals and participant loans (collectively, the Withdrawal Events). The terms of the GIC provide for interest on the $5,500,000 principal amount at a guaranteed interest rate of 6.12% over a period of 61 months. Interest payments are to be made annually to the Plan on April 1 (beginning April 1, 1995), up to the scheduled maturity date of April 1, 1999. As of June 30, 1994, the GIC had an accumulated book value of $5,615,769.50.

2. Confederation is a Canadian corporation doing business in the United States through branches in Michigan and Georgia. The Employer represents that on August 11, 1994, the Canadian insurance regulatory authorities placed Confederation into a liquidation and winding-up process, and on August 12, 1994, the insurance authorities of the State of Michigan commenced legal action to place the U.S. operations of Confederation into a rehabilitation proceeding. As a result of these actions, Confederation suspended interest and maturity payments under the GIC and significantly limited the circumstances under which withdrawals may be obtained from the GIC. The Employer represents that it has established a separate fund to which the portion of the Stable Interest Fund attributable to the GIC has been transferred. This separate fund has been frozen so that no payments for Withdrawal Events are permitted.[7]

3. The Employer proposes to advance interest free loans to the Plan at such times and in such amounts as required to fully realize the interest payments due the Plan under the GIC, but only to the extent that such amounts are not timely paid by or on behalf of Confederation. Consequently, each Loan will be reduced by any amounts actually received by the Plan, with respect to the particular interest payment due, from Confederation or any other party making payment with respect to Confederation's obligations under the GIC. In addition to the Loans required to guarantee interest payments, the Employer is also proposing a final Loan upon the GIC's final maturity date to the extent that Confederation fails to pay the full amount due. The amount of interest accrual and the final maturity payment due will be determined on the basis of the GIC's principal plus interest at the guaranteed rate, less previous withdrawals, as of the date of the Loan.

4. The Loans and their repayments will be made pursuant to a written agreement (the Loan Agreement) between the Plan and the Employer. The Plan and the Employer will also enter into a separate agreement (the Assignment Agreement) under which the Plan will agree to assign to the Employer any and all claims or causes of action it may have as holder of the GIC against the Plan's former GIC placement adviser, Buck Pension Fund Services, Inc. and its employees, agents, and related entities (collectively referred to as Buck). The Employer's recovery under the Assignment Agreement will be limited to the amount necessary to pay for litigation expenses and to pay off the Plan's outstanding Loan balance. If, pursuant to a cause of action assigned by the Plan, the Employer recovers from Buck an amount exceeding such litigation expenses and the outstanding Loan balance, the excess recovery will be transferred back to the Plan.

5. UMB (see section 1—above) has agreed to serve as independent fiduciary on behalf of the Plan throughout the duration of the transaction. UMB has acknowledged its duties, responsibilities and liabilities in acting as a fiduciary with respect to the proposed transaction. UMB represents that the Employee Benefit Division of its Trust Department has extensive experience as a provider of services to employee benefit plans. UMB maintains that less than 1% of its business is associated with the Employer. As independent fiduciary, UMB has concluded that the proposed transaction is in the best interests of, and protective of, the rights of the Plan's participants and beneficiaries. In this regard, UMB represents that the Loan Agreement will ensure that the Plan suffers no investment loss from its investment in the GIC, will make it possible for Plan Participants to gain access to their funds which have been frozen, and will allow the Plan to reinvest the funds that were previously invested in the GIC. In addition, UMB represents that the proposed transaction is protective of the

[7] The Department notes that the decisions to acquire and hold the GIC are governed by the fiduciary responsibility requirements of Part 4, Subtitle B, Title I of the Act. In this regard, the Department is not herein proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the GIC issued by Confederation.

Plan in that it provides the Plan with the cash it needs to fund Withdrawal Events and permits the Employer to pursue any claims that the Plan may have against the Plan's former GIC placement advisor. UMB represents that, under this arrangement, the Employer, not the Plan bears the risk of an uncertain recovery on a claim that would be expensive and time consuming for the Plan to pursue. If the Employer does bring any claim or cause of action against Buck, UMB has agreed to monitor the division of any recovery obtained in such litigation to assure that the Plan receives the portion to which it is entitled.

6. The Employer represents that it wishes to enter into the proposed transaction in order to protect the Plan participants from the effects of a prolonged rehabilitation process and from any potential loss resulting from Confederation's inability to meet its obligations under the GIC. In this regard, the Employer represents that the proposed transaction would ensure the availability of benefits equivalent to those anticipated by participants prior to the failure of Confederation, at no additional cost to participants. In addition, the Employer represents that the Loans will contribute to the Plan's ability to fund Withdrawal Events. The Employer also represents that the Loans will be non-interest-bearing and the Plan will not incur any expenses in connection with the proposed transaction.

7. Repayment of the Loans under the Agreement is limited to payments made to the Plan by or on behalf of Confederation, or its successor, or any other responsible third parties. No other assets of the Plan will be available for repayment of the Loans. If the payments by or on behalf of Confederation are not sufficient to fully repay the Loans, the Loan Agreement provides that the Employer will have no recourse against the Plan, or against any participants or beneficiaries of the Plan, for the unpaid amount. To the extent the Plan receives GIC proceeds in excess of the total amount of the Loans, such additional amounts will be retained by the Plan and allocated among the accounts of the Plan's participants.

8. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act because: (1) The transaction will preserve the Plan's ability to timely fund participants' benefits; (2) The transaction will preserve any cause of action that may exist against the Plan's GIC placement advisor; (3) The Plan will not incur any expenses with respect to the transaction; (4) Repayment of the Loans will be made only from amounts paid to the Plan by Confederation, its successor, or any other third party; (5) If the payments by or on behalf of Confederation are not sufficient to fully repay the Loans, the Employer will have no recourse against the Plan, or against any participants or beneficiaries of the Plan, for the unpaid amount; and (6) Repayment of the Loans will be waived with respect to the amount by which the Loans exceed the amount the Plan receives from GIC proceeds.

FOR FURTHER INFORMATION CONTACT: Virginia J. Miller of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

BlackRock Financial Management L.P. (BlackRock), Located in New York, New York; Proposed Exemption

[Application No. D–09963]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a)(1)(A) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) of the Code, shall not apply to the proposed cross-trading of equity or debt securities between various accounts managed by BlackRock (the Accounts) where at least one Account involved in any cross-trade is an employee benefit plan account (Plan Account) for which BlackRock acts as a fiduciary.

Conditions and Definitions

This proposed exemption is subject to the following conditions:

1. (a) A Plan's participation in the cross-trade program is subject to a written authorization executed in advance by a fiduciary with respect to each such Plan, the fiduciary of which is independent of BlackRock;

(b) The authorization referred to in paragraph (a) is terminable at will without penalty to such Plan, upon receipt by BlackRock of written notice of termination; and

(c) Before an authorization is made, the authorizing Plan fiduciary must be furnished with any reasonably available information necessary for the authorizing fiduciary to determine whether the authorization should be made, including (but not limited to) a copy of this exemption (if granted), an explanation of how the authorization may be terminated, a description of BlackRock's cross-trade practices, and any other reasonably available information regarding the matter that the authorizing fiduciary requests.

2. (a) No more than three (3) business days prior to the execution of any cross-trade transaction, BlackRock must inform an independent fiduciary of each Plan involved in the cross-trade transaction: (i) That BlackRock proposes to buy or sell specified securities in a cross-trade transaction if an appropriate opportunity is available; (ii) the current trading price for such securities; and (iii) the total number of shares to be acquired or sold by each such Plan;

(b) Prior to each cross-trade transaction, the transaction must be authorized either orally or in writing by the independent fiduciary of each Plan involved in the cross-trade transaction;

(c) If a cross-trade transaction is authorized orally by an independent fiduciary, BlackRock will provide written confirmation of such authorization in a manner reasonably calculated to be received by such independent fiduciary within one (1) business day from the date of such authorization;

(d) The authorization referred to in this paragraph (2) will be effective for a period of three (3) business days; and

(e) No more than ten (10) days after the completion of a cross-trade transaction, the independent fiduciary authorizing the cross-trade transaction must be provided a written confirmation of the transaction and the price at which the transaction was executed.

3. (a) Each cross-trade transaction is effected at the current market value for the security on the date of the transaction, which shall be, for equity securities, the closing price for the security on the date of the transaction, and for debt securities, the fair market value for the security as determined in accordance with paragraph (b) of Rule 17a–7 issued by the Securities and Exchange Commission (SEC) under the Investment Company Act of 1940 (the 1940 Act);

(b) The cross-trade transaction is effected at a price that: (1) In the case of any equity security, is within 10 percent of the closing price for the security on the day before the date on which BlackRock receives authorization from the independent Plan fiduciary to engage in the cross-trade transaction; and (2) in the case of any debt security, is within 10 percent of the fair market value of the security on the last valuation date preceding the date on which BlackRock receives authorization by the independent Plan fiduciary to engage in the cross-trade transaction as

determined in accordance with SEC Rule 17a–7(b) of the 1940 Act;

(c) The securities involved in the cross-trade transaction are those for which there is a generally recognized market;

(d) The cross-trade transaction is effected only where the trade involves less than five (5) percent of the aggregate average daily trading volume of the securities which are the subject of the transaction for the week immediately preceding the authorization of the transaction. A cross-trade transaction may exceed this limit only by express authorization of independent fiduciaries on behalf of Plans affected by the transaction, prior to the execution of the cross-trade.

4. For all accounts participating in the cross-trading program, if the number of units of a particular security which any accounts need to sell on a given day is less than the number of units of such security which any accounts need to buy, or vice versa, the direct cross-trade opportunity must be allocated among the buying or selling accounts on a pro rata basis.

5. (a) BlackRock furnishes the authorizing Plan fiduciary at least once every three months, and not later than 45 days following the period to which it relates, a report disclosing: (i) a list of all cross-trade transactions engaged in on behalf of the Plan; and (ii) with respect to each cross-trade transaction, the prices at which the securities involved in the transaction were traded on the date of such transaction; and

(b) The authorizing Plan fiduciary is furnished with a summary of the information required under this paragraph 4(a) at least once per year. The summary must be furnished within 45 days after the end of the period to which it relates, and must contain the following: (i) A description of the total amount of Plan assets involved in cross-trade transactions during the period; (ii) a description of BlackRock's cross-trade practices, if such practices have changed materially during the period covered by the summary; (iii) a statement that the Plan fiduciary's authorization of cross-trade transactions may be terminated upon receipt by BlackRock of the fiduciary's written notice to that effect; and (iv) a statement that the Plan fiduciary's authorization of the cross-trade transactions will continue in effect unless it is terminated.

6. The cross-trade transaction does not involve assets of any Plan established or maintained by BlackRock or any of its affiliates.

7. All Plans that participate in the cross-trade program have total assets of at least $25 million.

8. BlackRock receives no fee or other compensation (other than its agreed upon investment management fee) with respect to any cross-trade transaction.

9. BlackRock is a discretionary investment manager with respect to Plans participating in the cross-trade program.

10. For purposes of this proposed exemption:

(a) *Cross-trade transaction* means a purchase and sale of securities between accounts for which BlackRock or an affiliate is acting as an investment manager;

(b) *Affiliate* means any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with BlackRock;

(c) *Plan Account* means an account holding assets of one or more employee benefit plans that are subject to the Act, for which BlackRock acts as a fiduciary.

Summary of Facts and Representations

1. BlackRock is a Delaware limited partnership with its principal office located in New York City. BlackRock Management Partners L.P. (BMP) is the general partner of BlackRock. The partners of BlackRock and BMP executed an agreement with PNC Bank on February 28, 1995, whereby all of the interests in BlackRock and BMP were sold to a wholly-owned subsidiary of PNC Bank, N.A. In this regard, BlackRock continues to conduct its business in the same manner as it did prior to the sale. BlackRock provides a broad range of financial services to a variety of clients, including corporations, financial institutions, registered investment companies and employee benefit plans. BlackRock serves as investment manager for a substantial number of qualified pension plans and currently has more than $24 billion of assets under management.

2. With respect to the employee benefit plans that will participate in the proposed cross-trading program (the Plans), BlackRock will be acting as a discretionary investment manager. The Plan Accounts maintained by BlackRock are all considered ''managed accounts'' under which BlackRock and the sponsor or other named fiduciary of the underlying Plan have agreed that the investment of the assets in question will be managed actively at the discretion of BlackRock, pursuant to written guidelines as to which types of securities to buy or sell for the account.

Under the investment guidelines for many of the Plan Accounts, BlackRock manages the assets in accordance with investment parameters that are designed to invest the assets in various types of fixed-income securities, such as mortgage-backed securities, U.S. Government securities or corporate debt securities. BlackRock primarily manages such Plan assets using duration management techniques with the performance and composition of the assets for the Plan Account measured against a specified benchmark, such as various Salomon Brothers, Lehman Brothers or Merrill Lynch indices that are selected by the Plan sponsor or other named fiduciary. The duration of the assets held by the Plan Account will be comparable to the portfolio specified by the referenced benchmark. BlackRock states that the objective factors contained in or required by these investment parameters may not be changed or otherwise altered without the prior written approval of the Plan sponsor or other named fiduciary. The types of securities held in these accounts are generally the same for each Plan Account that retains BlackRock for purposes of managing such an account, although the specific mix of securities varies depending on the investment objectives of the particular Plan Account.

3. Securities sales and purchases for Plan Accounts may result from either: (a) The active decision-making by BlackRock's account manager relating to new investments for the Plan Account; or (b) a change in the overall level of investment as a result of investments and withdrawals made to the Plan Account by the Plan sponsor or other named fiduciary requiring a rebalancing of the account with transactions involving the Plan Account's existing securities. Under either of these circumstances, BlackRock's disposition of a particular security for one Plan Account may involve a security that is desirable for another Plan Account, presenting an opportunity to save substantial dealer markups for both the liquidating Plan Account and the acquiring Plan Account. This saving could be effected by a cross-trade transaction, which involves matching BlackRock's sell orders for a particular day with its buy orders for the same day in nondealer transactions.

The execution of such cross-trades between various BlackRock accounts could involve trades between Plan Accounts, or between Plan Accounts and investment companies managed by BlackRock, or between Plan Accounts and private institutional accounts managed by BlackRock. In this regard, because BlackRock has special expertise in fixed-income securities, registered

investment companies and institutional accounts for which BlackRock or an affiliate serves as the investment advisor also hold the same types of securities as the Plan Accounts, although in different combinations based on their particular investment objectives.

4. BlackRock proposes to take advantage of opportunities to eliminate unnecessary third-party dealer markups by cross-trading securities, whenever possible, directly between Plan Accounts or directly between Plan Accounts and other client accounts. BlackRock represents that comparable trades of such securities on the open market between unrelated parties often require dealer markups equal to between one-sixteenth to one percent of the price of the securities for each sale or purchase transaction. BlackRock proposes to execute cross-trade transactions on behalf of the Plan Accounts without charging any commissions or receiving any dealer markups.

5. BlackRock represents that by participating in the cross-trading program, the Plan Accounts will benefit by not incurring the cost, in terms of price, of dealing with a person or firm acting as ''market-maker'' for the particular security involved in the cross-trade transaction. This cost is generally measured by the spread between the bid and offer prices for the security which would be paid to the market-maker. The Plan Accounts will also benefit under the cross-trading program by avoiding false pricing differentials that result in transactions with a market-maker where the securities in question are traded in odd-lot sizes. For example, in the case of debt securities, BlackRock states that both buyer and seller will benefit by cross-trading because the securities involved will be priced either by reference to the last sale price for the securities on the date of the transaction or, if no transactions have occurred that day, by averaging the spread between the highest independent bid and lowest independent offer obtained from at least two independent dealers, in accordance with SEC Rule 17a–7(b) of the 1940 Act (see Paragraph 10 below). Thus, in situations where an average of the current bid/offer prices is used, the seller will receive a higher price than the dealers' bid price and the buyer will pay a lower price than the dealers' offer price, which would not, in all instances, be the case in an open market transaction or a transaction directly with a dealer. BlackRock states further that where trading of a particular debt or equity security is ''thin'' (i.e. limited number of securities available) or round lots are not available, participation in the cross- trading program may enable the Plan Accounts to obtain early opportunities to acquire or sell such securities at favorable prices. Therefore, by participating in the cross-trading program, BlackRock represents that the Plan Accounts will incur substantially lower expenses for the particular transactions and will be better able to effect purchase and sale transactions.

6. BlackRock makes decisions regarding which securities to purchase or sell for client accounts considering all of the relevant facts and circumstances, including the composition of the portfolios and the liquidity requirements of the accounts. BlackRock states that such decisions will not be influenced by the fact that an opportunity for a cross-trade may be available. In this regard, BlackRock represents that the matching of sale and purchase orders for its accounts on any particular day will be largely automatic.

With respect to the allocation of cross-trade opportunities among various accounts, including the Plan Accounts, BlackRock proposes to use a non-discretionary pro-rata allocation system. For example, if the number of units of a particular security that any accounts need to sell on a given day is less than the number of units of such security which other accounts need to buy on that date, the cross-trade opportunity would be allocated among the buying accounts on a pro-rata basis. The same procedure would apply where the number of units of a particular security to be sold by various accounts is more than the number of units of such security which other accounts need to buy on that date, so that in such instances the cross-trade opportunity would be allocated among the selling accounts on a pro-rata basis. Thus, all accounts participating in BlackRock's cross-trading program, including the Plan Accounts, will have opportunities to participate on a proportional basis in cross-trade transactions during the operation of the program. BlackRock represents that this aspect of the cross-trading program will be part of the information disclosed in writing to the fiduciaries of the Plan Accounts prior to their authorization for participation in the program (as discussed further below).

7. Under the requested exemption, only Plans with at least $25 million in total assets will be eligible to participate in the cross-trading program. A Plan fiduciary that is independent of BlackRock must provide written authorization allowing the Plan's participation in the program before any specific cross-trade transactions can be executed for such Plan. This authorization will be terminable at will upon written notice by the appropriate independent Plan fiduciary. BlackRock will receive no fee or other compensation (other than its agreed upon investment management fee) with respect to any cross-trade transaction. Thus, a Plan will not pay any separate fees to BlackRock for cross-trading services. No penalty or other charge will be made as a result of the termination of a Plan's participation in the cross-trading program. In addition, before any authorization is made by a Plan for participation in the cross-trading program, BlackRock must provide the authorizing Plan fiduciary with all materials necessary to permit an evaluation of the program. These materials will include a copy of the proposed exemption and final exemption, if granted, an explanation of how the authorization may be terminated, a description of BlackRock's cross-trading practices, and any other available information that the authorizing Plan fiduciary may reasonably request.

8. In addition to requiring a general authorization of a Plan's participation in BlackRock's cross-trading program, an independent fiduciary of each Plan must specifically authorize each cross-trade transaction. Any such authorization will be effective only for a period of three (3) business days and will be subject to certain pricing limitations (as discussed below in Paragraph 10). The authorization to proceed with the transaction may be either oral or written. If a cross-trade transaction is authorized orally by an independent fiduciary, BlackRock will provide a written confirmation of such authorization in a manner reasonably calculated to be received by the independent fiduciary within one (1) business day from the date of the authorization. The Plan fiduciary will be sent a written confirmation of the cross-trade, including the price at which it was executed, within ten (10) days of the completion of the transaction.

9. BlackRock will provide the authorizing Plan fiduciary with a report, at least once every three (3) months and not later than forty-five (45) days following the period to which it relates, that sets forth: (a) A list of all the cross-trade transactions conducted on behalf of the Plan Account during the previous period; and (b) with respect to each cross-trade transaction, the prices at which the subject securities were traded on the date of the transaction. Each Plan fiduciary will also be provided with a summary of the quarterly reports, at least once a year and not later than 45 days after the end of the period to which

it relates, that includes: (a) A description of the total amount of Plan assets involved in cross-trade transactions completed during the year; (b) a statement that the Plan fiduciary's authorization to participate in the cross-trading program can be terminated without penalty upon BlackRock's receipt of a written notice to that effect; (c) a statement that the fiduciary's authorization of the Plan's participation in the program will continue unless it is terminated; and (d) a description of any material change in BlackRock's cross-trade practices during the period covered by the summary. These reports will provide the Plan fiduciaries with a mechanism for monitoring the operation of the cross-trade program. The applicant represents that the authorization of each cross-trade will prevent BlackRock from favoring one account at the expense of another in the cross-trade transaction.

10. The securities involved in any cross-trade transaction will be only those for which there is a generally recognized market. BlackRock represents that each cross-trade transaction will be effected at the current market value for the securities on the date of the transaction. For all equity securities, the current market value shall be the closing price for the security on the date of the transaction. For all debt securities, the current market value shall be the fair market value of the security as determined on the date of the transaction in accordance with SEC Rule 17a–7 under the 1940 Act. In this regard, SEC Rule 17a–7(b) contains four possible means of determining ''current market value'' depending on such factors as whether the security is a reported security and whether its principal market is an exchange. This Rule is also applicable to registered investment companies for which BlackRock acts as an investment advisor.

In addition, BlackRock states that each cross-trade transaction will be effected at a price that: (a) In the case of any equity security, is within 10 percent of the closing price for the security on the day before the date on which BlackRock receives authorization from the independent Plan fiduciary to engage in the cross-trade transaction; and (b) in the case of any debt security, is within 10 percent of the fair market value of the security on the last valuation date preceding the date on which BlackRock receives authorization by the independent Plan fiduciary to engage in the cross-trade transaction. This safeguard prevents BlackRock from effecting cross-trades at prices that were not contemplated at the time the independent fiduciary authorized the transaction.

Finally, each cross-trade transaction will be effected only where the trade involves less than five (5) percent of the aggregate average daily trading volume of the securities which are the subject of the transaction for the week immediately preceding the authorization of the transaction. BlackRock states that a particular cross-trade transaction may exceed this limit only by express authorization of independent fiduciaries on behalf of Plans affected by the transaction, prior to the execution of the cross-trade.

11. In summary, the applicant represents that the proposed transactions will satisfy the statutory criteria of section 408(a) of the Act because, among other things: (a) An independent Plan fiduciary must provide written authorization, terminable at will and without penalty, for each Plan's participation in the cross-trading program; (b) oral or written authorization must be provided by the independent Plan fiduciary to BlackRock prior to each cross-trade transaction; (c) all cross-trades will be executed at the current market price for the security on the date of the transaction, as determined by an independent third party source; (d) a cross-trade transaction will be effected only if certain price requirements are satisfied; (e) all securities involved in cross-trades will be ones for which there is a generally recognized market; (f) BlackRock will receive no commissions or additional fees as a result of the proposed cross-trades; (g) BlackRock will provide periodic reporting on cross-trade transactions to the participating Plan's independent fiduciary; (h) Plans participating in the cross-trading program will realize savings on their transactions due to the elimination of brokerage commissions, transaction fees and dealer markups; (i) the Plans participating in the cross-trading program will have assets of at least $25 million; and (j) the Plans participating in the cross-trading program will not include any employee benefit plan established or maintained by BlackRock or its affiliates.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 2nd day of June, 1995.

Ivan Strasfeld,

Director of Exemption Determinations Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 95–13910 Filed 6–6–95; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL INSTITUTE FOR LITERACY

Agency Information Collection Activities Under OMB Review

AGENCY: National Institute for Literacy.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that

an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before June 16, 1995.

FOR FURTHER INFORMATION CONTACT: Susan Green at (202) 632–1509.

SUPPLEMENTARY INFORMATION:

Title

Application for Literacy Leader Fellowships which will provide assistance to individuals pursing careers in adult education or literacy in the areas of instruction, management, research, or innovation and adult new learners. Under the program, career literacy workers and adult learners are applicants for fellowships.

Abstract

The National Literacy Act of 1991 established the National Institute for Literacy and required that the Institute award fellowships to engage in research, education, training, technical assistance, or other activities to advance the field of adult education or literacy, including the training of volunteer literacy providers at the national, State, or local level. Evaluations to determine successful applicants will be made by a panel of literacy experts using the published criteria. The Institute will use this information to make a maximum of four fellowships for a period of no less than 3 nor more than 12 months of full-time activity or the equivalent in less than full-time participation.

Burden Statement: The burden for this collection of information is estimated at 4 hours per response. This estimate includes the time needed to review instructions, complete the form, and review the collection of information.

Respondents: Individuals.

Estimated Number of Respondent: 100.

Estimated number of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 400 hours.

Frequency of Collection: One time.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to: Susan Green, National Institute for Literacy, 800 Connecticut Ave., NW, Suite 200, Washington, DC 20006, and Dan Chenok, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW, Washington, DC 20503.

Dated: Dated: June 2, 1995.

Andrew J. Hartman,

Director, NIFL.

[FR Doc. 95–14068 Filed 6–6–95; 8:45 am]

BILLING CODE 6055–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–255]

Consumers Power Company; Palisades Plant Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from Facility Operating License No. DPR–20, issued to Consumers Power Company, (the licensee), for operation of the Palisades Plant located in Van Buren County, Michigan.

Environmental Assessment

Identification of the Proposed Action

This Environmental Assessment has been prepared to address potential environmental issues related to the licensee's application of March 17, 1995, as supplemented April 26, 1995. The proposed action would exempt the licensee from the requirements of 10 CFR Part 50, Appendix J, Paragraph III.D.1.(a), to the extent that a one-time interval extension for the Type A test (containment integrated leak rate test) by approximately 21 months from the May 1995 refueling outage to the 1997 refueling outage would be granted.

The Need for the Proposed Action

The proposed action is needed to permit the licensee to defer the Type A test from the May 1995 refueling outage to the 1997 refueling outage, thereby saving the cost of performing the test and eliminating the test period from the critical path time of the outage.

Environmental Impact of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed one-time exemption would not increase the probability or consequences of accidents previously analyzed and the proposed one-time exemption would not affect facility radiation levels or facility radiological effluents. The licensee has analyzed the results of previous Type A tests performed at the Palisades Plant to show adequate containment performance and will continue to be required to conduct the Type B and C local leak rate tests which historically have been shown to be the principal means of detecting containment leakage paths with the Type A tests confirming the Type B and C test results. It is also noted that the licensee, as a condition of the proposed exemption, would perform the visual containment inspection although it is only required by Appendix J to be conducted in conjunction with Type A tests. The NRC staff considers that these inspections, though limited in scope, provide an important added level of confidence in the continued integrity of the containment boundary. The change will not increase the probability or consequences of accidents, no changes are being made in the types or amounts of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the NRC staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Palisades Plant dated June 1972 and its addendum dated February 1978.

Agencies and Persons Consulted

In accordance with its stated policy, on May 4, 1995, the NRC staff consulted with the Michigan State official, Dennis Hahn of the Michigan Department of Public Health, Nuclear Facilities and Environmental Monitoring, regarding

the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes 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 action.

For further details with respect to the proposed action, see the licensee's letters dated March 17 and April 26, 1995, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Van Wylen Library, Hope College, Holland, Michigan 49423.

Dated at Rockville, Maryland, this 31st day of May 1995.

For the Nuclear Regulatory Commission.

Janet L. Kennedy,

Project Manager, Project Directorate III–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–13975 Filed 6–6–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–458]

Entergy Operations, Inc.; River Bend Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License No. NPF–47, issued to Entergy Operations, Inc. (the licensee), for operation of the River Bend Station, Unit 1 (RBS), located in West Feliciana Parish, Louisiana.

Environmental Assessment

Identification of Proposed Action

The proposed action is in accordance with the licensee's application dated October 24, 1994, for exemption from certain Requirements of 10 CFR 73.55, ''Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage.'' The exemption would allow implementation of a hand geometry biometric system for site access control such that picture badges and access control cards for certain non-employees can be taken offsite.

The Need for the Proposed Action

Pursuant to 10 CFR 73.55, paragraph (a), the licensee shall establish and maintain an onsite physical protection system and security organization.

10 CFR 73.55(d), ''Access Requirements,'' paragraph (1), specifies that ''licensee shall control all points of personnel and vehicle access into a protected area.'' 10 CFR 73.55(d)(5) specifies that ''A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort.'' 10 CFR 73.55(d)(5) also states that an individual not employed by the licensee (i.e., contractors) may be authorized access to protected areas without escort provided the individual ''receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area . . .''

Currently, employee and contractor identification/access control badges are issued and retrieved on the occasion of each entry to and exit from the protected areas of the River Bend site. Station security personnel are required to maintain control of the badges while the individuals are offsite. Security personnel retain each identification/access control badge when not in use by the authorized individual, within appropriately designed storage receptacles inside a bullet-resistant enclosure. An individual who meets the access authorization requirements is issued the individual picture identification/access control card which allows entry into preauthorized areas of the station. While entering the plant in the present configuration, an authorized individual is ''screened'' by the required detection equipment. The individual provides a personal identification number (PIN) to the issuing guard and is screened again by the issuing security officer using the picture identification on the access card. Having received the badge, the individual proceeds to the access portal, inserts the access control card into the card reader, and passes through the turnstile which is unlocked by the access card. Once inside the station, the access card allows entry only to preauthorized areas and the individual's PIN is no longer required.

This present procedure is labor intensive since security personnel are required to verify badge issuance, ensure badge retrieval, and maintain the badge in orderly storage until the next entry into the protected area. The regulations permit employees to remove their badge from the site, but an exemption from 10 CFR 73.55(d)(5) is required to permit contractors to take their badge offsite instead of returning them when exiting the site.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the licensee's application. Under the proposed system, all individuals authorized to gain unescorted access will have the physical characteristics of their hand (hand geometry) recorded with their badge number. Since the hand geometry is unique to each individual and its application in the entry screening function would preclude unauthorized use of a badge, the requested exemption would allow employees and contractors to keep their badges at the time of exiting the protected area. The process of verifying badge issuance, ensuring badge retrieval, and maintaining badges could be eliminated while the balance of the access procedure would remain intact. Firearm, explosive, and metal detection equipment and provisions for conducting searches will remain as well. The security officer responsible for the last access control function (controlling admission to the protected area) will also remain isolated within a bullet-resistant structure in order to assure his or her ability to respond or to summon assistance.

Use of a hand geometry biometrics system exceeds the present verification methodology's capability to discern an individual's identity. Unlike the photograph identification badge, hand geometry is nontransferable. During the initial access authorization or registration process, hand measurements are recorded and the template is stored for subsequent use in the identity verification process required for entry into the protected area. Authorized individuals insert their access authorization card into the card reader and the biometrics system records an image of the hand geometry. The unique features of the newly recorded image are then compared to the template previously stored in the database. Access is ultimately granted based on the degree to which the characteristics of the image match those of the ''signature'' template.

Since both the badge and hand geometry would be necessary for access into the protected area, the proposed system would provide for a positive verification process. Potential loss of a badge by an individual, as a result of taking the badge offsite, would not enable an unauthorized entry into protected areas.

The access process will continue to be under the observation of security personnel. The system of identification/

access control badges will continue to be used for all individuals who are authorized access to protected areas without escorts. Badges will continue to be displayed by all individuals while inside the protected area. Addition of a hand geometry biometrics system will provide a significant contribution to effective implementation of the security plan at each site.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternative to the Proposed Action

Since the Commission has concluded there is not measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statements related to operation of River Bend Station, Unit 1.

Agencies and Persons Consulted

In accordance with its states policy, on May 16, 1995, the staff consulted with the Louisiana State official, Dr. Stan Shaw, Assistant Administrator of the Louisiana Radiation Protection Division, Department of Environmental Quality, regarding the environmental impact of the proposed action. The State official had no comments.

Findings of No Significant Impact

Based on the environmental assessment, the Commission concludes 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 action.

For further details with respect to this proposed action, see the request for exemption dated October 24, 1994, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Government Documents Department, Louisiana State University, Baton Rouge, LA 70803.

Dated at Rockville, Maryland this 30th day of May 1995.

For the Nuclear Regulatory Commission.

David L. Wigginton,

Senior Project Manager, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–13979 Filed 6–6–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–498 and 499]

Houston Lighting & Power Company City Public Service Board of San Antonio Central Power and Light Company City of Austin, Texas; South Texas Project, Units 1 and 2 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from Facility Operating License Nos. NPF–76 and NPF–80, issued to Houston Lighting & Power Company (HL&P) acting on behalf of itself and for the City Public Service Board of San Antonio (CPS), Central Power and Light Company (CPL), and City of Austin, Texas (COA) (the licensees), for operation of the South Texas Project, Units 1 and 2, (STP) located in Matagorda County, Texas.

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow implementation of a hand geometry biometric system of site access control such that photograph identification badges can be taken offsite.

The proposed action is in accordance with the licensee's application dated March 27, 1995, for exemption from certain requirements of 10 CFR 73.55, ''Requirements for physical protection of licensed activities in nuclear power plant reactors against radiological sabotage.''

The Need for the Proposed Action

Pursuant to 10 CFR 73.55, paragraph (a), the licensee shall establish and maintain an onsite physical protection system and security organization.

''Access Requirements,'' of 10 CFR 73.55(d), paragraph (1), specifies that ''licensee shall control all points of personnel and vehicle access into a protected area. . . .'' It is specified in 10 CFR 73.55(d)(5) that ''A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort.'' It also states that an individual not employed by the licensee (i.e., contractors) may be authorized access to protected areas without escort provided the individual ''receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area. . . .''

Currently, unescorted access into protected areas of STP is controlled through the use of a photograph on a combination badge and keycard (hereafter referred to as a badge). The security officers at each entrance station use the photograph on the badge to visually identify the individual requesting access. The badges for both licensee employees and contractor personnel, who have been granted unescorted access, are issued upon entrance at each entrance/exit location and are returned upon exit. The badges are stored and are retrievable at each entrance/exit location. In accordance with 10 CFR 73.55(d)(5), contractor individuals are not allowed to take badges offsite. In accordance with the plants' physical security plans, neither licensee employees nor contractors are allowed to take badges offsite.

The licensee proposes to implement an alternative unescorted access control system which would eliminate the need to issue and retrieve badges at each entrance/exit location and would allow all individuals with unescorted access to keep their badges with them when departing the site.

An exemption from 10 CFR 73.55(d)(5) is required to permit contractors to take their badges offsite instead of returning them when exiting the site.

The Commission has completed its evaluation of the proposed action. Under the proposed system, each individual who is authorized for unescorted entry into protected areas would have the physical characteristics of their hand (hand geometry) registered with their badge number in the access control system. When an individual

enters the badge into the card reader and places the hand on the measuring surface, the system would record the individual's hand image. The unique characteristics of the extracted hand image would be compared with the previously stored template to verify authorization for entry. Individuals, including licensee employees and contractors, would be allowed to keep their badge with them when they depart the site.

Based on a Sandia report entitled ''A Performance Evaluation of Biometric Identification Devices'' (SAND91—0276 UC—906 Unlimited Release, Printed June 1991), and on its experience with the current photo-identification system, the licensee concludes that the proposed hand geometry system will provide the same high assurance objective regarding onsite physical protection that is achieved by the current system. Since both the badge and hand geometry would be necessary for access into the protected area, the proposed system would provide for a positive verification process. Potential loss of a badge by an individual, as a result of taking the badge offsite, would not enable an unauthorized entry into protected areas. The licensee will implement a process for testing the proposed system to ensure a continued overall level of performance equivalent to that specified in the regulation. The Physical Security Plans for both sites will be revised to include implementation and testing of the hand geometry access control system and to allow licensee employees and contractors to take their badges offsite.

The access process will continue to be under the observation of security personnel. A numbered picture badge identification system will continue to be used for all individuals who are authorized access to protected areas without escorts. Badges will continue to be displayed by all individuals while inside the protected area.

Environmental Impacts of the Proposed Action

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the action would be to deny the request. Such action would not change any current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the ''Final Environmental Statement related to the operation of South Texas Project, Units 1 and 2,'' dated August 1986.

Agencies and Persons Consulted

In accordance with its stated policy, on May 12, 1995, the staff consulted with the Texas State official, Arthur C. Tate of the Bureau of Radiation Control, Texas Department of Health, regarding the environmental impact of the proposed action. The State official had no comments.

Findings of No Significant Impact

Based on the environmental assessment, the Commission concludes that the proposed action will not have a significant impact on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated March 27, 1995, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Wharton County Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488.

Dated at Rockville, Maryland, this 31st day of May 1995.

For the Nuclear Regulatory Commission.

Thomas W. Alexion,

Project Manager, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–13978 Filed 6–6–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–443]

North Atlantic Energy Service Corporation, Seabrook Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from Facility Operating License No. NPF–86, issued to North Atlantic Energy Service Corporation (the licensee or North Atlantic), for operation of the Seabrook Station, Unit No. 1 (Seabrook) located in Rockingham County, New Hampshire.

Environmental Assessment

Identification of the Proposed Action

This Environmental Assessment has been prepared to address potential environmental issues related to North Atlantic's request for exemption dated October 17, 1994, as supplemented by letters dated February 13, 1995, April 26, 1995, and May 12, 1995. The proposed action would exempt North Atlantic from certain requirements of 10 CFR 73.55. The proposed action would allow North Atlantic to eliminate issuing and retrieving photograph identification badges at the entrance and exit location to the Seabrook protected area upon implementation of a biometric (hand geometry) system of site access control. North Atlantic would be authorized to permit all individuals with unescorted access, including North Atlantic employees, contractor personnel, NRC employees, and others to retain their badges when leaving the Seabrook protected area.

The Need for the Proposed Action

The requirements for the establishment and maintenance of a physical protection system against theft of special nuclear material and against radiological sabotage at certain sites where special nuclear material is used are prescribed in 10 CFR Part 73. Facilities licensed under 10 CFR Part 50 are included in the scope of 10 CFR Part 73. Paragraph 73.55(a) specifies the general performance objectives and requirements of an onsite physical protection system and security organization, and paragraphs 73.55(b) through 73.55(h) specify minimum

specific requirements for the onsite physical protection system and security organization. Access requirements are specified in 73.55(d). Paragraph 73.55(d)(1) requires that licensees control all points of personnel and vehicle access into a protected area, and 73.55(d)(5) requires a numbered picture badge identification system to be used for all individuals who are authorized access to protected areas without escort. Paragraph 73.55(d)(5) also states that an individual not employed by the licensee may be authorized access to protected areas without escort provided the individual receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area.

Currently, unescorted access into protected areas of Seabrook is controlled through the use of a numbered picture badge and an attached but separate keycard (containing encoded information to relate the keycard to the badged individual) which is used to actuate the entrance turnstile for access into the protected area and certain other specific areas authorized within the protected area. The badges and keycards for all individuals who have been granted unescorted access, including North Atlantic employees, contractor personnel, NRC employees, and others, are stored by security personnel at the entrance to the protected area whenever they are not being used by the authorized individuals. Security personnel stationed at the entrance to the protected area use the photograph on the badge to visually verify the identity of an individual requesting access. After verification, the badge and keycard are issued to the individual to allow entrance to the protected area. The badge and keycard are retrieved when the individual is exiting the protected area. In accordance with the Seabrook Physical Security Plan and Safeguards Contingency Plan, no individual is allowed to retain a badge and keycard when leaving the protected area.

North Atlantic proposes to implement an alternative unescorted access control system which would eliminate the need to issue and retrieve badges and keycards at the protected area entrance/exit location and, instead, would allow all individuals with unescorted access to retain their badges and keycards when leaving the protected area.

An exemption from 10 CFR 73.55(d)(5) is required to permit individuals who are not North Atlantic employees to take their numbered picture badges from the protected area.

The Commission has completed its evaluation of the proposed action. Under the proposed system, each individual who is authorized for unescorted entry into the protected area would have the physical characteristics of their hand (hand geometry) registered with their badge number and keycard in the access control system. When an individual inserts the keycard into the card reader and places the hand on the measuring surface, the system would record the individual's hand image. The unique characteristics of the extracted hand image would be compared with the previously stored template associated with that badge and keycard to verify authorization for entry. All individuals authorized for unescorted access would be allowed to retain their badge and keycard when leaving the protected area.

Based on Sandia Laboratory report, SAND91—0276 UC—906, *A Performance Evaluation of Biometric Identification Devices*, (Unlimited Release, Printed June 1991), and on North Atlantic's experience with the current photo-identification system, North Atlantic demonstrated that the proposed hand geometry system would provide enhanced site access control. Since the badge, keycard, and hand geometry would be necessary for access into the protected area, the proposed system would provide for a positive verification process. Loss of either a picture badge, keycard or both badge and keycard outside the protected area would not enable an unauthorized entry into the protected area. North Atlantic will implement a process for testing the proposed system to ensure continued overall level of performance equivalent to that specified in the regulation. The Physical Security Plan and Safeguards Contingency Plan for Seabrook will be revised to include implementation and testing of the hand geometry access control system and to allow badges and keycards to be taken from the protected area.

The access will continue to be under the observation of security personnel. A numbered picture badge identification system will continue to be used for all individuals who are authorized access to protected areas without escorts, and picture badges will continue to be displayed by all individuals while inside the protected area.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed exemption and concludes that there will be no changes to Seabrook or the environment as a result of this action. The proposed exemption does not in any way affect the manner by which the facility is operated or change the facility itself. Accordingly, the Commission concludes that the proposed action would result in no radiological or nonradiological environmental impact.

Alternatives to the Proposed Action

Since the Commission has concluded there is no environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the action would be to deny the request. Such action would not change any current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Seabrook Station, Unit No. 1.

Agencies and Persons Consulted

In accordance with its stated policy, on May 17, 1995 the NRC staff consulted with the Massachusetts State official, Mr. James Muckerheid of the Massachusetts Emergency Management Agency regarding the environmental impact of the proposed action. On May 18, 1995 the NRC staff consulted with the New Hampshire State official, Mr. George Iverson of the New Hampshire Emergency Management Agency. The State officials had no comments.

Finding of No Significant Impact

Based on the environmental assessment, the Commission concludes 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 action.

For further details with respect to the proposed action, see North Atlantic's letters dated October 17, 1994, February 13, 1995, April 26, 1995, and May 12, 1995, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Exeter Public Library, Founders Park, Exeter, NH 03833.

Dated at Rockville, Maryland, this 31st day of May 1995.

For the Nuclear Regulatory Commission.

Phillip F. McKee,

Director, Project Directorate I–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–13977 Filed 6–6–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–275 and 50–323]:

Pacific Gas and Electric Company Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–80 and DPR–82, issued to Pacific Gas and Electric Company (the licensee), for operation of Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, located in San Luis Obispo County, California.

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow the storage of fuel in new and spent fuel racks with enrichments up to and including 5.0 weight percent U–235, would clarify that substitution of fuel rods with filler rods is acceptable for fuel designs that have been analyzed with applicable NRC-approved codes and methods, and would allow the use of ZIRLO fuel cladding in the future in addition to Zircaloy–4. The proposed action is in accordance with the licensee's application for amendment dated February 6, 1995, as supplemented by letters dated March 23, and May 22, 1995.

The Need for the Proposed Action

The proposed action is needed so that the licensee can use higher fuel enrichment to provide the flexibility of extending the fuel irradiation and to permit future operation with longer fuel cycles.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the technical specifications. The proposed revisions would permit storage of fuel enriched to a nominal 5.0 weight percent Uranium 235. The safety considerations associated with storing new and spent fuel of a higher enrichment have been evaluated by the NRC staff. The staff has concluded that such changes would not adversely affect plant safety. The proposed changes have no adverse effect on the probability of any accident. No changes are being made in the types or amounts of any radiological effluents that may be released offsite. There is no significant increase in the allowable individual or cumulative occupational radiation exposure.

The environmental impacts of transportation resulting from the use of higher enrichment fuel and extended irradiation (an enveloping case for the Diablo Canyon Power Plant since burnup remains unchanged) were published and discussed in the staff assessment entitled, ''NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation,'' dated July 7, 1988, and published in the **Federal Register** (53 FR 30355) on August 11, 1988, as corrected on August 24, 1988 (53 FR 32322) in connection with Shearon Harris Nuclear Power Plant Unit 1: Environmental Assessment and Finding of No Significant Impact. As indicated therein, the environmental cost contribution of the proposed increase in the fuel enrichment and irradiation limits are either unchanged or may, in fact, be reduced from those summarized in Table S–4 as set forth in 10 CFR 51.52(c). Accordingly, the Commission concludes that there are no significant radiological environment impacts associated with the proposed amendment.

With regard to potential nonradiological impacts of reactor operation with higher enrichment, the proposed action involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2.

Agencies and Persons Consulted

In accordance with its stated policy, on May 22, 1995, the staff consulted with the California State official, Mr. Steve Hsu of the Department of Health Services, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes 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 action.

For further details with respect to the proposed action, see the licensee's letter dated February 6, 1995, as supplemented by letters dated March 23, and May 22, 1995, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW, Washington, DC, and at the local public document room located at the California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Louis Obispo, California 93407.

Dated at Rockville, Maryland, this 1st day of June 1995.

For the Nuclear Regulatory Commission.

William H. Bateman,

Director, Project Directorate IV–2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–13976 Filed 6–6–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–277 and 50–278]

PECO Energy Company; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–44 and DPR–56 issued to PECO Energy Company (the licensee) for operation of the Peach Bottom Atomic Power Station, Units 2 and 3, located at York County, Pennsylvania.

The proposed amendment would revise the technical specification (TS) limiting condition for operation (LCO) for the Peach Bottom emergency diesel generators (EDGs). The LCOs will be revised to allow a single EDG to be out of service for a period of 30 days

provided a recently installed tie-line from the Conowingo Hydroelectric Station is operable. The allowed out of service time (AOT) for a single EDG will revert to the existing 7 day AOT if the Conowingo line is inoperable. The LCO will also be modified to address instances where either the Conowingo line or an EDG become inoperable if the other is already inoperable. The proposed amendment will add a TS reporting requirement if the Conowingo line is inoperable for 15 days. The proposed amendment will also add a surveillance requirement to verify the operability of the Conowingo line once per month.

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.

By July 7, 1995, 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, and at the local public document room located at the Government Publications Section, State Library of Pennsylvania, (Regional Depository) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularly the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a 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 schedule 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 reply 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.

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, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, Pennsylvania 19101, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated April 7, 1994, as supplemented by letters dated June 2, and September 6, 1994, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and the Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Dated at Rockville, Maryland, this 31st day of May, 1995.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–13974 Filed 6–6–95; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35786; File No. SR–Amex–94–51]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1 and 2 to the Proposed Rule Change by the American Stock Exchange, Inc. Relating to the In Person Trading Volume Requirement for Registered Option Traders

May 31, 1995.

On November 18, 1994, the American Stock Exchange, Inc. (''Amex'' or ''Exchange''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] filed with the Securities and Exchange Commission (''Commission'') a proposal regarding the in person [3] trading volume requirement for Registered Options Traders (''Traders'').[4] Notice of the proposal appeared in the **Federal Register** on December 12, 1994.[5] No comment letters were received on the proposed rule change. The Exchange filed Amendment No. 1 to the proposal on January 9, 1995,[6] and Amendment No. 2 on April 6, 1995.[7] This order approves the proposal, as amended.

Specifically, the Exchange proposes to amend Rule 958 to: (1) Require Traders to execute at least 25% of his or her individual options transactions and total contract volume in each calendar quarter in person and not through the use of orders; [8] (2) require Traders to have at least 75% of their trading activity (measured in terms of contract volume) in the classes of options to which they are assigned, as opposed to the 50% currently required;[9] and (3) extend market maker capital and margin treatment for a Trader's opening off-floor orders provided that at least (i) 80% of their total transactions and contract volume on the Exchange in each calendar quarter are executed in person and not through the use of orders and (ii) the Trader satisfies its obligations pursuant to Rule 958.[10] In addition, the proposal requires Traders to satisfy the market making obligations set forth in Amex Rule 958 [11] for all off-floor orders for which a Trader receives market maker treatment and, in general, that those orders be effected only for purposes of hedging, reducing the risk of, rebalancing, or liquidating open positions of the Trader.

Currently, under Amex Rule 958 there is no in person trading volume or transaction requirement for Traders. The Exchange believes, however, that establishing an in person requirement for Traders of at least 25% of a Trader's individual transactions and total contract volume during each calendar quarter will result in better, more liquid markets because Traders will be available in trading crowds to contribute to the maintenance of fair and orderly markets, and will encourage Traders to make more competitive bids and offers and trade for their own account when there exists a lack of price continuity, a temporary disparity between the supply of and demand for options contracts, or a temporary distortion of the price relationships between options.

With regard to market maker treatment for off-floor options transactions, Amex Rule 958(g) currently provides that only option transactions initiated on the Amex's floor count as market maker transactions. Thus, only on-floor market maker transactions qualify for favorable capital and margin treatment under the Amex's rules, even if such orders are entered to adjust or hedge the risk of positions of the Trader that result from the Trader's on-floor market making activity.[12]

The Amex states that because a Trader currently cannot effectively adjust his or her positions or engage in hedging or other risk limiting opening transactions from off the Exchange floor without incurring a significant economic penalty, Amex Traders must either be physically present on the floor at all times while the market is open, or face significant risks of adverse market movements during those times when they must necessarily be absent from the trading floor. The Amex argues that by imposing costs on certain hedging or risk-adjusting transactions of Traders, the Amex's current rules may prevent Traders from effectively discharging their market making obligations and expose them to unacceptable levels of risk. The Amex believes that the amended proposal addresses these concerns by offering Traders the opportunity to obtain market maker treatment for up to 20% of their off-floor opening transactions.

Traders who elect market maker treatment for off-floor opening transactions but fail to satisfy the proposal's requirements, including the 80% in person requirement, will be referred to the Amex's Committee on Specialist and Registered Trader Performance and subject to the disciplinary measures provided in Article V of the Exchange's Constitution.[13] Under Article V of the Exchange's Constitution, the Exchange

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] ''In person'' means that options transactions are personally executed by a Trader on the Amex floor and not through the use of orders given to a floor broker or left on a specialist's book.

[4] Traders are considered specialists for purposes of the Act. *See* Amex Rule 958, Commentary .01.

[5] *See* Securities Exchange Act Release No. 35050 (December 5, 1994), 59 FR 64002.

[6] As discussed herein, in Amendment No. 1 the Exchange clarifies the obligation of Traders receiving market maker treatment for off-floor transactions and proposes disciplinary measures for Traders improperly accepting market maker treatment for such transactions. *See* Letter from Claire McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Michael Walinskas, Branch Chief, Office of Market Supervision (''OMS''), Division of Market Regulation (''Division''), Commission, dated January 9, 1995 (''Amendment No. 1'').

[7] In Amendment No. 2, the Exchange proposes to amend Amex Rule 958, Commentary .01 and .03, to provide that Traders must have at least 75% of their trading activity in classes in which they are assigned. Additionally, the Exchange proposes that Traders who elect market maker treatment for off-floor opening transactions but fail to satisfy the requirements of Rule 958 will be referred to the Exchange's Committee on Specialist and Registered Trader Performance rather than the Exchange's Minor Floor Violation Disciplinary Committee as provided in Amendment No. 1. *See* Letter from Claire McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Michael Walinskas, Branch Chief, OMS, Division, Commission, dated April 5, 1995 (''Amendment No. 2'').

[8] The proposal also gives the Exchange the authority to increase the 25% in person requirement if the Exchange, in its discretion, deems such increase to be necessary. The Exchange would not have the authority to lower the in person requirement below 25% without the prior approval of the Commission pursuant to a rule filing under Section 19b of the Act.

[9] *See* Amendment No. 2, *supra* note 7.

[10] *See* Amendment No. 1, *supra* note 6. Currently, Rule 958, Commentary .03 provides, among other things, that except for unusual circumstances, at least 50% of a Trader's trading activity in any calendar quarter (in terms of contract volume) must ordinarily be in classes of options to which the Trader is assigned. In Amendment No. 2, the Exchange proposes to amend this requirement so that at least 75% of total activity (in terms of contract volume) must be in assigned classes. *See* Amendment No. 2, *supra* note 7.

[11] These obligations include, but are not limited to, requiring that such transactions contribute to the maintenance of fair and orderly markets, and requiring market makers to bid and offer within prescribed parameters.

[12] Questions of margin and capital treatment do not arise in connection with closing transactions initiated from off the floor, because they only reduce or eliminate existing positions.

[13] *See* Amendment No. 2, *supra* note 7.

may impose appropriate discipline for violations of the Act and the Exchange's rules, including expulsion, suspension, limitation of activities, fines, censure, or any other suitable sanction.[14]

The Amex believes that the amended proposal presents a more appropriate and realistic treatment of Trade transactions initiated from both off the trading floor and in person than what is provided for under existing Exchange Rule 958. The Amex believes that requiring Traders to execute at least 25% of their transactions and total contract volume in each calendar quarter in person and, further, extending favorable margin and capital treatment for off-floor transactions only to those Traders who satisfy the 80% in person transaction and trading volume requirement, should have the effect of increasing the extent to which Trader transactions contribute to liquidity and to the maintenance of fair and orderly markets on the Amex by providing for a greater degree of in person trading by Traders and by enabling Traders to better manage the risk of their market making activities. Thus, the Amex believes that the proposal is consistent with and in furtherance of the objectives of Section 6(b)(5) and Section 11(a) of the Act in that it will promote the maintenance of fair and orderly markets on the Amex and will contribute to the protection of investors and the public interest.

The Commission finds that the proposal rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5) in that the proposal is designed to promote just and equitable principles of trade and to protect investors and the public interest.[15] In addition, the Commission finds that the proposal is consistent with the requirement under Section 11(b) of the Act and the rules thereunder that require market maker transactions to be consistent with the maintenance of fair and orderly markets.[16]

The Commission believes that the proposal is a reasonable effort by the Amex to accommodate the needs of Traders to effect off-floor opening transactions while reinforcing the requirement under Amex Rule 958 that Traders' transactions constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market. The Commission believes that the proposed 25% minimum in person trading requirement, the 75% minimum assigned class requirement, and the 80% in person requirement for market maker treatment for off-floor trades, taken together, will help to ensure that Traders' transactions continue to contribute to the maintenance of fair and orderly markets while, at the same time, enabling Traders to better manage the risk of their market making activities.

As the Amex has noted, under the current requirements, Traders who adjust existing positions for hedging purposes while not physically present on the Exchange floor cannot receive market maker margin treatment for such orders under any circumstances and must decide whether to close out their positions or place their orders in a customer margin account requiring 50% margin. While this may not be an unreasonable result in many cases, the Commission believes that the Amex has set forth a reasonable proposal that permits market maker treatment for certain off-floor orders under very limited circumstances that ensure that such orders must contribute to the maintenance of fair and orderly markets and that require Traders to comply with a heightened 80% in person trading requirement.

Moreover, by requiring that a percentage of Traders' transactions be effected in person and by strengthening the requirement that a substantial percentage of Traders' transactions be effected in their appointed classes, the proposal will improve Amex market maker capabilities. The Commission believes these requirements will help to ensure that Traders will be physically present in their appointed classes to respond to public orders and to improve the price and size of the markets made on the Amex floor. In addition, the proposal will have the effect of reducing the extent to which Amex Traders can effectively function as privileged investors by entering the Amex floor only long enough to drop off orders with a floor broker, without ever actually making competitive quotations or otherwise affirmatively functioning as market makers. Thus, the Commission believes the Amex proposal will serve to maintain fair and orderly markets and generally promote the protection of investors and the public interest.[17]

In summary, the Commission believes that the introduction of an in person trading requirement, an increase in the required percentage of trades in assigned classes, and the availability of market maker treatment for a limited number of off-floor transactions, as described above, should help to ensure the stability and orderliness of the Amex's markets.

The Commission expects the Amex to closely monitor those Traders electing to receive market maker treatment for off-floor orders as provided under the proposal to ensure that they are meeting the in person trading requirements in addition to their other market making obligations required under Rule 958, as amended. The Amex has represented that market makers who choose to receive favorable margin and capital treatment under the proposal but fail to satisfy the proposal's requirements will be referred to the Exchange's Committee on Specialist and Registered Trader Performance and subject to the sections available under Article V of the Exchange's Constitution.[18] The Commission expects the Exchange to impose strict sanctions for violations of the rule, particularly in cases of egregious or repeated failures to comply with the rule's requiremets.[19]

Finally, the Commission notes that the staff of the Board of Governors of the Federal Reserve System (''Board'') has previously issued a letter raising no objection to the Commission's approval of a substantively similar proposal by the CBOE based on the Commission's belief that the off-floor transactions of market makers for which they can receive market maker treatment will be designed to contribute to the maintenance of a fair and orderly market and would be consistent with the obligations of a specialist under Section 11 of the Act.[20]

The Commission finds good cause for approving Amendment Nos. 1 and 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, the Commission notes that Amendment

[14] *Id*.

[15] 15 U.S.C. 78f(b)(5)(1988).

[16] 15 U.S.C. 78k (1982) and 17 CFR 240.11b–1.

[17] *See* Securities Exchange Act Release No. 21008 (June 1, 1984), 49 FR 23721 (June 7, 1984), (order approving proposed rule change by the Chicago Board Options Exchange (''CBOE'') establishing minimum in person and assigned class trading requirements for market makers).

[18] *See* Amendment No. 2, *supra* note 7.

[19] The Amex plans to issue a circular to its membership describing the rule change and emphasizing the importance of monitoring off-floor trading activity. Telephone conversation between Claire McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, and Brad Ritter, Senior Counsel, OMS, Division, Commission, on January 10, 1995.

[20] *See* Securities Exchange Act Release No. 34104 (May 25, 1994), 59 FR 28438 (June 1, 1994), note 13 (*citing* letter from Scott Holz, Senior Attorney, Board, to Howard Kramer, Associate Director, Division, Commission, dated March 9, 1994) (''Exchange Act Release No. 34104'').

Nos. 1 and 2 are more restrictive than the original proposal, which was published for the full 21-day comment period without any comments being received by the Commission.[21] Additionally, the Commission notes that Amendment Nos. 1 and 2 conform the Amex proposal, in most respects, to the CBOE proposal previously approved by the Commission.[22] Accordingly, the Commission believes it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve Amendment Nos. 1 and 2 to the proposed rule change on an accelerated basis.

Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 1 and 2 to the proposed rule change. 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., 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–94–51 and should be submitted by June 28, 1995.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[23] that the proposed rule change (File No. SR–Amex–94–51), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–13892 Filed 6–6–95; 8:45 am]

BILLING CODE 8010–01–M

[21] The Commission believes the amended proposal is more restrictive in that it clarifies the obligations that Traders must satisfy in order to obtain market maker treatment for off-floor opening transactions and obligates the Exchange to initiate disciplinary proceedings against members who improperly accept market maker treatment for such transactions.

[22] *See* Exchange Act Release No. 34104, *supra* note 20.

[23] 15 U.S.C. 78s(b)(2) (1988).

[24] 17 CFR 200.30–3 (a)(12) (1994).

[Release No. 34–35784; File No. SR–Amex–95–18]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Use of the Series 7A and 7B Examination Modules

May 31, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 22, 1995, 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex is seeking approval to utilize the Series 7A examination administered by the New York Stock Exchange, Inc. (''NYSE'') for members seeking to conduct a professional customer business from the Amex Floor. The Amex is also seeking approval to utilize the Series 7B examination for clerks of such members.

The text of the proposed rule change is available at the Amex and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Exchange Rule 50(a) requires every applicant for regular or options principal membership to pass a qualifying examination prior to undertaking active duties on the Floor, and the Amex administers six such examinations.[1] The contents of these examinations and related materials were approved by the Commission, pursuant to Rule 19b–4 under the Act.[2] In addition, some members choose to take the Series 7 examination (administered by the National Association of Securities Dealers, Inc.), an industry-wide qualification examination for persons seeking registration as general securities representatives.

A new more specialized examination, the Series 7A (administered by the NYSE), is designed only to qualify an exchange Floor member to accept orders from professional customers for execution on an exchange trading floor.[3] The Exchange is now proposing to permit members who pass the Series 7A examination to accept orders from professional customers for execution on the Amex trading Floor.[4] Those members who anticipate receiving orders in listed options from such customers will also be required to pass the Listed Put and Call Options Questionnaire for Registered Personnel, which is administered by the Amex. The use of this examination was previously approved by the Commission.[5] Clerks of the Floor members would be required to pass the new Series 7B examination, which is administered by the NYSE.

It should be noted that the Commission has approved the content and use of both the Series 7A and 7B examinations.[6]

[1] The following examinations are administered by the Amex: the Qualification Examination for Regular Members, the Qualification Examination for Options Principal Members, the Put and Call Stock Option Exam, the Put and Call Option Questionnaire for Registered Personnel, the Specialist Exam and the Registered Equity Trader and Registered Equity Market Maker Exam.

[2] *See* Securities Exchange Act Release No. 35488 (Mar. 14, 1995) 60 FR 14986 (File No. SR–Amex–94–46).

[3] Professional customers are defined as a: bank, trust company, insurance company, investment trust, state or political subdivision thereof, charitable or nonprofit educational institution regulated under the laws of the United States, or any state, or pension or profit-sharing plan subject to ERISA or of any agency of the United States, or any state or a political subdivision thereof or any person (not including a natural person) who has, or has under management, net tangible assets of at least sixteen million dollars.

[4] Exchange Rule 50(c) provides that: The Exchange may require that a member pass additional examinations before undertaking particular types of activities.

[5] See Securities Exchange Act Release No. 35488 (Mar. 14, 1995) 60 FR 14986 (File No. SR–Amex–94–46).

[6] See Securities Exchange Act Release Nos. 32698 (July 29, 1993), 58 FR 41539 (File No. SR–NYSE–93–10); 34334 (July 8, 1994) 59 FR 35964 (File No. SR–NYSE–94–13).

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Sections 6(b)(5) and 6(c)(3) in particular in that it is designed to examine the training, experience and competence of Amex members and persons associated with them, and to verify the qualifications of such persons with respect to Amex membership. In addition, the proposed rule change serves to protect investors and the public interest by helping to assure member competence.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's 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. 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, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–95–18 and should be submitted by June 28, 1995.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder pertaining to a national securities exchange. In particular, the Commission believes that the proposed rule change is consistent with Sections 6(b)(5) and 6(c)(3)(B) of the Act.[7] Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Section 6(c)(3)(B) provides that a national securities exchange may examine and verify the qualifications of an applicant to become a person associated with a member in accordance with procedures established by the rules of the exchange, and require any person associated with a member, or any class of such persons, to be registered with the exchange in accordance with procedures so established.

The Commission also believes that the proposed rule change is consistent with Section 15(b)(7) of the Act,[8] which stipulates that prior to effecting any transaction in, or inducing the purchase or sale of, any security, a registered broker or dealer must meet certain standards of operational capability, and that such broker or dealer and all natural persons associated with such broker or dealer must meet certain standards of training, experience, competence, and such other qualifications as the Commission finds necessary or appropriate in the public interest or for the protection of investors.

The Commission believes that the proposed requirement that members who accept orders from profession customers for execution on the Amex trading Floor pass the Series 7A examination is consistent with the Act. Moreover, the Commission believes that the proposed requirement that the clerks of such Floor members pass the new Series 7B examination also is consistent with the Act. These requirements should help to ensure that only those Floor members and Floor clerks with a comprehensive knowledge of Exchange rules and the Act are able to accept orders from professional customers for execution on the trading Floor.[9]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval is appropriate given the prior approval of the examinations and their use on the NYSE and because the accelerated approval will allow Amex to begin utilizing the examinations as soon as practicable.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–Amex–95–18) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–13898 Filed 6–6–95; 8:45 am]

BILLING CODE 8010–01–M

[7] 15 U.S.C. 78f(b)(5) and (c)(3)(B) (1988 & Supp. V 1993).

[8] 16 U.S.C. 78o(b)(7) (1988).

[9] The Exchange will continue to require the successful completion of the Series 7 examination for members and their Floor clerks seeking to become registered representatives dealing with other than professional customers. In addition, any person who has successfully completed the Series 7 Examination will not be required to complete the Series 7A and 7B Examinations.

[10] 15 U.S.C. § 78s(b)(2) (1988).

[11] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35785; File No. SR–CBOE–94–54]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposal Relating to Firm Quote Responsibilities

May 31, 1995.

On January 4, 1995, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] a proposed rule change to expand the applicability of CBOE Rule 8.51, its firm quote rule, to certain two-part equity option orders in an attempt to allow public customers to execute defined risk strategies, such as spreads and straddles, at the disseminated market quotes.

Notice of the proposed rule change was published for comment and appeared in the **Federal Register** on February 14, 1995.[3] No comments were received on the proposal. On May 24, 1995, the CBOE submitted Amendment No. 1 to the filing (''Amendment No. 1'') in order to clarify certain non-substantive matters.[4] This order approves the proposal, as amended.

[1] 15 U.S.C. § 78s(b)(1) (1988 & Supp. V 1993).

[2] 17 CFR 240.19b–4 (1994).

[3] See Securities Exchange Act Release No. 35345, 60 FR 8433.

[4] See Letter from Michael L. Meyer, Schiff Hardin & Waite, to Michael A. Walinskas, Chief, Options Branch, SEC, dated May 24, 1995. Specifically,

Continued

I. Description of the Proposal

The purpose of the proposed rule change is to expand the applicability of CBOE Rule 8.51, its firm quote (''firm quote'') or ten-up (''ten-up'') rule, to include two-part equity option orders in which the component series are on opposite sides of the market and in a one-to-one ratio. The CBOE believes this change will enhance the ability of public customers to execute defined risk strategies, such as spreads and straddles, at the disseminated market quotes.[5]

CBOE Rule 8.51 places the responsibility on the trading crowd to ensure that non-broker-dealer customer orders are sold or bought, up to ten contracts, at the quoted offer or bid, respectively. This ''firm quote'' or ''ten-up'' requirement is meant to provide confidence that the displayed quotes may be relied upon by the investing public and to ensure that public customer orders will be executed at those quotes, or better.

From its inception the ten-up rule was intended to apply to, and has been interpreted to apply only to, single part orders, *i.e.*, either a buy order or a sell order for a particular option series. The Exchange has determined, however, that public customers would be served better if the interpretation were expanded to include a requirement to provide a ten-up market in two-part equity option orders in which the components of the order are on opposite sides of the market and in a one-to-one ratio to each other. The expansion in the interpretation of this rule would make it possible for public customers to execute both sides of a defined risk strategy, for up to ten contracts on each side, such as a spread or a straddle, at the disseminated prices. The exchange believes the rule change should help it compete more effectively for public customer order flow and trading activity.

The Exchange does not believe this rule change would be burdensome to market-makers because, under the current interpretation, the market-makers would be required to satisfy the ten-up requirement as to each leg of a spread or straddle if each was placed as a separate order. This rule change would merely ensure that these two components may be done at the same time, as one order, and at the same prevailing market quotes. The Exchange believes, however, that it is inappropriate, under any circumstance, to extend the firm-quote treatment to multipart orders with all parts on the same side of the market as this would effectively impose the burden on options market-makers of making markets in the underlying security. For example, a position in a long call and a short put is economically equivalent to being long the underlying stock; and thus, requiring a trading crowd to provide firm quote treatment to an order for this position would essentially be requiring the option market-makers to act as market-makers in the underlying security.[6]

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[7] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirement that the rules of an exchange be designed to promote just and equitable principles of trade and not to permit unfair discrimination between customers, issuers, brokers, and dealers.

The Commission believes that the CBOE's proposal to modify its current ten-up rule should expand the benefits to public customers associated with ten-up markets. In general, the ten-up rule results in faster executions of public customer orders and improves the quality of the Exchanges' options markets and market maker performance. Specifically, the proposal will extend the ten-up rule to each leg of certain two-part equity options. Accordingly, small public customers will be assured order execution for both parts of the order at the same time and at the best bid or offer to a minimum depth of ten contracts. Accordingly, the proposal should result in better executions for these types of non-broker dealer customer orders.

The Commission also believes the proposal will provide greater depth to the option markets without imposing any undue burdens upon market makers. Because market makers are already required to satisfy the ten-up requirement as to each leg of two part equity option orders as if each was placed as a separate order, the Commission does not believe the proposal will impose any additional unnecessary burdens or capital risks upon market makers.

The Commission also notes that the proposal will only apply to two-part equity option orders in which the components are on opposite sides of the market and in a one-to-one ratio. The Commission believes these conditions are reasonable measures that should help ensure that the proposal will not allow the simultaneous execution of certain types of orders that otherwise might effectively raise the firm quote requirements above the current ten contracts limit, which could create disparate firm quote treatment for ''one'' versus ''two'' part orders.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 1 adopts Interpretation and Policy .06 to Rule 8.51, which reflects in summary form the policy described in the Regulatory Circular. Because the Regulatory Circular was included as part of the filing, the substance and policy of which were discussed in the notice, the Commission does not believe that Amendment No. 1 raises any new or substantive issues. Therefore, the Commission believes it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve Amendment No. 1 to the proposal on an accelerated basis.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–CBOE–94–

Amendment No. 1 proposes to add Interpretation and Policy .06 to CBOE Rule 8.51.

[5] In its filing, the CBOE included a draft regulatory circular to be issued to members describing the change in policy applicable to the ten-up guarantee under CBOE Rule 8.51.

[6] Under existing Rule 8.51, the firm quote size minimum will continue to not apply whenever a ''fast market'' is declared under Rule 6.6, and may be suspended for any class or series on a case by case basis as determined by the Market Performance Committee.

[7] 15 U.S.C. 78f(b)(5) (1982).

54 and should be submitted by June 28, 1995.

It Therefore Is Ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–CBOE–94–54) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–13899 Filed 6–6–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35789; File No. SR–CBOE–95–05]

Self-Regulatory Organizations; Order Approving Proposed Rule Changes and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1, 2, and 3 to the Proposed Rule Changes by the Chicago Board Options Exchange, Incorporated, Relating to Trading Halts, Trading Suspensions, the Re-opening of Trading after a Trading Halt or Suspension, and the Suspension of the Retail Automatic Execution System

May 31, 1995.

I. Introduction

On January 18, 1995, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange''), filed proposed rule changes with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4[2] thereunder, to: (1) Codify the Exchange's existing practice regarding the factors considered and circumstances under which the Exchange could decide to halt or suspend trading in its markets; (2) establish procedures for the resumption of trading after a halt or suspension is lifted; and (3) grant the senior person in charge of the CBOE Control Room the authority to turn off the Retail Automatic Execution System (''RAES'') if the Control Room receives a credible indication that trading has stopped in the underlying stock. The Exchange filed Amendment No. 1 to the proposal on February 21, 1995,[3] Amendment No. 2 to the proposal on May 10, 1995,[4] and Amendment No. 3 to the proposal on May 31, 1995.[5]

Notice of the proposal was published for comment and appeared in the **Federal Register** on February 27, 1995.[6] No comment letters were received on the proposed rule changes. This order approves the Exchange's proposal, as amended.

II. Description of the Proposal

The CBOE proposes to amend its rules and Regulatory Circulars RG94–17 (''Inter-Exchange Procedures in Volatile Markets'') and RG93–58 (formerly RG92–40 (''Trading Halt Policy'') to codify existing practices regarding the factors the Exchange considers in deciding whether to halt or suspend trading and the circumstances under which trading is generally halted or suspended by the Exchange. The CBOE also proposes to establish procedures for the resumption of trading after a halt or suspension is lifted, and to grant the senior person in charge of the Control Room the authority to turn off RAES[7] for a particular stock option if the Control Room receives a credible indication that trading in the underlying stock has been halted.

A. Status of Rotation as Factor Considered in Halt or Suspension

Specifically, the CBOE proposes to amend Rules 6.3(a), 6.4(a) and 24.7(a) to include the status of the trading rotation[8] as a factor that may be considered in a decision whether to halt or suspend trading. Although not presently explicit in the CBOE rules, the Exchange states that its current practice includes consideration of the rotation status in deciding whether to halt or suspend trading. An explicit statement would notify members and the public that, when deciding whether to halt trading, Floor Officials may consider the extent to which the rotation has been completed and other factors regarding the status of the rotation. When deciding whether to suspend trading, the Board of Directors similarly would be able to consider the extent to which the rotation is complete and other factors regarding the status of the rotation.

B. Regulatory Halt or Suspension

CBOE further proposes to add Interpretation .04 to Rule 6.3 and Interpretation .01 to Rule 6.4 to reflect the current CBOE practice that, in general, trading in a stock option will be halted when a regulatory halt in the underlying stock has occurred in the primary market for that stock. Pursuant to Rule 6.3, any two Floor Officials may halt trading in any security in the interests of a fair and orderly market for a period not in excess of two consecutive business days. Similarly, the proposal reflects the current CBOE practice that, in general, trading in a stock option will be suspended when a regulatory suspension in the underlying stock has occurred in the primary market for that stock. In the case of a regulatory suspension, the Board of Directors is authorized under Rule 6.4 to suspend trading in any security in the interests of a fair and orderly market for an indefinite period.

Rules 6.3 and 6.4 list factors considered in deciding whether to halt or suspend trading. While the factors listed are considered in deciding whether to halt trading, when a regulatory halt in the underlying stock has been declared in the primary market, generally the Exchange will halt or suspend trading in the overlying stock option. The Exchange believes that the close relationship between the underlying stock and the pricing of stock options overlying that security typically justify such a result. When a regulatory halt is declared in the underlying stock, it often is because some news is pending regarding the

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[8] 15 U.S.C. § 78s(b)(2) (1988)

[9] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 proposes to delete the reference to Rule 6.3A in paragraph (c) of Rule 24.7, because the rule change proposes the deletion of Rule 6.3A in its entirety. *See* Letter from Michael Meyer, Schiff, Hardin & Waite, to John Ayanian, Attorney, Office of Market Supervision (''OMS''), Division of Market Regulation (''Market Regulation''), Commission, dated February 17, 1995. (''Amendment No. 1''.)

[4] Amendment No. 2 proposes to amend Interpretation .05 to CBOE Rule 6.3 to indicate that the senior person in the Control Room may rely on a *verified report* from the CBOE trading crowd as a credible indication of a trading halt or suspension in the primary market of an underlying security.

CBOE also proposes to clarify that its proposed rescission of CBOE Rule 6.3A is intended to encompass the two Interpretations and Policies previously adopted for that rule. See Letter from Michael Meyer, Schiff, Hardin & Waite, to John Ayanian, Attorney, Market Regulation, OMS, Commission, dated May 10, 1995. (''Amendment No. 2''.)

[5] Amendment No. 3 proposes to amend Regulatory Circular RG93–58 to indicate that two Floor Officials may permit trading to continue for more than 15 minutes after a failure of last sale and/or quotation dissemination from either the Exchange or the Options Price Reporting Authority (''OPRA'') only with the concurrence of a senior Exchange official. *See* Letter from Michael Meyer, Schiff, Hardin & Waite, to John Ayanian, Attorney, Market Regulation, OMS, Commission, dated May 31, 1995. (''Amendment No. 3''.)

[6] *See* Securities Exchange Act Release No. 35397 (February 21, 1995), 60 FR 10621 (February 27, 1995).

[7] RAES automatically executes public customer market and marketable orders of a certain size against participating market makers in the CBOE trading crowd at the best bid or offer reflected in the CBOE quotation system. A more detailed description of RAES is provided in Securities Exchange Act Release No. 22015 (May 6, 1985), 50 FR 19832 (May 10, 1985).

[8] A ''trading rotation'' is a series of very brief time periods during which bids, offers, and transactions in only a single, specific option contract can be made. *See* CBOE Rule 6.2.

underlying stock and the primary market wants to allow time for the dissemination of such news. For the same reason, the CBOE believes it generally is appropriate in that circumstance to halt trading in the overlying stock option.

CBOE also proposes to amend Rules 6.3(a)(iii) and 6.4(a)(ii) to clarify that these rules are only applicable to non-option securities. Securities other than options include, for example, securities traded at CBOE that are subject to Chapter 30 of the CBOE Rules. Securities presently subject to Chapter 30 include stock, warrants (which term includes currency and index warrants except as otherwise expressly provided or as the context otherwise requires), UIT interests, and such other securities instruments and contracts as the Board of Directors may from time to time declare subject to Chapter 30. The Exchange believes the changes are necessary to clarify that Rules 6.3(a)(iii) and 6.4(a)(ii) do not apply to stock options or any other options traded at CBOE, but only to securities traded at CBOE other than options.

C. Circuit Breaker Halts and Subsequent Reopening Rotations

The proposal also would rescind Rule 6.3A, which provides for a trading halt in all equity and index options when there has been a floor-wide New York Stock Exchange (''NYSE'') halt or suspension as a result of activation of circuit breakers on the NYSE. The CBOE believes that this rule is unnecessary because the only circumstances under which Rule 6.3A could apply are situations that Rule 6.3B already expressly governs. Presently, there are only two circuit breakers that lead to a New York Stock Exchange floor-wide halt; when there has been a decline in the Dow Jones Industrial Average of 250 or more points below the previous day's closing value, and when on the same day there is a cumulative decline of 400 or more points from the previous day's closing value. Rule 6.3B already governs trading halts under both of these circumstances. Under Rule 6.3B, the mandatory circuit breaker halt would terminate automatically after the expiration of the applicable one hour or two hour time period.

The proposal would eliminate the requirements contained in Rule 6.3A that, prior to a reopening rotation, (i) an additional determination must be made that a halt or suspension is not in effect in the primary market where the underlying security for each class of options is traded; (ii) a determination must be made, in the case of index options, that a halt or suspension is not in effect in the primary market of the securities constituting 50% or more of the index value; and (iii) two Floor Officials, in consultation with a designated senior executive officer, must conclude in their judgment that the interests of a fair and orderly market are served by a resumption of trading. The effect of this proposal is that after a circuit breaker halt, trading would resume automatically unless the Exchange affirmatively acted to declare a further halt or suspension pursuant to other rules, such as Rules 6.3, 6.4 or 24.7.

CBOE believes that trading should generally resume after a circuit breaker halt, subject only to the rules regarding trading halts and suspensions. Pursuant to Rules 6.3, 6.4 and 24.7, a halt or suspension in the underlying security (to which Rule 6.3A refers) are among the factors considered in the decision to suspend or halt trading, but these factors do not necessarily *require* a halt or suspension nor limit the Exchange's ability to exercise judgment in these circumstances. CBOE believes that the interests of a fair and orderly market are better served when the rules allow Exchange officials the discretion to evaluate market conditions and circumstances and to exercise their judgment as to when to halt or suspend trading, without the restrictions on the exercise of that judgment that are contained in Rule 6.3A.

The rescission of Rule 6.3A also removes the current requirement that, if trading is halted due to activation of circuit breakers, reopening rotations *shall* be held. Rule 6.3A makes a reopening rotation mandatory and prevents Exchange officials from reopening without a rotation. CBOE believes the interests of a fair and orderly market are better served when the rules allow Exchange officials the discretion to evaluate market conditions and circumstances and to exercise their judgment as to whether to reopen with or without a rotation.

Procedures regarding reopening rotations after a halt triggered by circuit breakers will be added by amending Rule 6.3B, Interpretation .02. The amended Interpretation .02 would require a reopening rotation unless two Floor Officials, or an Order Book Official acting on authorization from a senior Exchange official, conclude it is appropriate under the circumstances to employ a different method of reopening, including but not limited to, no rotation, an abbreviated rotation, or a variation in the manner of the rotation. The senior Exchange official could authorize the order Book Officials to deviate from normal reopening rotation procedures by making a general announcement to all Order Book Officials. The CBOE believes it is reasonable to presume that a reopening rotation will be held after a circuit breaker halt because, after a floorwide halt, it is physically difficult to have two Floor Officials available at each trading post to make a decision regarding the resumption of trading. The Exchange believes that the presumption allows for a universal treatment of the reopening after a circuit breaker halt, yet still permits appropriate Exchange officials to exercise judgment to deviate from this presumed course of action when a different method of reopening is appropriate.

D. Corresponding Amendments to Regulatory Circulars

1. Regulatory Circular RG94–17

The Exchange also proposes to amend Regulatory Circular RG94–17, which addresses inter-exchange procedures in volatile markets, to make the content of the circular consistent with the proposed amended Interpretation .02 to Rule 6.3B. Regulatory Circular RG94–17 discusses the CBOE's procedures during a halt in options trading due to a DJIA drop of 250 or more points below the previous day's closing trading value, or a cumulative drop of 400 points in the DJIA on the same day. Pursuant to the proposed change to Interpretation .02 to Rule 6.3B, after the expiration of the one or two hour period set forth in Rule 6.3B, a reopening rotation would be held in each class of options unless two Floor Officials (or an Order Book Official acting upon authorization from a senior Exchange official) conclude a different method of reopening is appropriate. Additionally, Regulatory Circular RG95–17 would be amended to delete the requirements contained in Rule 6.3A that, before reopening after a circuit breaker halt, the Exchange must verify that (1) there is no halt or suspension in effect in the primary market where the underlying stock is traded and (2) with respect to an index option, there is no halt or suspension in the primary market of the securities constituting 50% of the index.

2. Regulatory Circular RG93–58

The CBOE further proposes to amend Regulatory Circular RG93–58, which addresses trading halt policy for options on individual equity securities, to make the circular consistent with the proposed amendment to Rule 6.3.[9] Regulatory Circular RG93–58 would be further amended to state that it does not address the Exchange's trading halt

[9] Regulatory Circular RG93–58 is a reprint of Regulatory Circular RG92–40, dated July 8, 1992.

policy when a halt has been declared as a result of the operation of a circuit breaker pursuant to Rule 6.3B, due to a 250 or 400 point intra-day drop in the DJIA.

Consistent with Rule 6.3, Regulatory Circular RG93–58 would be amended to provide that two Floor Officials may exercise judgment regarding trading halts without the concurrence of a senior Exchange staff official. Presently, Rule 6.3 provides that a decision regarding whether to halt trading may be made by any ''two Floor Officials.'' This amendment would make the guidelines in Regulatory Circular RG93–58 consistent with the Rule 6.3. The Exchange believes that Floor Officials need to be able to exercise their judgment without obtaining the concurrence of a senior Exchange staff official because it may be physically difficult for a senior Exchange staff official to be present at all trading posts during circumstances where a trading halt may be simultaneously necessary in multiple options classes.

Regulatory Circular RG93–58 provides Floor Officials with non-mandatory guidelines to assist them in their decision regarding a trading halt. Pursuant to Rule 6.3, ''[a]ny two Floor Officials may halt trading in any security in the interests of a fair and orderly market.'' Rule 6.3 permits Floor Officials to exercise judgment and discretion in deciding whether to halt trading. The language of rule 6.3 is discretionary and does not require that Floor Officials declare a trading halt. The proposed amendments to Regulatory Circular RG93–58 delete language that would limit Floor Official's discretion by imposing mandatory criteria.

The proposal would further amend Regulatory Circular RG93–58 to reflect the CBOE's general practice, as set forth in the proposed interpretation to Rule 6.3, to halt trading in an overlying stock option when a regulatory halt in the underlying stock has been declared in the primary market for that stock.

Regulatory Circular RG93–58 would be further amended to delete the requirement that, in connection with a halt due to no last sale and/or quotation dissemination either by the Exchange or the Options Price Reporting Authority (''OPRA''),[10] trading may only resume 15 minutes after notification to the news wire services. The guidelines provide that the news wire services will be notified of the dissemination difficulty.

However, under such circumstances, since trading presumably would have been proceeding in other markets, it is important for the options market to resume trading as soon as practical after the dissemination difficulty which led to the halt is no longer present. CBOE believes that waiting 15 minutes to resume trading would be inordinately long and may be contrary to the interests of a fair and orderly market. Nonetheless, the proposed amendments would specifically state CBOE's general practice to notify member firms and news wire services before the resumption of trading.

The language in paragraph one of Regulatory Circular RG93–58 would be further amended to clarify that there is a preference, but not a requirement, to halt trading if two Floor Officials believe that the dissemination problem will last more than 15 minutes. Additionally, the language would be amended to limit the discretion of the Floor Officials by requiring the concurrence of a senior Exchange official if two Floor Officials want to permit trading to continue for more than 15 minutes after a failure of last sale and/or quotation dissemination. The language would be further amended to clarify that, if the two Floor Officials believe that the dissemination problem *will* be resolved within the next 15 minutes, then there is no preference for a halt—even if that expectation proves to be incorrect. The present language would be further amended to clarify that trading *ordinarily* will continue if two Floor Officials believe it is likely the dissemination problem will be resolved in less than 15 minutes. The present language appears to require trading to continue under such circumstances. Again, the Exchange believes these guidelines should not limit Floor Officials' discretion, since Rule 6.3 provides for discretion in such circumstances. If a systems problem prevented CBOE or OPRA from disseminating CBOE's last sale or quote data, this would be an unusual market condition and, pursuant to Rule 6.3, two Floor Officials *may* halt trading.

The CBOE proposes to delete the requirement in paragraph four of Regulatory Circular RG93–58 that, in connection with a primary market floor-wide trading halt not subject to Rule 6.3B, and despite the determination by two Floor Officials that sufficient markets will support trading other than at the primary market, trading may resume only upon a one hour notification to the news wire services. Again, since trading of the underlying stock is continuing at an exchange other than the primary exchange, the CBOE believes that waiting one hour to resume options trading at the CBOE could be inordinately long and might be contrary to the interests of a fair and orderly market. Instead, paragraphs one and six of Regulatory Circular RG93–58 would be amended so that the guidelines for the resumption of trading would be consistent with Rule 6.3(b), which provides that trading in a security that has been the subject of a halt may resume upon a determination by two Floor Officials that the conditions which led to the halt are no longer present, or that the interests of a fair and orderly market are best served by a resumption of trading. However, the proposed amendments would specifically state CBOE's general practice to notify member firms and news wire services before the resumption of trading.

E. RAES

Finally, the proposal would add Interpretation .05 to Rule 6.3 to grant authority to the senior person then in charge of the Exchange's Control Room to turn off RAES with respect to a stock option if that senior person confirms that the Control Room has received a credible indication (including, but not limited to, a verified report from the trading crowd)[11] that trading in the underlying stock has been halted or suspended. After exercising such authority, that senior person would

[10] OPRA is a National Market System Plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3–2. Securities Exchange Act Release No. 17638 (March 18, 1981).

OPRA provides for the collection and dissemination of last sale and quotation information on options that are traded on the five exchanges participating in the plan. The exchanges include the CBOE, the Philadelphia Stock Exchange, the American Stock Exchange, the Pacific Stock Exchange, and the New York Stock Exchange.

The OPRA plan was implemented in response to directives of the SEC that provisions be made for the consolidated reporting of transactions in eligible options contracts listed and traded on national securities exchanges.

[11] CBOE represents that if information of a trading halt or suspension comes from the trading crowd or from a source other than authoritative information in the Control Room, the senior person in charge of the Control Room would first attempt to independently verify the information before turning off RAES. To verify the existence of a trading halt or suspension, the senior person in charge of the Control Room would seek to identify and obtain authoritative information in the Control Room, including (1) the quote of the underlying security being pulled from the Class Display Screen, (2) an ST or H appearing on the Class Display Screen via the Consolidated Tape, (3) a print-out in the Control Room confirming the halt or suspension of trading in the underlying security, and (4) notification of the trading halt or suspension via the ''Hoot and Holler'' system. The Hoot and Holler system is a voice linkage between all of the exchanges and the Commission. Telephone conversation between Edward Joyce, Executive Vice President, CBOE, and John Ayanian, Attorney, OMS, Market Regulation, Commission, on February 16, 1995.

need to immediately seek confirmation of this decision from two Floor Officials. The purpose of this interpretation is to prevent orders from being placed on RAES during the interval after the trading in the underlying stock has been halted or suspended but before two Floor Officials have declared a trading halt pursuant to Rule 6.3(a) or before a Post Director or Order Book Official has suspended trading pursuant to Interpretation .01 to Rule 6.3. The CBOE believes this provision is necessary because, if trading in a stock is halted due to pending news, the effect of the news may be anticipated and, while Floor Officials are being called to a post to decide whether to halt trading, orders could still be placed on RAES. Under the current Interpretations to Rule 6.3, the Post Director or Order Book Official must turn off RAES concurrently with any suspension of trading. If an ''ST'' symbol (for an exchange listed security) or an ''H'' symbol (for a security traded primarily in the over-the-counter market) is displayed on the Class Display Screen that displays current market information for the underlying security, the Order Book Official or Post Director may suspend trading in the related equity option for a period not to exceed five minutes and concurrently shall turn off RAES for the affected options class or classes.[12] The Control Room, however, may receive information that trading has stopped in the underlying stock before the Post Director or Order Book Official sees the ''ST'' symbol or ''H'' symbol on the Class Display Screen for the underlying stock. Consequently, the CBOE believes it is important for the Control Room to have authority to turn off RAES without being required to wait for the Post Director or Order Book Official to act, or in a circumstance where the senior person in charge of the Control Room confirms that the Control Room has received a credible indication that trading in the underlying stock has been halted or suspended.

The proposal provides that the Post Director, Order Book Official, or their representative will re-start RAES after the trading halt or suspension has ceased. This would be consistent with Rules 6.8(f) and 24.15(f), which provide that each day RAES is available, a Post Director or his representative will start RAES.

[12] *See* Securities Exchange Act Release No. 34126 (May 27, 1994), 59 FR 29309 (June 6, 1994) (Approval Order giving the Order Book Officials or the Post Director the authority to suspend trading, and to turn off RAES for the affected options class or class whenever trading in the underlying security is halted).

III. Commission Finding and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[13] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, while protecting investors and the public interest.

Specifically, the Commission believes it is appropriate to amend Rules 6.3(a), 6.4(a) and 24.7(a) to include the status of the trading rotation as a factor that may be considered in a decision whether to halt or suspend trading. The Commission notes that there may be circumstances in which it could be in the interest of a fair and orderly market to complete a rotation before calling a halt or suspension in trading. For example, CBOE officials may want to consider the status of a trading rotation in the event of extreme market volatility or a pending news announcement. Allowing Floor Officials, in the case of a trading halt, and the Board of Directors, in the case of a suspension of trading, to evaluate the status of the rotation in determining whether to halt or suspend trading may contribute to their evaluation of how best to maintain a fair and orderly market.

The Commission further believes that it is appropriate to add Interpretation .04 to Rule 6.3 and Interpretation .01 to Rule 6.4 to state that, in general, trading in a stock option will be halted or suspended when a regulatory halt or suspension in the underlying stock has occurred in the primary market for that stock. The Commission believes that a general practice whereby trading is halted on the CBOE when investors lack access to current pricing information in the primary market for the underlying stock, should contribute to the maintenance of fair and orderly markets. Moreover, the Commission believes that the CBOE's proposal to amend its Regulatory Circular RG93–58 to parallel the provisions of Interpretation .04 to Rule 6.3 and Interpretation .01 to Rule 6.4 will help make such procedures readily known and available to floor members.

[13] 15 U.S.C. 78f(b)(15).

The Commission further believes that it is appropriate to amend Rules 6.3(a)(iii) and 6.4(a)(ii) to clarify that these rules are only applicable to non-option securities. Currently, Rule 6.3(a)(iii) and Rule 6.4(a)(ii) state that the rules apply to any security other than a stock option. The Commission believes that the amendments clarify the proper application of the rule to non-option securities such as stock, UIT interests, and warrants.

Further, the Commission believes that it is appropriate to rescind Rule 6.3A, which provides for a halt in trading of all equity and index options when there has been a floor-wide New York Stock Exchange halt or suspension as a result of activation of circuit breakers on the New York Stock Exchange. The Commission understands that the only circumstances under which Rule 6.3A could apply are situations that Rule 6.3B already expressly governs and, as a result, the rule is redundant. The rescission of Rule 6.3A will have the effect of removing the mandatory reopening rotation (and related procedures) following a floor-wide NYSE trading halt. However, the Commission believes that the proposed amendment to Interpretation .02 to Rule 6.3B appropriately addresses this circumstance. Interpretation .02 to Rule 6.3B requires a reopening rotation in each class of options following a circuit breaker halt unless two Floor Officials (or an Order Book Official acting upon authorization from a senior Exchange official) conclude that a different method of reopening is appropriate under the circumstances, including but not limited to, no rotation, an abbreviated rotation, or any other variation in the manner of the rotation. Moreover, the Commission believes that the CBOE's proposal to amend and redistribute Regulatory Circular RG94–17 to parallel the provisions of Interpretation .02 to Rule 6.3B, and notice the rescission of Rule 6.3A, are necessary in order to notify to CBOE members of these reopening procedures.

The Commission also believes it is appropriate to amend CBOE Regulatory Circular RG93–58 to reflect the discretion granted to Floor Officials in Rule 6.3, as amended. Currently, CBOE Regulatory Circular RG93–58 contains limiting language regarding the Floor Officials' discretion when addressing trading halt and resumption of trading procedures. The CBOE's proposed amendments to the Regulatory Circular address the need to provide parallel guidelines between the rules and regulatory circulars regarding trading halt and resumption of trading procedures.

The Commission also believes that it is appropriate for the CBOE to add Interpretation .05 to Rule 6.3 to grant the authority to the senior person then in charge of the Exchange's Control Room to turn off RAES for a particular stock option if that senior person confirms that the Control Room has received a credible indication that trading in the underlying stock has been halted or suspended. The proposed rule change should protect investors and the public interest by enabling the senior person in charge of the Control Room to take prompt action in response to trading halts in underlying securities verified in the Control Room, before the ''ST'' or ''H'' symbol appears on the Class Display Screen, or the Post Director or Order Book Official has acted. The Commission notes that if information of an impending halt or suspension comes from the trading crowd or from a source other than authoritative information in the Control Room, the senior person in charge of the Control Room must first verify the information before turning off RAES.[14]

The Commission also finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 1 merely corrects a technical error in the proposed amendment to Rule 24.7. As filed, the proposed amendment showed ''no change'' to paragraph (c) of that rule. In fact, CBOE proposes to amend paragraph (c) to delete the reference to Rule 6.3A, because the rule change proposes the deletion of the latter rule in its entirety. Accordingly, the Commission believes it is consistent with Section 6(b)(5) of the Act to approve Amendment No. 1 to the CBOE's proposal on an accelerated basis.

Additionally, the Commission finds good cause for approving Amendment No. 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. This amendment clarifies that when the senior person in charge of the Control Room receives a report from the trading crowd that trading in the underlying stock has been halted or suspended in the primary market, the report from the trading crowd must first be verified before turning off the RAES system with respect to the stock option. The Commission believes that this amendment clarifies the responsibilities of the senior person in charge of the Control Room when invoking this interpretation and is substantially similar to the original proposal. Accordingly, the Commission believes that it is consistent with Section 6(b)(5) of the Act to approve Amendment No. 2 to CBOE's proposed rule changes on an accelerated basis.

The Commission also finds good cause for approving Amendment No. 3 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 3 clarifies that, pursuant to Regulatory Circular RG93–58, two Floor Officials may permit trading to continue for more than 15 minutes after a failure of dissemination only with the concurrence of a senior Exchange official. The Commission believes that this amendment clarifies the scope of authority granted to the Floor Officials when invoking this provision and raises no new regulatory issues. Accordingly, the Commission believes that it is consistent with Section 6(b)(5) of the Act to approve Amendment No. 3 to CBOE's proposed rule changes on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 1, 2 and 3. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 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., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–95–05 and should be submitted by June 28, 1995.

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule changes (File No. SR–CBOE–95–05), as amended, are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–13900 Filed 6–6–95; 8:45 am]

BILLING CODE 8010–01–M

[14] *See supra* note 11.

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

[Release No. 34–35781; File No. SR–PHLX–95–29]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to an Increase in the Maximum AUTO–X Order Size for U.S. Top 100 Index Options

May 30, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 22, 1995, the Philadelphia Stock Exchange, Inc. (''PHLX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Currently, public customer market and marketable limit orders for up to 25 option contracts, as determined by the specialist, are eligible for execution through AUTO–X, the automatic execution feature of the PHLX's Automated Options Market (''AUTOM'') system. The PHLX proposes to increase the maximum AUTO–X order size eligibility for public customer market and marketable limit orders in U.S. Top 100 Index (''TPX'') options from 25 to 50 contracts.

The text of the proposed rule change is available at the Office of the Secretary, PHLX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the

most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposal is to increase the maximum AUTO–X order size eligibility for public customer market and marketable limit orders in TPX options from 25 to 50 contracts.

AUTO–X, the automatic execution feature of AUTOM, was approved by the Commission as part of the AUTOM pilot program in 1991.[1] AUTOM, which has operated on a pilot basis since 1988 and was most recently extended through December 31, 1995,[2] is an on-line system that allows electronic delivery of options orders from member firms directly to the appropriate specialist on the Exchange's trading floor. Currently, orders for up to 100 options contracts are eligible for AUTOM and public customer market and marketable limit orders for up to 25 contracts are eligible for AUTO–X.[3] AUTO–X orders are executed automatically at the disseminated quotation price on the Exchange and reported to the originating firm. Orders that are not eligible for AUTO–X are handled manually by the specialist.

TPX options were approved recently for trading on the Exchange as broad-based index options.[4] The PHLX now proposes to permit the use of AUTO–X for public customer market and marketable limit orders of up to 50 contracts in TPX options. The Exchange believes that the proposed expanded AUTO–X parameter should improve the AUTOM system by offering the benefits of AUTO–X to investors in TPX options who place a high premium on prompt and efficient automatic executions for 50-lot orders at the displayed price. The Exchange notes that the increase from a maximum of 25 to 50 contracts is in line with prior changes; for example, the Commission previously approved an AUTO–X increase for public customer orders from 10 to 20 contracts.[5]

According to the PHLX, the proposed expansion of the maximum AUTO–X order size should not impose significant burdens on the operation and capacity of the AUTOM system. Instead, the PHLX believes that increasing the number of public customer orders eligible for automatic execution, and thereby reducing manual processing, may enhance AUTOM's effectiveness. In addition, the Exchange notes that the Commission has previously approved the automatic execution of 50 contracts for a broad-based index.[6]

The PHLX believes that the proposal is consistent with Section 6(b) of the Act, in general, and, in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade and to prevent fraudulent and manipulative acts and practices, as well as to protect investors and the public interest by extending the benefits of AUTO-X to a larger number of public customer orders.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX 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 either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days after May 22, 1995, the date on which it was filed, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(e)(6) thereunder. In particular, the Commission believes that the proposal does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing

[1] See Securities Exchange Act Release No. 28978 (March 15, 1991), 56 FR 12050 (order approving File No. SR–PHLX–90–34).

[2] See Securities Exchange Act Release No. 35183 (December 30, 1994), 60 FR 2420 (January 9, 1995) (order approving File No. SR–PHLX–94–41). See also Securities Exchange Act Release Nos. 25540 (March 31, 1988), 53 FR 11390 (order approving AUTOM on a pilot basis); 25868 (June 30, 1988), 53 FR 25563 (order approving File No. SR–PHLX–88–22, extending pilot through December 31, 1988); 26354 (December 13, 1988), 53 FR 51185 (order approving File No. SR–PHLX–88–33, extending pilot program through June 30, 1989); 26522 (February 3, 1989), 54 FR 6465 (order approving File No. SR–PHLX–89–1, extending pilot through December 31, 1989); 27599 (January 9, 1990), 55 FR 1751 (order approving File No. SR–PHLX–89–03, extending pilot through June 30, 1990); 28625 (July 26, 1990), 55 FR 31274 (order approving File No. SR–PHLX–90–16, extending pilot through December 31, 1990); 28978 (March 15, 1991), 56 FR 12050 (order approving File No. SR–PHLX–90–34), extending pilot through December 31, 1991); 29662 (September 9, 1991), 56 FR 46816 (order approving File No. SR–PHLX–91–31, permitting AUTO–X orders up to 20 contracts in Duracell options only); 29782 (October 3, 1991), 56 FR 55146 (October 24, 1991) (order approving File No. SR–PHLX–91–33, permitting AUTO–X for up to 20 contracts for all strike prices and expiration months); 29837 (October 18, 1991), 56 FR 36496 (order approving File No. SR–PHLX–90–03, extending pilot through December 31, 1993); 32906 (September 15, 1993), 58 FR 15168 (order approving File No. SR–PHLX–92–38, permitting AUTO–X orders up to 25 contracts in all options); and 33405 (December 30, 1993), 59 FR 790 (order approving File No. SR–PHLX–93–57, extending pilot through December 31, 1994).

[3] The Commission recently approved a PHLX proposal to codify the use of AUTOM and AUTO–X for index options. *See* Securities Exchange Act Release No. 34920 (October 31, 1994), 59 FR 5510 (November 7, 1994) (order approving File No. SR–PHLX–94–40). In addition, the Commission has approved a PHLX proposal to codify the Exchange's practice of accepting certain orders for AUTOM and AUTO–X. *See* Securities Exchange Act Release No. 35601 (April 13, 1995), 60 FR 19616 (April 19, 1995) (order approving File No. SR–PHLX–95–18).

[4] See Securities Exchange Act Release No. 35591 (April 11, 1995), 50 FR 19423 (April 18, 1995) (order approving File No. SR–PHLX–95–07).

[5] See Securities Exchange Act Release No. 29837, *supra* note 2.

[6] See Securities Exchange Act Release No. 33894 (April 11, 1994), 59 FR 18429 (April 18, 1994) (order approving File No. SR–Amex–93–32, permitting the use of Auto-Ex on the American Stock Exchange, Inc., for up to 50 contracts for public customer market and marketable limit orders in Hong Kong Index options).

will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 28, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–13896 Filed 6–6–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35788; File No. SR–NASD–95–21]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Freely Tradeable Direct Participation Program Securities

May 31, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. § 78s(b)(1), notice is hereby given that on May 23, 1995, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is herewith filing a proposed rule change to Article III, Section 34 of the Rules of Fair Practice. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

Direct Participation Programs

Sec. 34.

* * * * *

Suitability

(3)(A) A member or person associated with a member shall not underwrite or participate in a public offering of a direct participation program unless standards of suitability have been established by the program for participants therein and such standards are fully disclosed in the prospectus and are consistent with the provisions of subparagraph (B) of this section.

(B) In recommending to a participant the purchase, sale or exchange of an interest in a direct participation program, a member or person associated with a member shall:

(i) have reasonable grounds to believe, on the basis of information obtained from the participant concerning his investment objectives, other investments, financial situation and needs, and any other information known by the member or associated person, that:

a. the participant is or will be in a financial position appropriate to enable him to realize to a significant extent the benefits described in the prospectus, including the tax benefits where they are a significant aspect of the program;

b. the participant has a fair market net worth sufficient to sustain the risks inherent in the program, including loss of investment and lack of liquidity; and

c. the program is otherwise suitable for the participant; and

(ii) maintain in the files of the member documents disclosing the basis upon which the determination of suitability was reached as to each participant.

(C)[D] Notwithstanding the provisions of subparagraphs (A) and (B) hereof, no member shall execute any transaction in a direct participation program in a discretionary account without prior written approval of the transaction by the customer.

(D)[C] Subparagraphs 3(A) and 3(B), *and, only in situations where the member is not affiliated with the direct participation program, Subparagraph 3(C),* shall not apply to:

(i) a secondary public offering of or a secondary market transaction in a unit, depositary receipt, or other interest in a direct participation program for which quotations are displayed on Nasdaq or which is listed on a registered national securities exchange, or

(ii) an initial public offering of a unit, depositary receipt or other interest in a direct participation program for which an application for inclusion on Nasdaq or listing on a registered national securities exchange has been approved by Nasdaq or such exchange and the applicant makes a good-faith representation that it believes such inclusion on Nasdaq or listing on an exchange will occur within a reasonable period of time following the formation of the program.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Article III, Section 34 of the Rules of Fair Practice regulates participation by members and persons associated with a member in direct participation programs and limited partnership rollup transactions (''DPP rule''). The DPP rule generally prohibits a member or a person associated with a member from participating in a public distribution of a direct participation program or a limited partnership rollup transaction unless the distribution or transaction conforms to certain suitability and disclosure requirements and standards of fairness and reasonableness.

Since the adoption of the DPP rule in 1982,[2] an increasing number of direct participation programs, such as master limited partnerships, have issued partnership units, depositary receipts for such units, or assignee units of limited partnership units that are freely tradeable in a manner generally analogous to common stock and are quoted on Nasdaq and listed on registered national stock exchanges. A direct participation program security is considered freely-tradeable under Section 34 if it is either (1) a secondary public offering of or a secondary market transaction in a direct participation program security for which quotations are displayed on Nasdaq or which is listed on a registered national securities exchange, or (2) a primary offering of a direct participation program for which

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[7] 17 CFR 200.30–3(a)(12) (1994).

[1] The proposal was originally filed with the Commission on May 10, 1995. The NASD subsequently submitted Amendment No. 1 to the filing which amends Subsections (b)(3)(C) (i) and (ii) to Article III, Section 34 of the Rules of Fair Practice, by replacing the phrase ''the NASDAQ System'' in Subsections (i) and (ii) and the word ''NASDAQ'' in Subsection (ii) with the word ''Nasdaq.'' Letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Mark P. Barracca, Branch Chief, Over-the-Counter Regulation, Division of Market Regulation, SEC, dated May 22, 1995.

[2] The DPP rule was initially approved by the Commission as Appendix F to Article III, Section 34 on September 16, 1982 (Securities Exchange Act Release No. 19054); 47 FR 42226 (September 24, 1982).

an application for inclusion on Nasdaq or listing on a registered national securities exchange has been approved.

In order to address the increased transparency and liquidity associated with the nature of the secondary markets for freely tradeable direct participation program securities, the NASD amended the DPP rule to, among other things, exempt freely tradeable direct participation program securities from the suitability requirements of Subsections 34(b)(3) (A) and (B) of the DPP rule.[3] At the time, the NASD determined that since the disclosure requirements in the DPP rule were primarily designed for direct participation program securities that lacked liquidity and marketability, no purpose was served by applying the same criteria to freely tradeable direct participation program securities.

Freely tradeable direct participation program securities, however, continue to be subject to the discretionary account prohibitions of Article III, Section 34. Currently, Subsection 34(b)(3)(D) of the DPP rule states, in part, that ''* * * no member shall execute any transaction in a direct participation program in a discretionary account without prior written approval of the transaction by the customer.'' The provision applies to transactions in all direct participation program securities, whether freely tradeable or not. The NASD considers discretionary transactions in direct participation program securities which are illiquid and for which no ready market exists to be an improper use of discretionary power. Recently, the NASD considered whether Monthly Income Preferred Securities (''MIPS''), a new financial instrument which is a freely tradeable direct participation program security, ought to be subject to the discretionary account restrictions in Article III, Section 34.[4] In its consideration, the NASD determined that the concerns which attach to the use of discretionary authority for illiquid, unmarketable direct participation program securities are not present with freely tradeable direct participation program securities. Therefore, the NASD is proposing reversing the order of current Subsections (b)(3)(C) and (D) to Section 34 and to add a reference to Subparagraph 3(C) in new Subparagraph 3(D) to exclude freely-tradeable direct participation program securities from the prohibition on transactions in discretionary accounts without written approval. The exclusion for freely tradeable direct participation program securities in newly designated Subparagraph (3)(D) also restricts the availability of the exclusion to members that are not affiliated with the direct participation program. Where such an affiliation is present, the NASD believes that substantial conflict of interest and regulatory concerns continue to exist and the exclusion should not be made available.

The NASD believes that recognizing the use of discretionary authority for transactions in freely tradeable direct participation program securities is consistent with 1986 amendments to Section 34 exempting freely tradeable participation program securities from the suitability and disclosure requirements of Section 34. Such suitability and disclosure requirements, which are necessary where direct participation program securities lack liquidity and marketability, were found to be unnecessary where a ready, liquid market exists.

Nothwithstanding the relief provided by the proposed rule from the prohibition in Article III, Section 34 against discretionary transactions in freely tradeable direct participation program securities, such transactions would, however, remain subject to the general discretionary account requirements contained in Article III, Section 15 of the Rules of Fair Practice.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[5] which require that the rules of the Association be designed to prevent fraudulent and manipulative acts and promote just and equitable principles of trade, in that the proposed rule change relieves members of their obligation to comply with prohibitions against discretionary transactions in direct participation program securities in situations which do not present the regulatory concerns that the prohibitions were intended to address, and provides for regulatory consistency in the treatment of discretionary transactions in freely tradeable securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–95–21 and should be submitted by June 28, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–13897 Filed 6–6–95; 8:45 am]

BILLING CODE 8010–01–M

[3] *See*, Securities Exchange Act Release No. 23619 (September 15, 1986); 51 FR 33968 (September 24, 1986).

[4] MIPS are preferred securities issued by a parent company's subsidiary, which is structured as a limited partnership or limited liability company. The subsidiary issues MIPS to investors and invests the proceeds in convertible subordinated debentures of the parent. Interest on the debentures of the parent are paid to the subsidiary, which in turn pays the equivalent rate of interest to MIPS holders in the form of dividends. MIPS are eligible to be listed on a national securities exchange or The Nasdaq Stock Market and have flow-through tax consequences for investors, which means that they are considered direct participation programs and, therefore, subject to Section 34.

[5] 15 U.S.C. 78*o*–3.

[Release No. 34–35776; File No. SR–NYSE–95–13]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Amendments to the Exchange's Allocation Policy and Procedures

May 30, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 31, 1995, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change, and on May 17, 1995, filed Amendment No. 1 to the proposed rule change,[1] as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to the Exchange's Allocation Policy and Procedures which would permit Floor broker Senior Floor Officials to replace Governors for quorum purposes.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The intent of the Exchange's Allocation Policy and Procedures (''Policy'') is to ensure that each security is allocated in the fairest manner possible to the best specialist unit for that security. In accordance with this intent, the Exchange recently amended the Policy to increase the number of Floor broker Governors[2] on the Allocation Committee from one to three.[3] Formerly, only one Floor broker Governor served as a member of the Allocation Committee. The Exchange believes that the Floor broker Governors on the Allocation Committee add a comprehensive knowledge of specialist performance and a broad perspective and expertise relating to the Exchange. In conjunction with this amendment, the Exchange amended the Policy's quorum requirement to require at least two Floor broker Governors to be present at Allocation Committee meetings. Prior to the amendment, the Policy required only one such Governor to be present.[4] These rule changes were implemented by the Exchange in October, 1994.

In order to avoid the appearance of a conflict of interest on the part of an Allocation Committee member, the Policy requires an Allocation Committee member whose firm has an investment banking/underwriting relationship with a listing company or is affiliated with a specialist unit applicant, to abstain from deliberations with respect to that particular stock. Since the implementation of the amendments discussed above, the Exchange has found that the conflict of interest exclusion may, at times, impede the Exchange's efforts to maintain the maximum presence of three Floor broker Governors on the Allocation Committee. The Exchange believes that conflict of interest abstentions, among other matters, could lead to situations in which the quorum requirement for Floor broker Governors could not be met. In order to respond to this concern, the Exchange is proposing to amend the Policy to permit Senior Floor Officials[5] to substitute for Floor broker Governors on the Allocation Committee for purposes of satisfying quorum requirements.

The Allocation Committee membership is drawn from the Allocation Panel, which consists of 28 Floor brokers, 8 allied members,[6] the 8 Floor broker Governors (who are part of the Allocation Panel by virtue of their appointment as Governors), and the 4 allied members serving on the Exchange's Market Performance Committee.[7] The Exchange would also amend the Policy to expand the Allocation Panel by appointing a minimum of 5 Senior Floor Officials each year. The Senior Floor Officials on the Allocation Panel would constitute a separate category, distinguished from the 28 Floor brokers.

In the event that any of the Floor broker Governors on the standing Allocation Committee were not able to attend an Allocation Committee meeting, or to participate in the allocation of a particular stock, the Exchange would first seek to substitute for such Governor(s) with another Floor broker Governor on the Allocation Panel. If no such Governor was available, in order to maximize the seniority of the Allocation Committee membership, a Senior Floor Official broker on the Allocation Panel that is not a standing member of the Allocation Committee would be sought as a substitute for the absent Governor(s). In instances where no Senior Floor Official broker was available from the Allocation Panel, any Senior Floor Official broker on the standing Allocation Committee may substitute for the absent Governor(s) for purposes of meeting the Governor quorum requirement.

In the event that no current Floor broker or allied member is available from the Allocation Panel, a former Allocation Committee chairman may substitute for a standing Allocation Committee member who cannot attend a meeting or participate in a particular allocation decision. However, a former Allocation Committee chairman may not substitute for a Floor broker Governor for the purpose of meeting the Floor broker Governor quorum requirement unless such former Allocation Committee chairman is a Senior Floor Official.

The Exchange is also amending the ''Term of Service'' provision for Panel members to include a provision for Senior Floor Officials. Senior Floor

[1] *See* Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Elisa Metzger, Staff Attorney, SEC dated May 16, 1995.

[2] A Floor broker Governor is an individual, designated as such by the Chairman of the Exchange's Board of Directors, who is empowered to perform any duty, make any decision or take any action assigned to or required of a Floor Director as prescribed by the rules of the Exchange's Board of Directors.

[3] This committee determines which specialist unit will specialize in a particular security. *See* Securities Exchange Act Release No. 34626 (September 1, 1994), 59 FR 46457.

[4] *See* Securities Exchange Act Release No. 34626 (September 1, 1994), 59 FR 46457.

[5] A Senior Floor Official is a former Governor or a former Floor Director.

[6] An allied member is a general partner, principal executive officer or employee who controls a member firm or member organization. *See* New York Stock Exchange, Inc., Constitution, Art. 1, Sec. 3(c).

[7] The Allocation Panel comprises the pool of individuals from which the Allocation Committee is formed. The Allocation Panel members are selected through an annual appointment process with input from the membership. Panel members are appointed to serve a one-year term; Floor broker Governors, however, remain on the Allocation Panel for as long as they are Floor broker Governors.

Officials are subject to annual reappointment, but are not subject to the two committee term restriction that floor brokers and allied members are subject to, and are not limited to a maximum of six consecutive one-year terms.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The proposed rule changes are consistent with these objectives in that they enable the Exchange to further enhance the process by which stocks are allocated.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other 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 the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC, 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–95–13 and should be submitted by June 28, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–13894 Filed 6–6–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35782; File No. SR–PHLX–95–30]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to an Increase in the Maximum Size of Optioned Orders Eligible for Delivery Through the Automated Options Market System

May 30, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 23, 1995, the Philadelphia Stock Exchange, Inc. (''PHLX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Currently, orders of up to 100 option contracts are eligible for delivery through the Automated Options Market (''AUTOM'') system, the PHLX's electronic order routing and delivery system for equity and index options. The PHLX proposes to amend its rules to allow a maximum of 500 contracts to be delivered through AUTOM. Currently, only public customer orders of 25 option contracts or less are eligible for automatic execution through AUTO–X, the automatic execution feature of AUTOM. The proposal does not affect AUTO–X order size eligibility.

The text of the proposed rule change is available at the Office of the Secretary, PHLX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposal is to increase the maximum eligible order size for the delivery of equity and index option orders through AUTOM from 100 to 500 contracts.

AUTOM, which has operated on a pilot basis since 1988 and was not recently extended through December 31, 1995,[1] is an on-line system that allows

[1] *See* Securities Exchange Act Release No. 35183 (December 30, 1994), 60 FR 2420 (January 9, 1995) (order approving File No. SR–PHLX–94–41). *See also* Securities Exchange Act Release Nos. 25540 (March 31, 1988), 53 FR 11390 (order approving AUTOM on a pilot basis); 25868 (June 30, 1988), 53 FR 25563 (order approving File No. SR–PHLX–88–22, extending pilot through December 31, 1988); 26354 (December 13, 1988), 53 FR 51185 (order approving File No. SR–PHLX–88–33, extending pilot program through June 30, 1989); 26522 (February 3, 1989), 54 FR 6465 (order approving File No. SR–PHLX–89–1, extending pilot through December 31, 1989); 27599 (January 9, 1990), 55 FR 1751 (order approving File No. SR–PHLX–89–03, extending pilot through June 30, 1990); 28625 (July 26, 1990), 55 FR 31274 (order approving File No. SR–PHLX–90–16, extending pilot through December 31, 1990); 28978 (March 15, 1991), 56 FR 12050 (order approving File No. SR–PHLX–90–34, extending pilot through December 31, 1991); 29662 (September 9, 1991), 56 FR 46816 (order approving File No. SR–PHLX–91–31, permitting AUTO–X orders up to 20 contracts in Duracell options only); 29782 (October 3, 1991), 56 FR 55146 (order approving File No. SR–PHLX–91–33, permitting AUTO–X for all strike prices and expiration months); 29837 (October 18, 1991), 56 FR 36496 (order approving File No. SR–PHLX–90–03, extending pilot through December 31, 1993); 32906 (September 15, 1993), 58 FR 15168 (order approving File No. SR–PHLX–92–38, permitting AUTO–X orders up to 25 contracts in all options); and 33405

electronic delivery of options orders from member firms directly to the appropriate specialist on the Exchange's trading floor. Currently, orders for up to 100 options contracts are eligible for AUTOM and public customer orders for up to 25 contracts are eligible for AUTO–X, the automatic execution feature of AUTOM.[2] AUTO–X orders are executed automatically at the disseminated quotation price on the Exchange and reported to the originating firm. Orders that are not eligible for AUTO–X are handled manually by the specialist. The current proposal does not impact AUTO–X order size eligibility.

The Exchange proposes to increase the maximum eligible size of AUTOM orders from 100 to 500 contracts. This change is intended to extend the benefits of AUTOM to additional users. The Exchange notes that the maximum AUTOM order size has remained the same since 1990. In light of the PHLX's experience with AUTOM over the past seven years, including five years during which the maximum AUTOM order size has been 100 contracts, the Exchange believes that it is appropriate, at this time, to increase the maximum size of the option orders eligible for routing and delivery through AUTOM to 500 contracts. The PHLX notes that the most recent change, in 1990, increased the eligible order size for AUTOM from 10 to 100 contracts.[3]

The PHLX states that the AUTOM system has sufficient capacity to operate with a maximum order size of 500 contracts, such that AUTOM and AUTO–X functioning would not be adversely affected by the proposal.

Accordingly, the PHLX believes that the proposal is consistent with Section 6(b) of the Act, in general, and, in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade and to prevent fraudulent and manipulative acts and practices, as well as to protect investors and the public interest by extending the benefits of AUTOM, including prompt and efficient order handling, to orders for up to 500 contracts.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX 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 either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days after May 23, 1995, the date on which it was filed, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(e)(6) thereunder. In particular, the Commission believes that the proposal does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 28, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–13895 Filed 6–6–95; 8:45 am]

BILLING CODE 8010–01–M

(December 30, 1993), 59 FR 790 (order approving File No. SR–PHLX–93–57, extending pilot through 31, 1994).

[2] The Commission recently approved a PHLX proposal to codify the use of AUTOM and AUTO–X for index options. *See* Securities Exchange Act Release No. 34920 (October 31, 1994), 59 FR 5510 (November 7, 1994) (order approving File No. SR–PHLX–94–40). In addition, the Commission has approved a PHLX proposal to codify the Exchange's practice of accepting certain orders for AUTOM and AUTO–X. *See* Securities Exchange Act Release No. 35601 (April 13, 1995), 60 FR 19616 (April 19, 1995) (order approving File No. SR–PHLX–95–18). AUTO–X was approved as part of the AUTOM pilot program in 1991. *See* Securities Exchange Act Release No. 28978, *supra* note 1.

[3] *See* Securities Exchange Act Release No. 28516 (October 3, 1990), 55 FR 41408 (October 11, 1990) (order approving File No. SR–PHLX–90–18).

[4] 17 CFR 200.30–3(a)(12) (1994).

[Rel. No. IC–21104; No. 812–9200]

The Guardian Insurance & Annuity Company, Inc., et al.

May 31, 1995.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (''1940 Act'').

APPLICANTS: The Guardian Insurance & Annuity Company, Inc. (''Guardian''), The Guardian Separate Account K (''Separate Account'') and Guardian Investor Services Corporation (''Guardian Services'').

RELEVANT 1940 ACT SECTIONS Order requested under Section 6(c) granting exemptions from the provisions of Sections 2(a)(32), 2(a)(35), 22(c), 26(a)(1), 26(a)(2), 27(a)(1), 27(c)(1), 27(c)(2), 27(d), and 27(e) of the 1940 Act, and paragraphs (b)(1), (b)(12), (b)(13)(i), (b)(13)(iii), (b)(13)(iv), (b)(13)(v), (b)(13)(vii), (c)(1), (c)(4) of Rule 6e–2, and Rules 6e–3(T)(c)(4)(v), 22c–1 and 27e–1 thereunder.

SUMMARY OF APPLICATION: Applicants request an order that would permit them to offer and sell certain variable whole life insurance contracts with modified scheduled premiums (''Contracts'') that provide for: (1) A death benefit that may or may not vary based on investment experience; (2) a sales charge deducted from premium payments and as a contingent deferred sales charge; (3) a contingent deferred administrative charge; (4) deduction from Account Value for cost of insurance charges, guaranteed insurance amount charges, substandard mortality risks and incidental insurance benefits, including

a Premium Skip Option; (5) values and charges based on the 1980 Commissioners' Standard Ordinary Mortality Tables (''1980 CSO Tables''); (6) the holding of underlying fund shares by the Separate Account without the use of a trustee under an open account arrangement and without trust indenture; and (7) a waiver of notice of refund and withdrawal rights. Applicants also request exemptive relief to deduct a charge from premium payments received under the Contracts, and from premiums received under certain single premium, scheduled premium and flexible premium variable life insurance contracts (''Other Contracts'') to be issued by Guardian through the Separate Account or any other separate account established by Guardian (''Future Accounts''), to compensate Guardian for its increased federal tax burden resulting from the receipt of such premiums.[1]

FILING DATE: The application was filed on August 29, 1994 and amended on May 4, 1995. Applicants have represented that the application will be amended during the notice period to reflect certain representations made herein.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 26, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requestor's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Applicants: Richard T. Potter, Esq., The Guardian Insurance & Annuity Company, Inc., 201 Park Avenue, South, New York, New York 10003.

FOR FURTHER INFORMATION CONTACT: Yvonne M. Hunold, Assistant Special Counsel, or Wendy Friedlander, Deputy Chief, at (202) 942–0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. Guardian is a stock life insurance company and a wholly-owned subsidiary of The Guardian Life Insurance Company of America. Guardian is authorized to conduct a life insurance business in all 50 States and the District of Columbia.

2. The Separate Account is registered as a unit investment trust (''UIT) under the 1940 Act and interests in the Contracts are registered under the Securities Act of 1933 (''1933 Act''). Future Accounts will be registered under the 1940 Act as UITs. The Separate Account and the Future Accounts will be used to support the Contracts or the Other Contracts.

The Separate Account currently consists of six investment divisions (''Investment Divisions''), each investing in a corresponding fund registered under the 1940 Act as a diversified open-end management company (''Fund'' or collectively, ''Funds''). The Funds serve as underlying funding vehicles for the Contracts. Each Fund is managed by a registered investment adviser. Additional Investment Divisions may be established in the future and may invest in the Funds or in other underlying investment vehicles.

3. Guardian Services, the principal underwriter for the Contracts, is a registered broker-dealer under the Securities Exchange Act of 1934 and a member of the National Association of Securities Dealers, Inc.

4. Under the Contracts, premiums may be paid on a scheduled or an unscheduled basis (collectively, ''Premium Payments''), subject to certain exceptions and conditions. Each Premium Payment is subject to ''Premium Assessments'' which are paid in connection with a Contract issued on a substandard basis and for supplemental insurance benefits provided by rider or endorsement. If, however, the ''Premium Skip Option'' is elected,[2] 90.5% of Premium Assessment otherwise payable from Premium Payments is deducted from Account Value. The remaining Premium Payment (''Basic Scheduled Premium'')[3] is used to purchase base Contract coverage and is reduced by certain Premium Charges, discussed below.[4]

Each unscheduled Premium Payment also is subject to deduction of Premium Charges, including the remaining 9.5% of Premium Assessment otherwise payable from Premium Payments if the Premium Skip Option is in effect. Thus, Premium Assessments usually are deducted from Premium Payments before sales load and other charges against Premiums are imposed. Premium Assessments deducted from Account Value (under the Premium Skip Option), in effect, are deductions from amounts previously subject to Premium Charges (which are equal to a total of 9.5% of Premiums until the cumulative total of Basic Scheduled Premiums and unscheduled Premium Payments is an amount equal to twelve Basic Scheduled Premiums). Accordingly, a discounting of Premium Assessments deducted from Account Value reflects the fact that the deductions are being made from post-premium charge amounts. Net Premiums are credited to Account Value and allocated to the Investment Divisions, or to the Fix-Rate Option, as specified by the Contract owner.

5. Two Death Benefit Options are available: (1) ''Option 1 Death Benefit,'' equal to the Face Amount of a Contract until the Contract Anniversary nearest the insured's 100th birthday; and (2) ''Option 2 Death Benefit,'' equal to the

[1] Applicants represent that the application will be amended during the notice period to delete Future Accounts as applicants and to request that exemptive relief to deduct such a charge be extended to Future Accounts in connection with the offering of Other Contracts.

[2] A Premium Skip Option permits the Contract owner, after the first Contract Year, to skip annual Premium Payments without the Contract lapsing, subject to certain conditions.

[3] The Basic Scheduled Premium initially is calculated at the issuance of the Contract and thereafter on each subsequent date that a Contract premium is due until the later of: (a) the Contract Anniversary nearest the insured's 70th birthday; or (b) the 10th Contract Anniversary (''Guaranteed Premium Period''). After the Guaranteed Premium Period, the Basic Scheduled Premium will be reviewed on each ''Contract Review Date'' (the monthly date prior to each Contract anniversary). If on that date the Account Value is: (a) less than the ''Benchmark Value,'' then the Basic Scheduled Premium will be increased to no more than the ''maximum'' amount set forth in the Contract; or (b) higher than the Benchmark Value, then the Basic Scheduled Premium could be reduced to no less than the Basic Scheduled Premium payable during the Guaranteed Premium Period.

The Benchmark Value approximately equals the Account Value needed on a Contract Anniversary for the Contract to endow at age 100 for the Face Amount, assuming (a) all Basic Scheduled Premiums are paid when due and do not increase after the Guaranteed Premium Period due to re-determination on a Review Date; (b) no unscheduled payments, partial withdrawals, reductions in Face Amount, or loans have been or will be made; (c) a level net annual rate of return on Account Value of 4%; and (d) deduction on each Monthly Date of the maximum Contract Charge, Administrative Charge, Guaranteed Insurance Amount and Cost of Insurance Charges.

[4] The portion of a Premium Payment that consists of Premium Assessments is not subject to Premium Charges.

Face Amount of a Contract plus the excess of Account Value on the date of death over a Contract's ''Benchmark Value'' for the applicable Contract Year, adjusted to the date of death until the Anniversary nearest the insured's 100th birthday. Under either Option, Death Benefits are guaranteed not to be less then a Contract's then-current Face Amount as long as Premium Payments are made, or excused, and there is no outstanding Contract Debt. If, however, a greater Death Benefit would be provided under either one of two ''Alternative Death Benefits,'' (a) the minimum death benefit required under Section 7702 of the Code, or (b) the variable insurance amount, then the greater Alternative Death Benefit will be paid. Thus, the Death Benefit under either Option 1 or Option 2 varies with investment experience when the Account Value is sufficiently large that: (a) the Death Benefit is increased in order for a Contract to qualify as life insurance for federal tax law purposes; or if greater, (b) the Death Benefit is increased to the variable insurance amount. This may occur because of favorable investment experience, unscheduled Premium Payments, imposition of lower than guaranteed charges, or a combination of these factors.

6. Various fees and expenses are deducted from Premium Payments under the Contracts:

a. Premium Charges: The following charges are deducted from each Premium Payment:

(1) *Sales Charge:* A Premium Sales Charge equal to 6.0% of all Premium Payments until the cumulative total of all such Payments is equal to twelve Basic Scheduled Premiums; thereafter, the charge will be equal to 3.0% of all such payments.

(2) *Premium Tax Charge:* A State Premium Tax Charge of 2.5% which is an approximate average of the rates Guardian expects to pay in all states over the lifetime of the insureds covered by the Contracts. Guardian reserves the right to increase if its premium taxes increase due to a change in state law.

(3) *Federal Premium Tax Burden Charge:* A charge of 1.0% to compensate Guardian for an increase in its federal income tax burden resulting from the application of Section 848 of the Internal Revenue Code of 1986 (''Code''), as amended by the Omnibus Budget Reconciliation Act of 1990 (''OBRA'').

(4) *Processing Charge:* Guardian reserves the right to impose a maximum charge of $2.00 from each unscheduled Premium Payment received for processing costs, including recordkeeping. Guardian does not expect a profit from this fee, if imposed.

b. Transaction Charges: The following charges are deducted proportionately from Account Value attributable to the Investment Divisions until the Account value is depleted, and then from the Fixed-Rate Option:

(1) *Surrender Charge:* A Contingent Deferred Sales Charge (''CDSC'') and a Contingent Deferred Administrative Charge (''CDAC'') are deducted during the first 12 Contract Years upon withdrawal, surrender, reduction in Face Amount, or lapse.

(A) CDSC: [5] For an insured age 78 or less, the lesser of (i) 36% of the annual Basic Scheduled Premium payable for the first Contract Year, less the sum of 3% of all Basic Scheduled Premiums and unscheduled Premium Payments actually paid under the Contract up to the date that the Surrender Charge is incurred and any deferred sales charges deducted for prior Face Amount reductions; or (ii) a percentage of the then payable annual Basic Scheduled Premium specified in the following chart for the Contract Year during which the Surrender Charge is applied:

Contract year [6]	Percentage
1	36
2	33
3	30
4	27
5	24
6	21
7	18
8	15
9	12
10	9
11	6
12	3
13+	0

(B) CDAC: The CDAC compensates Guardian for certain administrative expenses as follows (per $1,000 Base Contract Face Amount), subject to certain decreases associated with a reduction in Face Amount:

ADMINISTRATIVE SURRENDER CHARGE

Year (ages)	1	2	3	4	5	6	7	8	9	10	11	12	13+
00–27	2.4	2.20	2.0	1.80	1.6	1.40	1.2	1.00	0.8	0.60	0.4	0.20	.00
28–29	3.0	2.75	2.5	2.25	2.0	1.75	1.5	1.25	1.0	0.75	0.5	0.25	.00
30–31	3.6	3.30	3.0	2.70	2.4	2.10	1.8	1.50	1.2	0.90	0.6	0.30	.00
32–33	4.2	3.85	3.5	3.15	2.8	2.45	2.1	1.75	1.4	1.05	0.7	0.35	.00
34–80	4.8	14.40	4.0	3.60	3.2	2.80	2.4	2.00	1.6	1.20	0.8	0.40	.00

(2) *Partial Withdrawal Administration Charge:* The lesser of $25 or 2% of the amount withdrawn for certain administrative costs. Guardian does not expect to profit from this charge.

(3) *Transfer Charge:* Guardian reserves the right to deduct $25 for each transfer in excess of four transfers during a Contract Year. No transfer charge will be imposed in connection with dollar cost averaging feature or loans. Guardian does not expect to profit from this charge.

(4) *Premium Skip Option Charge:* An amount equal to 90.5% of any Premium Assessment that otherwise would be deducted from an annual Premium will be deducted on each Contract Anniversary on which the ''skipped'' Premium otherwise would be due or, if later, on the date the Premium Skip Option is effected. The remaining 9.5% is deducted as part of the Premium Charges for any unscheduled Premium Payment.

c. Monthly Deductions: The following charges are deducted monthly proportionately from Account Value attributable to each Investment Division and the Fixed-Rate Option, ending on

[5] The total sales charge (Premium Sales Charge and CDSC) is subject to a maximum of 9% of Basic Scheduled Premiums paid under the Contract over the shorter of 20 years or the insured's anticipated life expectancy.

[6] In order to preclude the possibility that Guardian would be required to refund any sales load, the Contracts provide that the CDSC imposed during the first two Contract Years will be no greater than the sum of: 24% of payments made during the first Contract Year up to an amount equal to an annual Basic Scheduled Premium; plus 4% of payments made during the second Contract Year up to an amount equal to an annual Basic Scheduled Premium; plus 3% of all unscheduled payments made during the first two Contract Years.

the Contract Anniversary nearest the insured's 100th birthday:

(1) *Contract Charge and Administration Charge:* The Contract charge is equal to $10 per month during Contract Years 1 through 3, and $4 per month thereafter (guaranteed not to exceed $8 per month). The Administrative Charge is equal to $0.02 to $0.04 (increasing with issue age) per $1,000 of Face Amount during the first 12 Contract Years, and $0.015 per $1,000 of Face Amount thereafter, for underwriting, issuing and maintaining the Contract. Guardian does not expect to profit from these charges.[7]

(2) *Guaranteed Insurance Amount Charge:* $0.01 per $1,000 of Face Amount to compensate Guardian for the risk it assumes by guaranteeing that a Contract will remain in force if all premiums have been paid when due and no loans have been taken, regardless of the investment experience of the Investment Division; and

(3) *Cost of Insurance Charge:* A charge, based on the 1980 CSO Tables (discounted at the monthly equivalent of 4% per year), is deducted and calculated by multiplying the net amount at risk on a Monthly Date (amount by which the Death Benefit on the first day of the Contract month exceeds the Account Value on the same day, after monthly deductions for contract and administration charges and the Guaranteed Insurance Amount charge have been processed) by the applicable monthly cost of insurance rate, divided by $1,000.

d. Separate Account Charges: Each Investment Division currently is assessed a charge for mortality and expense risks that Guardian assumes, at a current effective annual rate of .60% of the value of its assets. Guardian reserves the right to increase the mortality and expense risk charge up to a maximum effective annual rate of .90%, subject to further Commission authorization. Guardian assumes a mortality risk under the Contracts that insured may live for shorter periods of time than estimated, and assumes an expense risk that its actual costs of issuing and administering the Contracts may be more than it estimated. No charge currently is deducted from Separate Account assets for income taxes attributable to the Separate Account or the Contracts. Guardian reserves the right to impose such charges if the income tax treatment of variable life insurance changes, or if there is a change in Guardian's tax status.

e. Fund Expenses: Charges for investment advisory and other expenses incurred by the Funds are deducted from assets of the relevant Fund and are indirectly borne by Contract owners.

Applicants' Legal Analysis

Section 6(c) authorizes the Commission, by order and upon application, to exempt any person, security, or transaction, or class of persons, securities, or transactions, from any provisions of the 1940 Act. The Commission grants relief under Section 6(c) to the extent an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. For the reasons stated below, Applicants assert that the requested exemptions satisfy the standards of Section 6(c).

A. Request for Exemptions Relating to Definition of ''Variable Life Insurance Contract''

1. Applicants note that Rule 6c–3 under the 1940 Act provides that a separate account that meets the requirements of Rule 6e–2(a)[8] and registers as an investment company under the 1940 Act also is exempt from the 1940 Act provisions set forth in Rule 6e–2(b), except for Sections 7 and 8(a), under the same terms and conditions as a separate account claiming exemption directly under Rule 6e–2.[9] Applicants state that the Separate Account satisfies the conditions of Rule 6e–2(a) and, therefore, is entitled to rely on Rule 6e–3. Accordingly, the Separate Account is exempt from the provisions of the 1940 Act specified in paragraph (b) of Rule 6e–2, except for Sections 7 and 8(a) of the 1940 Act, under the same terms and conditions as a separate account claiming exemption under Rule 6e–2.

Rule 6e–2(c)(1) defines a ''variable life insurance contract'' to include only life insurance contracts that provide both a death benefit and a cash surrender value which vary to reflect the investment experience of the separate account, and that guarantee that the death benefit will not be less than an initial dollar amount stated in a contract. The required guaranteed minimum death benefit need be provided only so long as payments are duly made in accordance with the contract's terms.

2. Applicants submit that under the Contracts the Death Benefit varies to reflect investment experience within the meaning of Rule 6e–2(c)(1). Applicants concede, however, that the Death Benefit is not precisely the type of variable death benefit contemplated when Rule 6e–2 was adopted, and that the Contracts also contain other provisions that are not specifically addressed in Rule 6e–2.

3. Applicants believe that Option 2 Death Benefit falls within the requirement that it ''vary to reflect the investment experience of the separate account,'' although it varies only when Account Value exceeds Benchmark Value. Applicants submit that this situation is analogous to more conventional scheduled premium variable life insurance contracts where death benefits are increased when investment experience exceeds an assumed investment rate. Applicants assert that Rule 6e–2(c)(1) clearly contemplates that a death benefit would vary only if it exceeds a guaranteed minimum death benefit.

4. Applicants state, however, that Option 1 will fail to satisfy this requirement if the Death Benefit has not been otherwise increased to provide the minimum death benefit required by Section 7702 of the Code of the variable insurance amount.

5. Applicants request exemptions from the definition of ''variable life insurance contract'' in Rule 6e–2(c)(1) and from all Sections of the 1940 Act and rules thereunder specified in Rule 6e–2(b) (other than Sections 7 and 8(a)), under the same terms and conditions applicable to a separate account that satisfies the conditions set forth in Rule 6e–2(a), and to the extent necessary to permit the offer and sale of the Contracts in reliance on Rule 6e–2, except as otherwise set forth herein.[10]

[7] Applicants represent that each of these fees is reasonable, and in an amount that does not exceed the expenses to which such charge relates that are currently anticipated to be incurred over the lifetime of the Contracts. The maximum amount of each of these fees or charges is guaranteed not to increase during the term of the Contract. Guardian does not anticipate realizing a profit from these charges.

[8] Rule 6e–2(a) states that ''a separate account * * * shall, except for the exemptions provided in paragraph (b) [of Rule 6e–2], be subject to all provisions of [the 19040 Act] * * * as though such separate account were a registered investment company issuing periodic payment plan certificates,'' provided that the conditions set forth in Rule 6e–2(a) are met. Thus, Rule 6e–2(a) contemplates that a variable life separate account relying on Rule 6e–2 will not be registered under the 1940 Act.

[9] Accordingly, all registered separate accounts issuing variable life insurance products do so in reliance on Rule 6c–3, and not directly in reliance on Rules 6e–2 or 6e–3(T), as applicable. Applicants represent that the application will be amended during the notice period to reflect these statements.

[10] Both Death Benefit Options provide for a guaranteed minimum death benefit at least equal to the Contract's initial Face Amount, as required by Rule 6e–2(c)(1). The Contracts also permit a reduction in Face Amount (including reductions through partial withdrawals). Certain provisions of

6. Applicants submit that the definition of ''variable life insurance contract'' in Rule 6e–2(c)(1) was drafted at a time when all the variable life insurance contracts then contemplated clearly met this definition, and that the considerations that led the Commission to grant the exemptions in Rule 6e–2 did not depend in any material way upon the fact that the death benefit, as well as cash values, varied with investment experience. Nor did such considerations depend on whether a scheduled premium contract also provided for substantial premium payment flexibility and other features so long as the scheduled premiums, if paid when due, provided for a minimum death benefit guaranteed to at least equal the initial face amount.

7. Applicants further submit that the extent to which favorable investment experience is used to increase death benefits rather than cash values differs considerably among the contracts offered by different issuers in reliance on Rule 6e–2. Applicants also submit that, under all contract designs, the degree to which investment performance changes the death benefit necessarily has an impact on cash values under the Contracts.

8. Applicants represent, that, generally, higher death benefits require higher cost of insurance deductions which, in turn, result in lower cash values. Applicants state that it is desirable for purchasers to be free to choose a benefit structure which they believe suits their own needs with respect to the relationship of cash value, death benefit and investment performance. Applicants also state that Contract owners can do this by, for example, deciding whether to apply excess value to purchase extra death benefit. Using excess value for this purpose will maximize the guaranteed death benefit in the event of favorable investment experience, but will cause Account Value to be less than it otherwise would be.

9. Applicants also submit that the considerations that led the Commission to adopt Rules 6c–3 and 6e–2 apply equally to the Separate Account and the Contracts, and that the exemptions provided by these rules would be granted to the Separate Account and to the other Applicants on the terms specified in those rules, except to the extent that further exemption from those terms is specifically requested herein.

B. Request for Exemptions Relating to Sales and Administrative Charges

1. Applicants request exemptions from Sections 2(a)(32), 2(a)(35), 22(c), 26(a)(2), 27(a)(1), 27(c)(2), 27(d) and Rules 6e–2(b)(1), (b)(12), (b)(13)(i), (b)(13)(iv), (b)(13)(v) and (c)(4), and Rule 22c–1 to the extent necessary to permit deductions of: (a) part of a Contract's sales charge from premium payments and part from Account Value as a CDSC, and (b) the CDAC from Account Value. Both the CDSC and the CDAC will be deducted on surrender, Face Amount reduction (including upon partial withdrawals), or lapse.

2. *Section 2(a)(35) and Rules 6e–2 (b)(1) and (c)(4).* Applicants assert that Section 2(a)(35) [11] and Rules 6e–2 (b)(1) and (c)(4) [12] may be read to contemplate that the sales charge for a variable life insurance contract will be deducted from premium payments. Applicants submit that Guardian's deduction of the CDSC from Account Value may be deemed inconsistent with these provisions. Further, deduction of the CDSC also may be deemed inconsistent with Rule 6e–2(c)(4) because, in order to facilitate the payment and other flexibility features under the Contracts, the CDSC is computed based on the lesser of actual payments made or Basic Scheduled Premiums payable (rather than as the excess of actual premium payments made over certain amounts, as required by the literal terms of that provision). Accordingly, Applicants request exemptions from Section 2(a)(35) and Rule 6e–2 (b)(1) and (c)(4) to the extent necessary to permit part of the Contracts' sales charge to be deducted from premium payments and part as a CDSC upon surrender, Face Amount reduction (including upon partial withdrawal) or lapse of a Contract.

In addition, Applicants argue that Rule 6e–2(c)(4) can be construed to allow the imposition of a sales charge on other than premiums because the definition of ''sales load'' in the Rule does not reflect the actual methodology of administering variable life insurance contracts, referring in subparagraphs (i) and (ii), for example, to other amounts that are not deducted from payments. To this extent, Applicants assert that the applicability of the definition need not be limited to any particular form of sales load. Accordingly, Applicants submit that the CDSC is consistent with the definition of ''sales load'' set forth in Rule 6e–2(c)(4). Applicants, however, request the exemptions noted above in order to avoid any question concerning full compliance with the 1940 Act and any regulations thereunder.

3. *Section 27(a)(1) and Rule 6e–2(b)(13)(i).* Section 27(a)(1) limits sales load in terms of a maximum percentage of payments to be made on a periodic payment plan certificate. Rule 6e–2(b)(13)(i) limits the amount of sales charges on a variable insurance contract to a maximum of 9% of the payments to be made under the contract during a period equal to or the lesser of (a) 20 years or (b) the anticipated life expectancy of the insured, based on the 1958 Commissioners' Standard Ordinary Mortality Table (''1958 CSO Tables'').

Applicants assert that Section 27(a)(1) and Rule 6e–2(b)(13)(i) could be read to contemplate that the sales charge under the Contracts will be deducted from Premium Payments prior to their allocation to the Separate Account. Consequently, Guardian's deduction of part of its sales charge as a CDSC may be deemed inconsistent with the foregoing provisions to the extent that the sales charge is deducted from other than premium payments. Applicants thus request exemptions from Section 27(a)(1) and Rule 6e–2(b)(13)(i) to the extent necessary to permit part of the Contracts' sales charge to be deducted as a CDSC upon surrender, Face Amount reduction (including upon partial withdrawal) or lapse.

4. *Sections 26(a)(2) and 27(c)(2).* Applicants state that Sections 26(a)(2) [13]

Rule 6e–2, such as paragraph (c)(3), recognize the existence of partial withdrawals; in addition, partial withdrawals and reductions in Face Amount are common features in Contracts governed by Rule 6e–2. Applicants do not seek exemptive relief in this regard.

Applicants also state that they believe the Contract Options provide an additional benefit to a Contract owner by making it possible to continue insurance protection and participation in the Separate Account, if desired, even though the Contract owner may not continue to pay Contract Premiums. Similarly, Applicants believe the existence of the Primary Insured Term Rider and Fixed-Rate Option enhance the benefits available to a Contract owner. Applicants believe the availability of these options does not modify the basic characteristics of the Contract and, therefore, is consistent with the fundamental nature of the Contracts as variable life insurance contracts under paragraph (c)(1) of Rule 6e–2.

[11] ''Sales load'' is defined under Section 2(a)(35), in relevant part, as:

''the difference between the price of a security to the public and that portion of the proceeds from its sale which is received and invested or held for investment by the issuer (or in the case of a unit investment trust, by the depositor or trustee), less any portion of such difference deducted for trustee's or custodian's fees, insurance premiums, issue taxes, or administrative expenses or fees which are not properly chargeable to sales or promotional activities.''

[12] Under Rule 6e–2(b)(1), ''sales load'' has the meaning set forth in Rule 6e–2(c)(4), which defines ''sales load'' charged on any payment as the excess of the payment over the sum of certain other amounts.

[13] Section 26(a)(2) provides, in relevant part, that: ''no principal underwriter for a depositor of a registered unit investment trust shall sell any

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and 27(c)(2)[14] may be read to require that proceeds of all Premium Payments under a Contract be deposited in the Separate Account, and that no payment be made from the Separate Account to any Applicant, or any affiliated person thereof, except for bookkeeping and other administrative services. Accordingly, Guardian's imposition of the CDSC may be deemed to be inconsistent with the foregoing provisions to the extent that the deduction could constitute payment for an expense not specifically permitted. Applicants thus request exemptions from Sections 26(a)(2) and 27(c)(2) to the extent necessary to permit the CDSC to be deducted upon surrender, Face Amount reduction (including upon partial withdrawal) or lapse of a Contract.

5. *Sections 2(a)(32), 27(c)(1) and 27(d), Rules 6e–2(b)(12), (b)(13)(iv) and (b)(13)(v).* Sections 2(a)(32), 27(c)(1) and 27(d) prohibit Applicants from selling a Contract unless it is a ''redeemable security,'' defined under Section 2(a)(32) as entitling an owner of a Contract, upon surrender, to receive approximately his or her proportionate share of the Separate Account's current net assets. Section 27(d) provides a Contract owner with certain surrender and sales charge refund rights.

Rules 6e–2(b)(12), (b)(13)(iv) and (b)(13)(v) provide exemptions from Section 27(a)(1), and Rule 6e–2(b)(13)(iv) and (b)(13)(v) afford exemptions from Section 27(d), to the extent necessary for cash value to be regarded as satisfying the redemption and sales charge refund requirements of the 1940 Act. Applicants note, however, that the exemptions afforded by Rules 6e–2(b)(12), 6e–2(b)(13)(iv) and (b)(13)(v) may not contemplate the deduction of the Surrender Charge (*i.e.*, the CDSC and the CDAC). Guardian's deduction of the Surrender Charge can be viewed as reducing the proceeds that the Contract owner would receive on surrender below a Contract owner's proportionate share of the Separate Account's current net assets.

Further, Applicants note that Rule 6e–2 was adopted at a time when less flexibility regarding payments and other contract features was offered than subsequently has been permitted. Because of these features, Applicants state that it is unclear how the technical sales load computation provisions in Rule 6e–2 apply to the Contracts. Accordingly, because certain provisions of the Contracts' sales charge structure may be inconsistent with the provisions of Sections 2(a)(32), 27(c)(1) and 27(d) and paragraphs (b)(12), (b)(13)(iv) and (b)(13)(v) of Rule 6e–2, Applicants request exemptions from those provisions to the extent necessary to permit part of the Contracts' sales charge to be deducted from Premium Payments and part to be deducted as a CDSC, and to permit the deduction of the CDAC on surrender, Face Amount reduction (including upon partial withdrawal) or lapse.

In addition, Applicants submit that, although Section 2(a)(32) does not specifically contemplate the imposition of a sales charge and an administrative charge at the time of redemption, such charges are not necessarily inconsistent with the definition of ''redeemable security.'' Applicants further submit that the charges are little different, for this purpose, from the ''redemption'' charge authorized in Section 10(d)(4) of the 1940 Act. Applicants argue that Congress intended that such a redemption charge, expressly described as a ''discount from net asset value,'' be deemed consistent with the concept of ''proportionate share'' under Section 2(a)(32).

Consistent with Section 2(a)(32), Applicants therefore assert that the Contracts will be ''redeemable securities'' because the Contracts provide for full surrender for the Net Cash Surrender Value and are expected to provide for partial withdrawals of Cash Surrender Value in excess of the Benchmark value. Applicants represent that the prospectus for the Contracts will disclose the contingent deferred nature of part of the sales charge and of the administrative charges. Accordingly, Applicants state that there will be no restriction on, or impediment to, surrender that should cause the Contracts to be considered other than a redeemable security. Upon surrender or lapse, a Contract owner will receive his or her proportionate share of the Separate Account (*i.e.*, the amount of net Basic Scheduled Premiums and unscheduled payments made, reduced by the amount of all charges and deductions and increased or decreased by the amount of investment performance credited to a Contract).

6. *Section 22(c) and Rules 6e–2(b)(12) and 22c–1.* Applicants state that Rule 22c–1 prohibits the redemption of a Contract except at its current net asset value next computed after receipt of the request for surrender or partial withdrawal. Rule 6e–2(b)(12) provides exemptions from the redemption procedures mandated by Rule 22c–1. Nonetheless, Applicants submit that the rule may not contemplate the deduction of the Surrender Charge, which can be viewed as causing a Contract to be redeemed at a price based on less than a Contract's current net asset value next computed after full or partial surrender of a Contract. Consequently, the Surrender Charge may be deemed to be inconsistent with the foregoing rules.

Applicants submit that Rule 22c–1 and Rule 6e–2(b)(12) together impose requirements with respect to both the amount payable on surrender and the time as of which such amount is calculated. The requirement of these rules regarding the amount payable to a Contract owner on surrender is essentially the same as the requirements that are explicit or implicit in certain other provisions of the 1940 Act and rules thereunder from which Applicants are requesting exemptions.

Regarding the timing requirement of Rule 22c–1, Applicants state that they will determine the Net Cash Surrender Value under a Contract consistent with their current procedures and in accordance with Rules 6e–2(b)(12)(i) and 22c–1, and on a basis next computed after receipt of a Contract owner's request for surrender of a Contract or partial withdrawal. In addition, Applicants assert that the Commission's purpose in adopting Rule 22c–1 was to minimize (i) dilution of the interests of the other security holders and (ii) speculative trading practices that are unfair to such holders. Applicants state that the CDSC would in no way have the dilutive effect that Rule 22c–1 is designed to prohibit because a surrendering Contract owner would ''receive'' no more than an amount equal to the Net Cash Surrender Value determined pursuant to the formula set out in his or her Contract and after receipt of the request. Further, variable life insurance contracts do not lend themselves to the kind of speculative short-term trading that Rule 22c–1 was aimed against, and, further, the CDSC would discourage, rather than encourage, any such trading.

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security of which the trust is the issuer unless the instrument pursuant to which the security is issued provides that no payment to the depositor of or the principal underwriter for such trust, or to any affiliated person of such depositor or underwriter, shall be allowed the trustee or custodian as an expense, expect that provision may be made for the payment to any such person of a fee, not exceeding such reasonable amount as the Commission may prescribe, as compensation for performing bookkeeping and other administrative services of a character normally performed by the trustee or custodian itself.''

[14] Section 27(c)(2) provides, in relevant part, that: ''it shall be unlawful for any registered investment company issuing periodic payment plan certificates, or for any depositor of or underwriter for such company, to sell any such certificate unless the proceeds of all payments on such certificate (except such amounts as are deducted for sales load) are deposited with a trustee or custodian having specified qualifications and are held by such trustee or custodian under an indenture or agreement containing specified provisions.''

7. In support of their request for exemptions relating to sales and administrative charges, discussed above, Applicants submit that the deduction on a contingent deferred basis of part of the sales charge and the administrative charge will be advantageous to Contract owners for the following reasons.

a. First, the deferred charge structure has been accepted as an appropriate feature of life insurance products under Rule 6e–3(T) as well as pursuant to exemptive relief granted by the Commission, expands investors choices without sacrificing investor protection, and reinforces the intention that the product be held as a long term investment.

b. Second, the amount of a Contract owner's premium payment allocated to the Separate Account and available to earn a return for a Contract owner will be greater than it otherwise would have been if the sales and administrative charges were deducted from Premiums.

c. Third, Applicants represent that the total dollar amount of a sales load payable under a Contract is no higher than would be permitted by Rule 6e–2(b)(13), if taken entirely as front-end deductions from Premium Payments under a Contract for which all Premium Payments have been paid, as well as from any unscheduled Premium Payments. Moreover, for a Contract owners who does not lapse or surrender in the early Contract years, the dollar amount of the sales load is lower than otherwise would be permitted if taken entirely as front-end deductions. Furthermore, no Surrender Charge is deducted from any Death Benefit paid under a Contract.

Similarly, the total dollar amount of the CDAC under a Contract is no higher than if the charge were taken in full for the first Contract year, and is less for Contract owners who do not lapse, reduce the Face Amount by request or partial withdrawal, or surrender prior to the thirteenth Contract year. Applicants represent that this charge has not been increased to take into account the time value of money or the fact that not all Contract owners will incur the charge. Applicants state that Guardian does not anticipate a profit on the CDAC.[15]

d. Fourth, the allocation of a greater amount of Premium Payments to the Separate Account initially reduces the net amount at risk (Death Benefit less Account Value), upon which the cost of insurance charge is based.

8. Applicants submit that if Guardian is not permitted to charge sales and administrative charges in the form of contingent deferred charges and deducts these charges entirely from premiums, it could be charging continuing Contract owners more than otherwise may be necessary to recover the distribution and issuance costs attributable to such Contract owners. Applicants contend that their charge structure, by contrast, provides greater equity among both Contract owners who surrender and those who continue as Contract owners.

9. Applicants state that the CDSC, consistent with the definition in Section 2(a)(35), is an amount ''chargeable to sales or promotional activities.'' Although not imposed on ''payments,'' Applicants submit that the charge will cover expenses associated with the offer and sales of the Contracts, including commissions paid to sales personnel, promotional expenses and sales administration expenses. Similarly, the CDAC is for estimated administrative expenses connected with the Contracts. Applicants represent that these administrative expenses exclude any costs properly attributable to sales or distribution activity.

10. Applicants contend that the fact that the timing of the imposition of the Surrender Charge may not fall within the literal pattern of all the provisions discussed herein does not change the essential nature of the sales charge structure.

11. Although the methodology for computing sales charges under the Contracts may not have been contemplated by Rule 6e–2 as originally adopted, Applicants represent that the percentage of sales load imposed during the first two Contract Years will be no greater than the sum of: 30% of payments made during the first Contract Year up to an amount equal to an annual Basic Scheduled Premium, plus 10% of payments made during the second Contract Year up to an amount equal to an annual Basic Scheduled Premium, plus 9% of all unscheduled Premium Payments made during the first two Contract Years. Additionally, the percentage of sales load under the Contract will not exceed 9% of Basic Scheduled Premiums expected to be paid over the shorter of 20 years or the expected life expectancy of the insured. Moreover, Guardian does not anticipate making a profit on the CDAC. Therefore, Applicants submit that the Contract is consistent with the principals and policies underlying the limitations of Section 27 and Rule 6e–2(b)(13).

C. Deductions From Account Value of the Cost of Insurance, Guaranteed Insurance Amount Charge and Premium Assessments

1. Applicants submit that Sections 26(a)(2) and 27(c)(2), read together, could be interpreted to prohibit Guardian from deducting the following charges from Account Value: (a) Cost of insurance charge, (b) guaranteed insurance amount charge, and (c) if a Contract Premium is ''skipped,'' charges for Premium Assessments in connection with the Premium Skip Option. Accordingly, Applicants request exemptions from Sections 26(a)(2) and 27(c)(2) and Rule 6e–2(b)(13)(iii)[16] to the extent necessary to permit deduction of these charges from Account Value.[17] Applicants submit that, as described above, the method of deducting these charges is fair and reasonable in that the charges are not designed to yield more revenues than if they were assessed solely against premium payments.

2. *Cost of Insurance Charges.* Applicants submit that the method of deducting this charge is fair and reasonable. Applicants represent that they believe all other variable life insurance contracts provide for cost of insurance deductions from cash value, which under a Contract consists of the unloaned Account Value.

3. *Premium Assessments.* As described above, Premium Assessments are deducted from Premium Payments before the Basic Scheduled Premium (net of Premium Charges) is allocated to the Separate Account. However, when, pursuant to the Premium Skip Option, Premiums are ''skipped,'' and not paid, an amount equal to 90.5% of any Premium Assessment that otherwise would be deducted from a premium will be deducted from Account Value on

[15] Guardian intends to rely on Rule 6e–2(b)(13)(iii)(C) with regard to the CDAC.

[16] Rule 6e–2(b)(13)(iii) provides an exemption from Sections 27(c)(2) and 26(a)(2), subject to certain conditions, which Applicants submit they satisfy as noted herein.

[17] Applicants state that they are not seeking exemptions from these provisions with regard to the maximum handling fee for unscheduled premium payments that may be imposed under the Contracts (which will be deducted from premium payments in reliance on Rule 6e–2(c)(4)(iv), or the CDAC, the partial withdrawal charge, the transfer charge that may be imposed under the Contracts, or the Contract and Administration Charges deducted as part of the monthly deduction (each of which will be deducted pursuant to Rule 6e–2(b)(13)(iii). Applicants state that each of these charges is reasonable, and in an amount that does not exceed the expenses to which such charge relates that are currently anticipated to be incurred by Guardian over the lifetime of the insureds covered by the Contracts. Applicants represent that the maximum amount of each of these fees and charges is guaranteed not to increase during the term of the Contracts. Guardian does not anticipate realizing a profit on these fees or charges.

each Contract Anniversary on which the ''skipped'' Premium otherwise would be due or, in later, on the date the Premium Skip Option is effected. The remaining 9.5% is deducted as part of the Premium Charges when any unscheduled Premium Payment is made. Thus, part of the Premium Charges applied to any unscheduled Payment is to collect charges covered by Rules 6e–2(c)(4)(vi) and (vii), which refer to charges for substandard risk and for incidental insurance benefits deducted from Account Value.

Applicants represent that if Premium Assessments were required to be deducted solely from Premiums, it would be necessary for Guardian: (a) to reduce Contract payment flexibility, and/or (b) further limit the classes of insureds for whom a Contract will be available and limit or eliminate the rider benefits to be made available under a Contract. Applicants submit that purchasers and prospective purchasers of a Contract would find these results undesirable.

Rule 6e–2(c)(4), among other things, requires that charges referred to in Rule 6e–2(c)(4)(vi) and (vii) be subtracted from gross payments in determining amounts of ''sales load.'' Rule 6e–2(c)(7) requires the amount of gross premiums attributable to such charges to be subtracted for purposes of determining the amount of ''payments'' on which sales load percentages are calculated in order to evaluate compliance with Rule 6e–2's various sales load limitations. Accordingly, Applicants subtract any Premium Assessments (including that deducted from Premiums and from Account Value upon exercise of Premium Skip Option) from Premium Payments to compute ''sales load'' under Rule 6e–2(c)(4) and to compute the amount of payments under Rule 6e–2(c)(7).

Where, because of the payment and other flexibility features of a contract, the entire Premium for a Contract Year is not paid, Rule 6e–2(c)(7) might still require Applicants to deduct certain amounts from any payments that were made, for sales load compliance purposes. These deductions would be for payments made that would be deemed ''attributable'' to charges for substandard risks and incidental insurance benefits. If this were so, Applicants would subtract the same amount in determining the amount of sales load under paragraph (c)(4) of Rule 6e–2. The amount would be the same, because part of any payments deemed ''attributable'' to such charges would, in effect, be deducted as a portion of Premium Charges, and part would be deducted as a portion of Account Value upon exercise of the Premium Skip Option.

4. *Guaranteed Insurance Amount Charge.* Applicants represent that the guaranteed insurance amount charge compensates Guardian for the risk that it assumes in guaranteeing death benefits under a Contract. Applicants submit that this charge essentially is an insurance charge that was not contemplated at the time that the 1940 Act was adopted. Although Rule 6e–2(c)(4)(iii) provides for such a charge, it does not expressly authorize it to be deducted from Account Value.

Applicants submit that Rule 6e–3(T) authorizes deductions from Account Value for a minimum death benefit guarantee charge in connection with variable life insurance contracts qualified to rely on that rule, conditioned on the life insurer's making certain representations. Further, proposed amendments to Rule 6e–2 would similarly authorize such deductions from Account Value. Accordingly, Guardian makes the following representations and undertakings, which are consistent with the proposed amendments:

(a) The level of the guaranteed insurance amount charge is reasonable in relation to the risks assumed by Guardian under the Contracts. The methodology used to support this representation is based on an analysis of the pricing structure of the Contracts, including all charges, and an analysis of the various risks, including special risks arising out of Contract provisions that allow unscheduled payments and, in certain circumstances, skipping Premiums. Guardian undertakes to keep and make available to the Commission on request the documents or memoranda used to support this representation.

(b) Guardian has concluded that: the proceeds from the sales charges may not cover the expected costs of distribution; surplus arising from the guaranteed insurance amount charge (among other sources) may be used to cover the distribution costs; and there is a reasonable likelihood that the distribution financing arrangements of the Separate Account will benefit the Separate Account and the Contracts owners. Guardian undertakes to keep and make available to the Commission on request a memorandum setting forth basis of this representation; and

(c) The Separate Account will invest only in management investment companies that have undertaken, in the event they should adopt any plan under Rule 12b–1 to finance distribution expenses, to have a board of directors (or trustees, as appropriate), a majority of whom are not interested persons of the company, formulate and approve such plan.

D. Request for Exemptions Relating to Use of 1980 CSO Tables

1. As discussed above, Rule 6e–2(b)(1) makes the definition of ''sales load'' in Rule 6e–2(c)(4) applicable to the Contracts. Section 27(a)(1) prohibits an issuer of periodic payment plan certificates from imposing a sales load exceeding 9% of the payments to be made on such certificates. Rule 6e–2(b)(13)(i) provides an exception from Section 27(a)(1) to the extent that sales load, as defined in Rule 6e–2(c)(4), does not exceed 9% of payments to be made on the variable life insurance contract during the period equal to the lesser of 20 years or the anticipated life expectancy of the insured based on the 1958 CSO Tables. Rule 6e–2(c)(4), in defining sales load, contemplates the deduction of an amount for the cost of insurance based on the 1958 CSO Tables and an assumed investment rate specified in the contract.[18]

2. Applicants assert it is appropriate that the deduction for the cost of insurance be based on the 1980 CSO Tables in determining what is deemed to be the sales load under the Contracts because: (a) the 1980 CSO Tables [19] reflect more recent information and data about mortality than the 1958 CSO Tables; (b) use of either the 1958 CSO Tables or the 1980 CSO Tables be permitted under proposed amendments to Rule 6e–2 for purposes of Rule 6e–2(b)(13)(i) and (c)(4), depending on which relates to the insurance rates guaranteed under a contract; and (c) the

[18] An assumed investment rate of 4% is specified in the Contract and used for purposes of determining the required Basic Scheduled Premiums. ''Assumed investment rate'' is defined by Rule 6e–2(c)(5) to be the net rate of investment return specified in the contract which would result in neither an increase nor a decrease in the variable death benefit of the contract above or below the guaranteed minimum death benefit. Applicants submit that this definition accurately describes the Contract's 4% assumed investment rate only so long as all other assumptions used in establishing Basic Scheduled Premiums holds true and only until the Death Benefit is increased in order for the Contract to qualify as life insurance for federal tax law purposes or the variable insurance amount is applicable. Applicants assert, however, the Rule 6e–2(c)(5) has never been interpreted to require that a contract's death benefit always vary in relation to performance above or below the assumed investment rate. Applicants believe it is appropriate to consider 4% to be the assumed investment rate for purposes of Rule 6e–2(c)(5) and, thus, seek no exemptive relief in this regard.

[19] Applicants state that the 1980 CSO Tables were adopted by the National Association of Insurance Commissioners subsequent to adoption of Rule 6e–2 by the Commission.

1980 CSO Tables must be used for all contracts that rely on Rule 6e–3(T).

3. Applicants further represent that: (a) Guardian uses the 1980 CSO Tables to establish Premium rates and determine reserve liabilities for the Contracts; (b) the guaranteed cost of insurance rates under the Contracts are based on the 1980 Tables; (c) the mortality rates reflected in the 1980 CSO Tables more nearly approach the mortality experience which Guardian believes will apply to the Contracts; and (d) for Contracts issued for insured at advance ages, appropriate adjustments have been made in the CDSC structure to ensure that, subject to the other exemptive relief requested herein, the 9% standard prescribed by Rule 6e–2(b)(13)(i) will be met over the expected lifetimes of such insureds, based on the 1980 CSO Tables.

E. Request for Exemptions Relating to Custodianship Arrangements

1. Applicants state that Section 26(a)(1) and Section 26(a)(2), in effect, prohibit Applicants from selling the Contracts unless the Contracts are issued pursuant to a trust indenture or other such instrument that designates one or more qualified trustees or custodians to have possession of all securities in which Guardian and the Separate Account invest. Applicants submit that Section 27(c)(2), in effect, could be read to prohibit Applicants from selling the Contracts unless the proceeds of all Premium Payments are deposited with a qualified trustee or custodian. Applicants further submit that Rule 6e–2(b)(13)(iii), in relevant part, provides an exemption from Sections 26(a)(1), 26(a)(2) and 27(c)(2), provided that Guardian complies with all other applicable provisions of Section 26 as though it were a trustee or custodian for the Separate Account and assuming it meets the other requirements set forth in the rule.

2. Applicants assert that the holding of Fund shares by Guardian and the Separate Account under an open account arrangement, without having possession of share certificates and without a trust indenture or other such instrument, may be deemed to be inconsistent with the foregoing provisions. Nevertheless, Applicants represent that current industry practice calls for separate accounts organized as UITs, such as the Separate Account, to hold shares of management investment companies in uncertificated form. This practice is believed to contribute to efficiency in the purchase and sale of such shares by separate accounts and to bring about cost savings generally. Therefore, Applicants submit that the requirements of the 1940 Act and Rule 6e–2 regarding share ownership are inconsistent with current industry practice and its rationale.

3. Applicants further note that the Commission has adopted and proposed the following rules which would grant the requested exemptions: (a) Rules 6e–3(T)(b)(13)(iii)(B) and (C), in effect, grant the requested exemptions, but only for contracts covered by Rule 6e–3(T); (b) proposed Rule 6e–2(b)(13)(iii)(B) would permit a life insurer, such as Guardian, to hold the assets of a separate account without a trust indenture or other such instrument; (c) proposed Rule 6e–2(b)(13)(iii)(C) would permit a separate account organized as a UIT to hold the securities of registered investment companies, such as the Funds, that offer shares to the Separate Account in uncertificated form; and (d) Rule 26a–2, adopted by the Commission, affords exemption essentially similar to those requested here regarding variable annuity contracts. Applicants presume, based on information and belief, that the Commission adopted or proposed the foregoing exemptive rules based on a determination that safekeeping of separate account assets does not necessarily depend on the presence of a trustee, custodian or trust indenture or the issuance of share certificates, where state insurance law protects separate account assets, and open account arrangements foster administrative efficiency and cost savings.

4. The proposed exemptive provisions of Rule 6e–2(b)(13)(iii)(B) and (C) subject a life insurer to certain conditions. Guardian represents that it will: (a) comply with conditions of Rule 6e–2(b)(13)(iii)(B) and (C); (b) comply with all other applicable provision of Section 26 as if it were a trustee or custodian for the Separate Account (subject to the other exemptive relief requested in this application); and (c) will file with the insurance regulatory authority of Delaware an annual statement of its financial condition in the form prescribed by the National Association of Insurance Commissioners, which most recent statement indicates that it (i) has a combined capital and surplus of not less than $1 million, (ii) is examined from time-to-time by the insurance regulatory authority of Delaware as to its financial condition and other affairs, and (iii) is subject to supervision and inspection with respect to its separate account operations.

5. Applicants further believe that the Commission has determined that compliance with such conditions, which contemplate state protection of separate account assets, will help assure that the exemptions will be consistent with the public interest, the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

F. Request for Exemptions Relating to Waiver of Notice of Withdrawal and Refund Rights

1. Section 27(e) and Rules 27e–1 and 6e–2(b)(13)(vii),[20] in effect require a notice of right of withdrawal and refund on Form N–271–1 to be provided to Contract owners entitled to a refund of sales load in excess of the limits permitted by Rule 6e–2b(13)(v). The Contracts limit the amount of the CDSC that may be deducted by excess sales load limits consistent with those set forth in Rule 6e–2(b)(13)(v)(A). Thus, under the Contracts' sales load structure, no excess sales load will be paid by or refunded to a Contract owner surrendering, effecting a Face Amount reduction or lapsing in the first two Contract years.[21]

2. Rule 27e–1(a) specifies that no notice need be mailed when there is otherwise no entitlement to receive any refund of sales load. Rule 27e–1 and Rule 6e–2 were both adopted in the context of front-end loaded products only, and in the broader context of the companion requirements in Section 27 for the depositor or underwriter to maintain segregated funds as security to assure the refund of any excess sales load.

3. Applicants submit that requiring delivery of Form N–271–1 could confuse Contract owners and potentially encourage a Contract owner to surrender during the first two Contract Years against the Contract owner's best

[20] Section 27(e) requires, with respect to any periodic payment plan certificate sold subject to Section 27(d) (which requires the refund of any excess sales load paid during the first 18 months after issuance), written notification of the right to surrender and receive a refund of the excess sales load. Rule 27(e) establishes the requirements for the notice mandated by Section 27(e) and prescribes Form N–271–1 for that purpose. Rule 6e–2(b)(13), which modifies the requirements of Section 27 and the rules thereunder, adopts Form N–271–1 and requires it to be sent to a contract owner upon issuance of a contract and again during any lapse period in the first two contract years. The Form requires statements of (i) the contract owner's right to receive back excess sales load for a surrender during the first two contract years, (ii) the date that the right expires, and (iii) the circumstances in which the right may not apply upon lapse.

[21] Applicants submit that the application of the technical sales load computation provisions in Rule 6e–2 to a modified scheduled premium contract is unclear. Applicants state that the reduction of the CDSC during the first two Contract Years is intended to reflect the requirements of Rule 6e–2 and take into account the Contract's payment flexibility in a manner that is consistent with Rule 6e–3(T)(b)(13)(v)(A), which specifically addresses flexible premium variable life insurance products.

interest to do so. Further, an owner of a variable insurance contract with a declining deferred sales charge, unlike a front-ended contract, does not foreclose his or her opportunity at the end of the first two contract years to receive a refund of monies spent. Not only has such an owner not paid any excess load, but because the deferred charge declines over the life of the Contract, the Contract owner may never have to pay it. Applicants submit that encouraging a surrender during the first two Contracts years could cost a Contract owner more in total sales load (relative to total payments) than he or she otherwise would pay if the Contract, which is designed as a long-term investment vehicle, were held for the period originally intended.

4. Because of the absence of excess sales load, and therefore, the absence of an obligation to assure repayment of that amount, Applicants believe that the Contracts do not create the right in a Contract owner which Form N–271–1 was designed to highlight. In the absence of this right, Applicants submit that the notification contemplated by Form N–271–1 creates an unnecessary and counterproductive administrative burden the cost of which appears unjustified. Any other purpose potentially served by the Form would already be addressed by the required Form N–271–2 Notice of Withdrawal Right, generally describing the charges associated with a Contract, and prospectus disclosure detailing a Contract's sales load structure. Applicants assert that neither Congress, in enacting Section 27, nor the Commission, in adopting Rule 27e–1 and Rule 6e–2, could have contemplated the applicability of Form N–271–1 in the context of a Contract with a declining contingent deferred sales charge.

G. Deduction of Charge for Section 848 Deferred Acquisition Costs

1. Applicants request exemptive relief from Section 27(c)(2) of the 1940 Act to permit the deduction of the 1.0% charge from each Premium Payment received under the Contracts, and from premiums received under Other Contracts to be issued by Guardian through the Future Accounts to reimburse Guardian for its increased federal tax burden resulting from the application of Section 848 of the Code, as amended, to the receipt of those premiums. Applicants also request exemptions from subparagraph (c)(4)(v) of Rules 6e–2 and 6e–3(T) under the 1940 Act to permit the proposed deductions to be treated as other than ''sales load,'' as defined under Section 2(a)(35) of the 1940 Act, for purposes of Section 27 and the exemptions from various provisions of that Section found in Rules 6e–2 and 6e–3(T), respectively.

2. Applicants state that Section 848, as amended, requires life insurance companies to capitalize and amortize over ten years certain general expenses for the current year rather than deduct these expenses in full from the current year's gross income, as allowed under prior law. Section 848 effectively accelerates the realization of income from specified contracts and, consequently, the payment of taxes on that income. Taking into account the time value of money, Section 848 increases the insurance company's tax burden because the amount of general deductions that must be capitalized and amortized is measured by the premiums received under the Contracts.

3. Deductions subject to Section 848 equal a percentage of the current year's net premiums received (*i.e.,* gross premiums minus return premiums and reinsurance premiums) under life insurance or other contracts categorized under this Section. The Contracts will be categorized under Section 848 as life insurance contracts requiring 7.7% of the net premiums received to be capitalized and amortized under the schedule set forth in Section 848(c)(1).

4. The increased tax burden on every $10,000 of net premiums received under the Contracts is quantified by Applicants as follows. For each $10,000 of net premiums received in a given year, Guardian must capitalize $770 (*i.e.,* 7.7% of $10,000), and $38.50 of this amount may be deducted in the current year. The remaining $731.50 ($770 less $38.50) is subject to taxation at the corporate tax rate of 35% and results in $256.03 (.35% × $731.50) more in taxes for the current year than Guardian otherwise would have owned prior to OBRA 1990. However, the current tax increase will be offset partially by deductions allowed during the next ten years, which result from amortizing the remainder of the $770 ($77 in each of the following nine years and $38.50 in year ten).

5. It is Guardian's business judgement that it is appropriate to use a discount rate of 10% in evaluating the present value of its future tax deductions for the following reasons. Guardian has computed its cost of capital as the after-tax rate of return that it seeks to earn on its surplus, which is in excess of 10%. To the extent that surplus must be used by Guardian to pay its increased federal tax burden under Section 848, such surplus will be unavailable for investment. Thus, the cost of capital used to satisfy this increased tax burden essentially will be the after-tax rate of return Guardian seeks on its surplus, which is in excess of 10%. Accordingly, Applicants submit that the rate of return on surplus is appropriate for use in this present value calculation.

6. To the extent that the 10% discount rate is lower than Guardian's actual rate of return on surplus, the calculation of this increased tax burden will continue to be reasonable over time, even if the corporate tax rate applicable to Guardian is reduced, or its targeted rate of return is lowered.

7. In determining the after-tax rate of return used in arriving at the discount rate, Guardian considered a number of factors that apply to itself and to its parent, including market interest rates, anticipated long-term growth rates, the risk level for this type of business that is acceptable, inflation, and available information about the rate of return obtained by other life insurance companies. Guardian represents that these are appropriate factors to consider.

8. First, Guardian projects its future growth rate, including the future growth rate of its parent, based on sales projections, current interest rates, inflation rate and amount of surplus that can be provided to support such growth. Guardian then uses the anticipated growth rate and the other factors to set a rate of return on surplus that equals or exceeds this rate of growth. Of these other factors, market interest rates, acceptable risk level and inflation rate receive significantly more weight than information about the rates of return obtained by other companies.

9. Guardian and its parent seek to maintain a ratio of surplus to assets that is established based on its judgment of the risks represented by various components of its assets and liabilities. Maintaining the ratio of surplus to assets is critical to offering competitively priced products and to maintaining the superior ratings now assigned to Guardian and its parent by various rating agencies. Consequently, Guardian's surplus should grow at least at the same rate as its assets.

10. Using a federal corporate tax rate of 35%, and assuming a discount rate of 10%, the present value of the tax effect of the increased deductions allowable in the following ten years, which partially offsets the increased tax burden, comes to $152.96. The effect of Section 848 on the Contracts is therefore an increased tax burden with a present value of $91.15 for each $10,000 of net premiums (*i.e.,* $244.11 less $152.96).

11. Guardian does not incur incremental federal income tax when it passes on state premium taxes to Contract Owners because state premium

taxes are deductible in computing federal income taxes. Conversely, federal income taxes are not deductible in computing Guardian's federal income taxes. To compensate Guardian fully for the impact of Section 848, Guardian must impose an additional charge to make it whole for the $91.15 additional tax burden attributable to Section 848, as well as the tax on the additional $91.15 itself, which can be determined by dividing $91.15 by the complement of 35% federal corporate income tax rate (*i.e.*, 65%), resulting in an additional charge of $140.23 for each $10,000 of net premiums, or 1.40%.

12. Based on its prior experience, Guardian reasonably expects to fully take almost all future deductions. It is Guardian's judgment that a charge of 1.00% of Basic Scheduled Premiums and unscheduled Premium Payments would reimburse it for the increased federal income tax liabilities under Section 848. Applicants represent that the 1.00% charge will be reasonably related to Guardian's increased federal income tax burden under Section 848. This representation takes into account the benefit to Guardian of the amortization permitted by Section 848 and the use of a 10% discount rate (which is equivalent to Guardian's rate of return on surplus) in computing the future deductions resulting from such amortization.

13. Guardian believes, however, that the 1.00% charge would have to be increased if future changes in, or interpretations of, Section 848 or any successor provision result in a further increased tax burden due to receipt of premiums. The increase could be caused by a change in the corporate tax rate, or in the 7.7% figure, or in the amortization period. The Contracts will reserve the right to increase the 1.00% charge in response to future changes in, or interpretations of, Section 848 or any successor provisions that increase Guardian's tax burden.

14. Applicants assert that it is appropriate to deduct this charge, and to exclude the deduction of this charge from sales load, because it is a legitimate expense of the company and not for sales and distribution expenses. Applicants represent that this charge will be reasonably related to Guardian's increased federal tax burden.

15. The Separate Account is, and the Future Accounts will be, regulated under the 1940 Act as issuers of periodic payment plan certificates. Accordingly, the Separate Account, the Future Accounts, Guardian (as depositor), and Guardian Services (as principal underwriter) are deemed to be subject to Section 27 of the 1940 Act.

16. Section 27(c)(2) prohibits the sale of periodic payment plan certificates unless the following conditions are met. The proceeds of all payments (except amounts deducted for ''sales load'' must be held by a trustee or custodian having the qualifications established under Section 26(a)(1) for the trustees of UITs. Sales loads, as defined under Section 2(a)(35), are limited by Sections 27(a)(1) and 27(h)(1) to a maximum of 9% of total payments on periodic payment plan certificates. These proceeds also must be held under an indenture or agreement that conforms with the provisions of Section 26(a)(2) and Section 26(a)(3) of the 1940 Act.

17. Certain provisions of Rules 6e–2 and 6e–3(T) provide a range of exemptive relief. Rule 6e–2 provides exemptive relief if the separate account issues scheduled variable life insurance contracts as defined in Rule 6e–2(c)(1). Rule 6e–3(T) provides exemptive relief if the separate account issues flexible premium variable life insurance contracts, as defined in subparagraph (c)(1) of that Rule.

18. Applicants state that paragraph (b)(13)(iii) of Rule 6e–2 implicitly provides, and paragraph (b)(13)(iii) of Rule 6e–3(T) explicitly provides, exemptive relief from Section 27(c)(2) to permit an insurer to make certain deductions, other than sales load, including the insurer's tax liabilities from receipt of premium payments imposed by states or by other governmental entities. Applicants assert that the proposed deduction with respect to Section 848 of the Code arguably is covered by subparagraph (b)(13)(iii) of each Rule. Applicants note, however, that the language of paragraph (c)(4) of the Rules appears to require that deductions for federal tax obligations from receipt of premium payments be treated as ''sales load.''

19. Applicants state that paragraph (b)(1), together with paragraph (c)(4), of each Rule provides an exemption from the Section 2(a)(35) definition of ''sales load'' by substituting a new definition to be used for purposes of each respective Rule. Rule 6e–2(c)(4) defines ''sales load'' charged on any payment as the excess of the payment over certain specified charges and adjustments, including a deduction for state premium taxes. Rules 6e–3(T)(c)(4) defines ''sales load'' during a period as the excess of any payments made during that period over certain specified charges and adjustments, including a deduction for state premium taxes. Under a literal reading of paragraph (c)(4) of the Rules, a deduction for an insurer's increased federal tax burden does not fall squarely into those itemized charges or deductions, arguably causing the deduction to be treated as part of ''sales load.''

20. Applicants state that the public policy that underlies paragraph (b)(13) of each Rule, and particularly subparagraph (b)(13)(i), like that which underlies paragraphs (a)(1) and (h)(1) of Section 27, is to prevent excessive sales loads from being charged for the sale of periodic payment plan certificates. Applicants submit that this legislative purpose is not furthered by treating a federal income tax charge based on premium payments as a sales load because the deduction is not related to the payment of sales commissions or other distribution expenses. Applicants assert that the Commission has concurred with this conclusion by excluding deductions for state premium taxes from the definition of sales load in paragraph (c)(4) of each Rule.

21. Applicants submit that the source for the definition of ''sales load'' found in paragraph (c)(4) of each Rule supports this analysis. Applicants believe that, in adopting paragraph (c)(4) of each Rule, the Commission intended to tailor the general terms of Section 2(a)(35) to variable life insurance contracts to ease verification by the Commission of compliance with the sales load limits of subparagraph (b)(13)(i) of each Rule. Just as the percentage limits of Section 27(a)(1) and 27(h)(1) depend on the definition of sales load in Section 2(a)(35) for their efficacy, Applicants assert that the percentage limits in subparagraph (b)(13)(i) of each Rule depend on paragraph (c)(4) of each Rule, which does not depart, in principal, from Section 2(a)(35).

22. Applicants submit that the exclusion from the definition of ''sales load'' under Section 2(a)(35) of deductions from premiums for ''issue taxes'' suggests that it is consistent with the policies of the 1940 Act to exclude from the definition of ''sales load'' in Rules 6e–2 and 6e–3(T) deductions made to pay an insurer's costs attributable to its federal tax obligations. Additionally, the exclusion of administrative expenses or fees that are ''not properly chargeable to sales or promotional activities'' also suggests that the only deductions intended to fall within the definition of ''sales load'' are those that are properly chargeable to sales or promotional activities. Applicants state that the proposed deductions will be used to compensate Guardian for its increased federal tax burden attributable to the receipt of premiums and not for sales or promotional activities. Therefore, Applicants believe the language in

Section 2(a)(35) further indicates that not treating such deductions as sales load is consistent with the policies of the 1940 Act.

23. Finally, Applicants submit that it is probably an historical accident that the exclusion of premium tax in subparagraph (c)(4)(v) of Rules 6e–2 and 6e–3(T) from the definition of ''sales load'' is limited to state premium taxes. When these Rules were each adopted and, in the case of Rule 6e–3(T), later amended, the additional Section 848 tax burden attributable to the receipt of premiums did not yet exist.

24. Applicants submit that the terms of the relief requested with respect to Other Contracts to be issued through Future Accounts are also consistent with the standards of Section 6(c). Without the requested relief, Guardian would have to request and obtain such exemptive relief for each Other Contract to be issued through a Future Account. Such additional requests for expensive relief would present no issues under the 1940 Act that have not already been addressed in this Application.

25. The requested relief is appropriate in the public interest because it would promote competitiveness in the variable life insurance market by eliminating the need for Guardian to file redundant exemptive applications regarding the federal tax charge, thereby reducing its administrative expenses and maximizing the efficient use of its resources. The delay and expense involved in having to repeatedly seek exemptive relief would impair Guardian's ability to effectively take advantage of business opportunities as they arise.

26. The requested relief is consistent with the purposes of the 1940 Act and the protection of investors for the same reasons. If Guardian were required to repeatedly seek exemptive relief with respect to the same issues regarding the federal tax charge addressed in this Application, investors would not receive any benefit or additional protection thereby and might be disadvantaged as a result of Guardian's increased overhead expenses.

27. Conditions for Relief:

a. Guardian will monitor the reasonableness of the charge to be deducted pursuant to the requested exemptive relief.

b. The registration statement for the Contracts, and for any Other Contracts under which the above-referenced federal tax charge is deducted, will: (a) disclose the charge; (b) explain the purpose of the charge; and (c) state that the charge is reasonable in relation to Guardian's increased federal tax burden under Section 848 of the Code.

c. The registration statement for the Contracts, and for such Other Contracts, providing for the above-referenced deduction will contain as an exhibit an actuarial opinion as to: (1) The reasonableness of the charge in relation to Guardian's increased federal tax burden under Section 848 of the Code resulting from the receipt of premiums; (2) the reasonableness of the rate of return on surplus that is used in calculating such charge; and (3) the appropriateness of the factors taken into account by Guardian in determining such targeted rate of return.

Conclusion

For the reasons and upon the facts set forth above, Applicants submit that the requested exemptions from Sections 2(a)(32), 2(a)(35), 22(c), 26(a)(1), 26(a)(2), 27(a)(1), 27(c)(1), 27(c)(2), 27(d), and 27(e) of the 1940 Act and paragraphs (b)(1), (b)(12), (b)(13)(i), (b)(13)(iii), (b)(13)(iv), (b)(13)(v), (b)(13)(vii), (c)(1), (c)(4) of Rule 6e–2, and Rules 6e–3(T)(c)(4)(v), 22c–1 and 27e–1 thereunder, are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act and, therefore, satisfy the standards set forth in Section 6(c) of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–13893 Filed 6–6–95; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 2214]

Determination Under Section 620(f) of the Foreign Assistance Act of 1961, As Amended

Pursuant to section 620(f)(2) of the Foreign Assistance Act (FAA) of 1961, as amended (22 U.S.C. 2370(f)(2)), and section 1–201(a)(12) of Executive Order No. 12163, as amended, I hereby determine that the removal of Laos from the application of section 620(f) of the FAA is important to the national interest of the United States. I therefore direct that Laos be henceforth removed, for an indefinite period, from the application of section 620(f) of the FAA, as amended.

This determination shall be reported to the Congress immediately and published in the **Federal Register**.

Dated: May 12, 1995.

Peter Tarnoff,

Acting Secretary of State.

[FR Doc. 95–13837 Filed 6–6–95; 8:45 am]

BILLING CODE 4710–10–M

Bureau of Political-Military Affairs

[Public Notice 2217]

Imposition of Chemical and Biological Weapons Proliferation Sanctions On Foreign Persons

AGENCY: Bureau of Political-Military Affairs, Department of State.

ACTION: Notice.

SUMMARY: The United States Government has determined that two companies have engaged in chemical weapons proliferation activities that require the imposition of sanctions pursuant to the Arms Export Control Act and the Export Administration Act of 1979 (the authorities of which were most recently continued by Executive Order 12924 of August 19, 1994), as amended by the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991.

EFFECTIVE DATE: May 19, 1995.

FOR FURTHER INFORMATION CONTACT: Vann H. Van Diepen, Office of Chemical, Biological and Missile Nonproliferation, Bureau of Political-Military Affairs, Department of State (202–647–4930).

SUPPLEMENTARY INFORMATION: Pursuant to Sections 81(a) and 81(b) of the Arms Export Control Act (22 U.S.C. 2798(a), 2798(b)), Sections 11C(a) and 11C(b) of the Export Administration Act of 1979 (50 U.S.C. app. 2410c(a), 2410c(b)), Section 305 of the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (P.L. 102–182), Executive Order 12851 of June 11, 1993, and State Department Delegation of Authority No. 145 of February 4, 1980, as amended, the United States Government determined that the following foreign persons have engaged in chemical weapons proliferation activities that require the imposition of the sanctions described in Section 81(c) of the Arms Export Control Act (22 U.S.C. 2798(c)) and Section 11C(c) of the Export Administration Act of 1979 (50 U.S.C. app. 2410c(c)):

1. GE Plan (Austria)
2. Mainway Limited (Germany)

Accordingly, the following sanctions are being imposed:

(A) Procurement Sanction.—The United States Government shall not procure, or enter into any contract for the Procurement of, any goods or services from the sanctioned persons; and

(B) Import Sanction.—The importation into the United States of products produced by the sanctioned persons shall be prohibited.

These sanctions apply not only to the companies described above, but also to their divisions, subunits, and any successor—entities. Questions as to whether a particular transaction is affected by the sanctions should be referred to the contract listed above. The sanctions shall commence on May 18, 1995. They will remain in place for at least one year and until further notice.

These measures shall be implemented by the responsible agencies as provided in Executive Order 12851 of June 11, 1993.

Dated: May 19, 1995.

Eric D. Newsom,

Acting Assistant Secretary of State for Political-Military Affairs.

[FR Doc. 95–13836 Filed 6–6–95; 8:45 am]

BILLING CODE 4710–25–M

Office of Defense Trade Controls

[Public Notice 2216]

Statutory Debarment Under the International Traffic in Arms Regulations

AGENCY: Office of Defense Trade Controls, Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of which persons have been statutorily debarred pursuant to § 127.7(c) of the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120–130).

EFFECTIVE DATE: June 7, 1995.

FOR FURTHER INFORMATION CONTACT: Philip S. Rhoads, Chief, Compliance Enforcement Branch, Office of Defense Trade Controls, Department of State (703–875–6650).

SUPPLEMENTARY INFORMATION: Section 38(g)(4)(A) of the Arms Export Control Act (AECA), 22 U.S.C. 2778, prohibits licenses or other approvals for the export of defense articles and defense services to be issued to a person, or any party to the export, who has been convicted of violating certain U.S. criminal statutes, including the AECA. The term ''person'', as defined in 22 CFR 120.14 of the International Traffic in Arms Regulations (ITAR), means a natural person as well as a corporation, business association, partnership, society, trust, or any other entity, organization or group, including governmental entities. The ITAR, specifically § 126.7(e), defines the term ''party to the export'' to include the president, the chief executive officer, and other senior officers and officials of the license applicant; the freight forwarders or designated exporting agent of the license applicant; and any consignee or end-user of any item to be exported. The statute permits certain limited exceptions to this prohibition to be made on a case-by-case basis. 22 U.S.C. 2778(g)(4).

The ITAR, section 127.7, authorizes the Assistant Secretary of State for Political-Military Affairs to prohibit certain persons convicted of violating, or conspiring to violate, the AECA, from participating directly or indirectly in the export of defense articles or in the furnishing of defense services for which a license or approval is required. Such a prohibition is referred to as a ''statutory debarment,'' which may be imposed on the basis of judicial proceedings that resulted in a conviction for violating, or of conspiring to violate, the AECA. *See* 22 CFR 127.7(c). The period for debarment will normally be three years from the date of conviction. At the end of the debarment period, licensing privileges may be reinstated at the request of the debarred person following the necessary interagency consultations, after a thorough review of the circumstances surrounding the conviction, and a finding that appropriate steps have been taken to mitigate any law enforcement concerns, as required by the AECA, 22 U.S.C. 2778(g)(4).

Statutory debarment is based solely upon a conviction in a criminal proceeding, conducted by a United States court. Thus, the administrative debarment procedures, as outlined in the ITAR, 22 CFR part 128, are not applicable in such cases.

The Department of State will not consider applications for licenses or requests for approvals that involve any person or any party to the export who has been convicted of violating, or of conspiring to violate, the AECA during the period of statutory debarment. Persons who have been statutorily debarred may appeal to the Under Secretary for International Security Affairs for reconsideration of the ineligibility determination. A request for reconsideration must be submitted in writing within 30 days after a person has been informed of the adverse decision. 22 CFR 127.7(d).

The Department of State policy permits debarred persons to apply for reinstatement of export privileges one year after the date of the debarment, in accordance with the AECA, 22 U.S.C. 2778(g)(4)(A), and the ITAR, section 127.7. A reinstatement request is made to the Director of the Office of Defense Trade Controls. Any decision to reinstate export privileges can be made only after the statutory requirements under section 38(g)(4) of the AECA have been satisfied through a process administered by the Office of Defense Trade Controls. If reinstatement is granted, the debarment will be suspended.

Pursuant to the AECA, 22 U.S.C. 2778(g)(4)(A), and the ITAR, 22 CFR 127.7, the Assistant Secretary for Political-Military Affairs has statutorily debarred twelve persons who have been convicted of conspiring to violate or violating the AECA.

These persons have been debarred for a three-year period following the date of their conviction, and have been so notified by a letter from the Office of Defense Trade Controls. Pursuant to ITAR, section 127.7(c), the names of these persons, their offense, date(s) of conviction and court(s) of conviction are hereby being published in the **Federal Register**. Anyone who requires additional information to determine whether a person has been debarred should contact the Office of Defense Trade Controls.

This notice involves a foreign affairs function of the United States encompassed within the meaning of the military and foreign affairs exclusion of the Administrative Procedure Act. Because the exercise of this foreign affairs function is discretionary, it is excluded from review under the Administrative Procedure Act.

In accordance with these authorities the following persons are debarred for a period of three years following their conviction for conspiring to violate or violating the AECA (name/address/offense/conviction date/court citation):

1. Paul LaVista, 2520 Olive Springs Rd., Marietta, GA 30060, 22 U.S.C. § 2778 (violating the AECA), September 25, 1992, *United States* v. *Paul LaVista*, U.S. District Court, Western District of Washington, Criminal Docket No. CR92–346C.

2. Satish Shah, 46 Glynn Court, Parlin, NJ 08859, 18 U.S.C. § 371 (conspiracy to violate 22 U.S.C. § 2778), May 10, 1993, *United States* v. *Tzvi Rosenfeld, et al.*, U.S. District Court, Middle District of Tennessee, Criminal Docket No. 3:91–00163–04.

3. Menachim Rosenfeld, c/o Lionel Lufton, 174 East Bay Street, Suite 302, Charleston, SC 29402, 18 U.S.C. § 371 (conspiracy to violate 22 U.S.C. § 2778), August 23, 1993, *United States* v. *Tzvi Rosenfeld, et al.*, U.S. District Court, Middle District of Tennessee, Criminal Docket No. 3:91–00163–01.

4. Mohd A.M. Anwahi, 295 West Wyoming Ave., Stoneham, MA 02180, 22 U.S.C. § 2778 (violating the AECA), September 28, 1993, *United States* v. *Mohd A.M. Anwahi,* U.S. District Court, District of Colorado, Criminal Docket No. 93–CR–132.

5. Willem Louw, 26 Andre Ave., President Ridge, Randburg, South Africa, 22 U.S.C. § 2778 (violating the AECA), October 18, 1993, *United States* v. *Tzvi Rosenfeld, et al.,* U.S. District Court, Middle District of Tennessee, Criminal Docket No. 3:91–00163–02.

6. Ronald Hendron, 1029 Olive Way, Palm Springs, CA 92262, 18 U.S.C. § 371 (conspiring to violate 22 U.S.C. § 2778) and 22 U.S.C. § 2778 (violating the AECA), April 18, 1994, *United States* v. *Ronald Hendron,* U.S. District Court, Eastern District of New York, Criminal Docket No. CR–92–424(S–2).

7. Aziz Muthana, 4856 N. Ridgeway, 3rd Floor, Chicago, IL 60625, 22 U.S.C. § 2778 (violating the AECA), April 20, 1994, *United States* v. *Aziz Muthana,* U.S. District Court, Northern District of Illinois, Criminal Docket No. 93–CR–580.

8. Louis Clarence Thomasset, 24 Rue de la Croix, Echampen, France 77440, 22 U.S.C. § 2778 (violating the AECA), May 16, 1994, *United States* v. *Louis Clarence Thomasset,* U.S. District Court, Southern District of Texas, Criminal Docket No. H–94–15.

9. Manfred Felber, 1150 John Street, 13–15, Vienna, Austria, 22 U.S.C. § 2778 (violating the AECA), June 6, 1994, *United States* v. *Manfred Felber,* U.S. District Court, District of Oregon, Criminal Docket No. CR–94–60044.

10. Joseph D'Addezio, 133 Greenmeadow Dr., Deer Park, NY 11729, 18 U.S.C. § 371 (conspiracy to violate 22 U.S.C. 2778), July 20, 1994, *United States* v. *Joseph D'Addezio,* U.S. District Court, Southern District of New York, Criminal Docket No. 90–CR–810.

11. Oskar Benevidez Vann, 919 Santa Maria, Laredo, TX 78040–2745, 18 U.S.C. § 371 (conspiring to violate 22 U.S.C. § 2778), September 23, 1994, *United States* v. *Oskar Benevidez Vann, et al.,* U.S. District Court, Western District of Louisiana, Criminal Docket No. CR–93–60012–01.

12. Rexon Technology Corp., 70 Old Turnpike Road, Wayne, NJ 07470, 22 U.S.C. § 2778 (violating the AECA), February 22, 1995, *United States* v. *Rexon Technology Corp., et al.,* U.S. District Court, District of New Jersey, Criminal Docket No. 93–610.

Dated: May 19, 1995.

William J. Lowell,

Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State.

[FR Doc. 95–13833 Filed 6–6–95; 8:45 am]

BILLING CODE 4710–25–M

[Public Notice 2207]

Office of Defense Trade Controls; Munitions Exports Involving Teledyne Wah Chang Albany, Extraco Ltd., Weco Industrial Products Export GmbH, Edward Johnson, Christian Demesmaeker, and International Commerce Promotion S.P.R.L.

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that all existing license and other approvals, granted pursuant to section 38 of the Arms Export Control Act, that authorize the export or transfer by, for or to, TELEDYNE INDUSTRIES, INC., D/B/A TELEDYNE WAH CHANG ALBANY, EXTRACO LTD., WECO INDUSTRIAL PRODUCTS EXPORT GMBH, EDWARD JOHNSON, CHRISTIAN DEMESMAEKER, AND INTERNATIONAL COMMERCE PROMOTION S.P.R.L., and any of their subsidiaries or associated companies, of defense articles or defense services are suspended effective July 13, 1994. In addition, it shall be the policy of the Department of State to deny all export license applications and other requests for approval involving, directly or indirectly, the above cited entities. This action also precludes the use in connection with such entities of any exemptions from license or other approvals included in the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120–130).

EFFECTIVE DATE: December 12, 1994.

FOR FURTHER INFORMATION CONTACT: Mary F. Sweeney, Acting Chief, Compliance and Enforcement Branch, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (703–875–6650).

SUPPLEMENTARY INFORMATION: A four (4) count indictment was returned on July 13, 1994, in the U.S. District Court for the District of Columbia, charging TELEDYNE INDUSTRIES, INC., D/B/A TELEDYNE WAH CHANG ALBANY (TWCA), Oregon; EXTRACO LTD, Athens Greece; WECO INDUSTRIAL PRODUCTS EXPORT GMBH, Germany and Belgium; EDWARD JOHNSON (employee of TWCA); CHRISTIAN DEMESMAEKER (employee of Weco Industrial Products Export GmbH); and INTERNATIONAL COMMERCE PROMOTION S.P.R.L., Belgium; with conspiracy (18 U.S.C. 371) to violate and violation of section 38 of the Arms Export Control Act (AECA) (22 U.S.C. 2778) and its implementing regulations, the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120–130). The indictment charges that the defendants conspired to conceal a scheme to sell and export zirconium compacts to Greece, for reexport to Jordan, without having first obtained the U.S. Department of State requisite authorization. (*United States* v. *Teledyne Industries, Inc., d/b/a Teledyne Wah Chang Albany, et al.,* U.S. District Court for the District of Columbia, Criminal Docket No. 94–286).

Effective July 13, 1994, the Department of State suspended all licenses and other written approvals (including all activities under manufacturing license and technical assistance agreements) concerning exports of defense articles and provision of defense services by, for or to the defendants and any of their subsidiaries or associated companies. Furthermore, the Department precluded the use in connection with the defendants of any exemptions from license or other approval included in the ITAR.

This action has been taken pursuant to sections 38 and 42 of the Arms Export Control Act (AECA) (22 U.S.C. 2778 & 2791) and 22 CFR 126.7(a)(2) and 126.7(a)(3) of the ITAR. It will remain in force until rescinded.

Exceptions may be made to this policy on a case-by-case basis at the discretion of the Office of Defense Trade Controls. However, such an exception would be granted only after a full review of all circumstances, paying particular attention to the following factors: whether an exception is warranted by overriding foreign policy or national security interests; whether an exception would further law enforcement concerns; and whether other compelling circumstances exist which are consistent with foreign policy or national security interests of the United States, and which do not conflict with law enforcement concerns.

A person named in an indictment for an AECA-related violation may submit a written request for reconsideration of the suspension/denial decision to the office of Defense Trade Controls. Such request for reconsideration should be supported by evidence of remedial measures taken to prevent future violations of the AECA and/or the ITAR and other pertinent documented information showing that the person would not be a risk for future violations of the AECA and/or the ITAR. The Office of Defense Trade Controls will evaluate the submission in consultation with the Department of Treasury, Justice, and other necessary agencies. After a decision on the request for reconsideration has been rendered by the Assistant Secretary for Political-Military Affairs, the requester will be

notified whether the exception has been granted.

Dated: December 12, 1994.

Thomas E. McNamara,

Assistant Secretary, Bureau of Political-Military Affairs, U.S. Department of State.

[FR Doc. 95–13835 Filed 6–6–95; 8:45 am]

BILLING CODE 4710–25–M

[Public Notice 2206]

Office of Defense Trade Controls; Rescission of Suspended Exports Regarding Teledyne Wah Chang Albany

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that Public Notice 1871, effective July 26, 1993, suspending all existing licenses and other approvals, granted by the Department of State pursuant to section 38 of the Arms Export Control Act (''AECA''), that authorized the export or transfer of defense articles or defense services by, for or to, Teledyne Wah Chang Albany is rescinded.

EFFECTIVE DATE: January 26, 1995.

FOR FURTHER INFORMATION CONTACT: Philip S. Rhoads, Chief Compliance and Enforcement Branch, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (703–875–6650).

SUPPLEMENTARY INFORMATION: On July 26, 1993, the Office of Defense Trade Controls, Department of State, suspended and denied all existing licenses and other approvals, granted pursuant to section 38 of the AECA, that authorized the export or transfer by, for or to, Teledyne Wah Chang Albany, and any other subsidiaries or associated companies, of defense articles or defense services. That suspension action was taken pursuant to section 38 and 40 of the AECA (22 U.S.C. 2778 and 2780) and §§ 126.7(a)(2) and 126.7(a)(3) of the International Traffic in Arms Regulations (''ITAR'') (22 CFR 126.7(a)(2) & (3)).

An indictment was returned, on May 26, 1993, in the U.S. District Court, Southern District of Florida charging Teledyne Wah Chang Albany, with one count of conspiracy (18 U.S.C. 371) to violate section 38 of the Arms Export Control Act (AECA, 22 U.S.C. 2778) and the ITAR (22 CFR Parts 120–130), and three substantive counts of violating the AECA and the ITAR. The indictment charged that the defendants conspired to conceal a scheme to illegally export United States origin ordnance-grade zirconium to Chile, for use in cluster bombs and other munitions for Iraq, without having first obtained the U.S. Department of State requisite authorization. On July 13, 1994, an indictment was returned in the U.S. District Court for the District of Columbia charging Teledyne Industries, Inc., d/b/a Teledyne Wah Chang Albany with one count of conspiracy (18 U.S.C. 371) to violate section 38 of the AECA and the ITAR, and one substantive count of violating the AECA and the ITAR. The indictment charged that the defendants conspired to conceal a scheme to sell and export zirconium compacts to Greece, for reexport to Jordan, without having first obtained the U.S. Department of State requisite authorization.

On January 26, 1995 in the U.S. District Court for the Southern District of Florida, Teledyne Industries, Inc., d/b/a Teledyne Wah Chang Albany entered a guilty plea to conspiring to violate and violating the AECA. On January 27, 1995 in the U.S. District Court for the District of Columbia, they entered a guilty plea of violating the AECA. Pursuant to a Consent Agreement, between Teledyne Industries, Inc., d/b/a Teledyne Wah Chang Albany and the Department of State, and an Order signed by the Assistant Secretary of State for Political-Military Affairs, the Department of State's suspension relating to Teledyne Industries, Inc., d/b/a Teledyne Wah Chang Albany imposed on July 26, 1993 (noticed in the September 23, 1993 **Federal Register**) and a second suspension imposed on July 24, 1994, is rescinded, effective January 27, 1995.

Dated: April 27, 1995.

William J. Lowell,

Director, Office of Defense Trade Controls, U.S. Department of State.

[FR Doc. 95–13834 Filed 6–6–95; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Dockets 50228 and 50229]

Applications of Omni Air Express, Inc., for Issuance of New Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 95–6–1).

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order (1) Finding Omni Air Express, Inc., fit, willing, and able, and (2) awarding it certificates of public convenience and necessity to engage in interstate and foreign charter passenger air transportation.

DATES: Persons wishing to file objections should do so no later than June 19, 1995.

ADDRESSES: Objections and answers to objections should be filed in Dockets 50228 and 50229 and addressed to the Documentary Services Division (C–55, room PL–401), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Lawyer, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366–1064.

Dated: June 2, 1995.

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 95–13952 Filed 6–6–95; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Air Traffic Procedures Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held from July 10 through July 13, 1995, from 9 a.m. to 5 p.m. each day.

ADDRESSES: The meeting will be held July 10–13 at the Doubletree Club Hotel, 137 Union Boulevard, Lakewood, Colorado.

FOR FURTHER INFORMATION CONTACT: Mr. W. Frank Price, Executive Director, ATPAC, Air Traffic Rules and Procedures, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–3725.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the ATPAC to be held from July 10 through July 13, 1995, at the Doubletree Club Hotel, 137 Union Boulevard, Lakewood, Colorado.

The agenda for this meeting will cover: a continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of Minutes.
2. Submission of Discussion of Areas of Concern.
3. Discussion of Potential Safety Items.
4. Report from Executive Director.
5. Items of Interest.
6. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above not later than July 7, 1995. The next quarterly meeting of the FAA ATPAC is planned to be held from October 23–26, 1995, in Washington, DC. Any member of the public may present a written statement to the Committee at any time at the address given above.

Issued in Washington, DC, on June 1, 1995.

W. Frank Price,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 95–13946 Filed 6–6–95; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee Meetings

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting to solicit information from the aviation maintenance community concerning maintenance, preventive maintenance, rebuilding and alteration, and inspection of certain aircraft. The information is requested to assist the Aviation Rulemaking Advisory Committee (ARAC) in its deliberations.

DATES: The meeting will be held on June 21, 1995, beginning at 7 p.m.

ADDRESSES: The meeting will be held at the Adams Mark Hotel, St. Louis, Missouri.

FOR FURTHER INFORMATION CONTACT: Ms. Christine Leonard, Professional Aviation Maintenance Association, 1008 Russell Lane, West Chester, PA 19382; telephone (610) 399–1744.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. II), notice is hereby given of a meeting to solicit information from the aviation maintenance community concerning maintenance, preventive maintenance, rebuilding and alteration, and inspection of certain aircraft. The information is requested to assist the Aviation Rulemaking Advisory Committee in its deliberations with regard to a task assigned to ARAC by the Federal Aviation Administration.

Specifically, the task is as follows:

Review Title 14 Code of Federal Regulations, parts 43 and 91, and supporting policy and guidance material for the purpose of determining the course of action to be taken for rulemaking and/or policy relative to the issue of general aviation aircraft inspection and maintenance, specifically section 91.409, part 43, and Appendices A and D of part 43. In your review, consider any inspection and maintenance initiatives underway throughout the aviation industry affecting general aviation with a maximum certificated takeoff weight of 12,500 pounds or less. Also consider ongoing initiatives in the areas of: maintenance recordkeeping; research and development; the age of the current aircraft fleet; harmonization; the true cost of inspection versus maintenance; and changes in technology.

Attendance is open to the interested public but may be limited to the space available. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting is held. Arrangements may be made by contacting the meeting coordinator listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on May 31, 1995.

Frederick J. Leonelli,

Assistant Executive Director, Air Carrier/General Aviation Maintenance Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 95–13942 Filed 6–6–95; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc.; Technical Management Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for the RTCA Technical Management Committee meeting to be held June 23, 1995, starting at 9 a.m. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, NW., suite 1020, Washington, DC, 20036.

The agenda will include:

(1) Chairman's Remarks;

(2) Review and Approve Summary of April 23, Meeting;

(3) Consider and Approve: a. Proposed Change No. 1 to DO–213, Minimum Operational Performance Standards for Nose-Mounted Radomes (RTCA Paper 299–95/TMC–172, previously distributed) prepared by SC–173; b. Proposed Change No. 1 to DO–220, Minimum Operational Performance Standards for Airborne Weather Radar with Forward-Looking Windshear Capability (RTCA Paper No. 303–95/TMC–174, previously distributed) prepared by SC–173; c. Proposed Final Draft, Minimum Operational Performance Standards for Lithium Batteries (RTCA Paper No. 290–95/TMC–171, previously distributed;

(4) Consider reports on: a. Actions directed by the TMC concerning the proposed final draft document previously approved by the TMC when submitted as the MLS MOPS, b. Response from the FAA concerning comment and recommendations on the proposed work relating to cockpit moving map displays;

(5) Develop and formalize the Special Committee Work Program;

(6) Other Business;

(7) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information, should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 30, 1995.

Janice L. Peters,

Designated Official.

[FR Doc. 95–13938 Filed 6–6–95; 8:45 am]

BILLING CODE 4810–13–M

Notice of Intent to Rule on Application To Impose and Use the Revenue from a Passenger Facility Charge (PFC) at Florence Regional Airport, Florence, SC

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 Florence Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the

Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before July 7, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, Campus Building, 1701 Columbia Ave., suite 2–260, College Park, GA 30337–2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Harvey Senseney, Executive Director of the Florence City-County Airport Commission at the following address: 2100 Terminal Drive, Florence, SC 29506.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Florence City-County Airport Commission under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Cathy Nelmes, Program Manager, Atlanta Airports District Office, Campus Building, 1701 Columbia Ave., suite 2–260, College Park, GA 30337–2747, (404) 305–7148. 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 Florence Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On May 31, 1995, the FAA determined that the application to impose and use the revenue from a PFC submitted by Florence City-County Airport Commission 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 5, 1995. The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: December 1, 1995.

Proposed charge expiration date: October 31, 1999.

Total estimated PFC revenue: $881,600.

Brief description of proposed project(s): Runway identification lighting; rehabilitation of medium intensity runway lights for runway 18/36; storm water drainage and terminal apron; abbreviated airport master plan update; terminal expansion and renovation; airfield signs and pavement marking; taxiway edge lighting and precision approach path indicator; expansion of the airport access road.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air carriers operating under Federal Aviation Regulation Part 135 or Part 298 on an on-demand, non-scheduled basis, and not selling tickets to individual passengers.

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 Florence City-County Airport Commission.

Issued in Atlanta, Georgia on May 31, 1995.

Dell T. Jernigan,

Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 95–13945 Filed 6–6–95; 8:45 am]

BILLING CODE 4910–13–M

Research and Special Programs Administration

[Docket No. P–94–2W; Notice 1]

Transportation of Hazardous Liquid by Pipeline Petition for Waiver; Alyeska Pipeline Service Company

SUMMARY: Alyeska Pipeline Service Company (Alyeska) has petitioned the Research and Special Programs Administration (RSPA) for an amendment to the May 19, 1975, waiver from compliance with the coating and cathodic protection requirements of 49 CFR 195.238(a)(5) and 195.242(a) regarding buried mainline insulated piping. RSPA proposes to grant the amendment with the noted stipulations.

DATES: Comments must be submitted on or before July 24, 1995.

FOR FURTHER INFORMATION CONTACT: L.E. Herrick, 202–366–5523 regarding the subject matter of this notice or the Dockets Unit, 202–366–5046, regarding copies of this notice or other material that is referenced herein.

ADDRESSES: Comments may be mailed to the Dockets Branch, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC, 20590. All comments and Docket material may be reviewed in the Dockets Branch, room 8421, between the hours of 8:30 a.m. to 5:00 p.m. Monday through Friday, except federal holidays.

SUPPLEMENTARY INFORMATION: By letters dated March 19 and May 3, 1975, Alyeska requested a waiver from compliance with the coating and cathodic protection requirements of 49 CFR 195.238(a)(5) and 195.242(a) with respect to thermally insulated mainline piping on the Trans-Alaska Pipeline System (TAPS). 49 CFR 195.238(a)(5) requires that each component in a hazardous liquid pipeline that is to be buried or submerged must have an external protective coating that supports any supplemental cathodic protection. In addition, if an insulating-type coating is used, it must have low moisture absorption and provide high electrical resistance. 49 CFR 195.242(a) requires a cathodic protection system be installed for all buried or submerged hazardous liquid facilities to mitigate corrosion that might result in a structural failure. A test procedure must be developed to determine whether adequate cathodic protection has been achieved.

The affected areas were specified as (1) three special buried, refrigerated sections totaling 4.3 miles, (2) approximately 240 short buried transitions sections, each approximately 60–80 feet, and (3) approximately 20 buried ''sag bend'' sections each approximately 120 feet long.

On May 19, 1975, RSPA granted Alyeska the requested waiver (Docket No. Pet. 75–41). The waiver was granted on the premise that the applied thermal insulation design would mitigate corrosion from occurring under insulation. Although the thermal insulation design has been generally effective on the buried insulated mainline piping in preventing thawing of the permafrost and external corrosion that requires repair based on structural analysis of the pipe using methods prescribed by 49 CFR 195.416(h), the design has not prevented all corrosion from occurring.

During routine internal inspection tool corrosion surveys, Alyeska reported evidence of corrosion on 300 of 1850 approximately 40 foot long pipe joints covered by the waiver (16 percent). Alyeska reported this corrosion to OPS on September 2, 1994 by letter. To date, all fifteen joints that have been excavated have been found to have non-injurious corrosion.

Accordingly, RSPA proposes to amend the May 1975 waiver prohibiting further installations on TAPS of buried mainline piping coated with thermal insulation not meeting all coating and cathodic protection requirements of CFR 195.238(a)(5) and 195.242(a).

RSPA further proposes to allow Alyeska to continue under the May 1975 waiver regarding coating and cathodic

protection requirements of 49 CFR 195.238(a)(5) and 195.242(a) for existing insulated piping addressed by the waiver, subject to the following amendments:

1. Alyeska will continue to inspect all thermally insulated mainline pipe by a program of annual internal inspection tool corrosion surveys capable of detecting and assessing potentially injurious corrosion. RSPA's Office of Pipeline Safety (OPS) and Alyeska concur that Alyeska should conduct the next internal inspection tool corrosion survey during the spring of 1996, a period of approximately 18 months from the previous survey. This one-time deviation from an annual schedule is required to place the timing of internal inspection tool corrosion surveys in the early spring of the year.

Running the survey in the spring of 1996 will minimize the adverse affects of wax precipitation on data quality, which would be encountered if a summer or fall 1995 survey were conducted and will avoid the serious weather constraints of a survey taking place during the 1995/1996 winter. Running the survey in the spring of 1996 will permit the completion of scheduled improvements to the corrosion inspection tool. Running the survey in the spring of 1996 will also allow full evaluation of that data with data from the survey conducted during the summer/fall of 1994.

Subsequent internal inspection tool surveys will continue to be conducted annually until OPS determines from the technical data presented by Alyeska that a reduced monitoring frequency is justified.

2. If evaluation of the internal inspection tool corrosion survey data indicates areas of potentially injurious corrosion:

A. An excavation and evaluation of actual corrosion found shall be made in accordance with 49 CFR 195.416(h) to determine if structural repairs are necessary.

B. Structural repairs, if required shall be made in accordance with requirements of ASME B31.4 and Alyeska's Maintenance and Repair Manual (MR–48).

C. Recoating and cathodic protection of excavated piping will be applied in accordance with the requirements of 49 CFR 195.238(a)(5) and 195.242(a).

3. Alyeska will submit to OPS the following engineering studies, which may provide the technical basis for future modification of this proposed waiver.

A. A detailed study of all insulated joints with identified corrosion including a comparison with joints previously identified as being corroded. Results will be used to evaluate the ability of internal inspection tools used on the TAPS to reliably and repeatedly detect, measure and assess corrosion that may impact structural integrity. Results of this study may also be used to provide the most desirable location to do at least one investigation of the corrosion mechanism described in item 3B below.

B. A completed analysis of mechanisms of corrosion under insulation to determine if the observed corrosion is active or dormant will be completed. This study will include review of internal inspection tool corrosion survey data, field observations from at least one dig and laboratory testing to confirm corrosion mechanisms. Field testing may include the installation of corrosion monitoring devices such as electrical resistance probes or corrosion rate coupons.

C. No later than December 1, 1996, a completed feasibility study of remediation designs and options to be used for the effective control of corrosion under mainline insulated piping. The feasibility study will consider corrosion mechanisms determined previously. A schedule will be provided so that OPS will have the opportunity to witness the internal inspection tool corrosion survey evaluation and installation of any remedial corrective systems.

Interested parties are invited to comment on the proposed amendment to waiver by submitting in duplicate such data, views, or arguments as they may desire. RSPA specifically requests comments on the adequacy of the proposed action regarding 195.238(a)(5) and 195.242(a). Comments should identify the Docket and Notice numbers, and be submitted to the Dockets Unit.

All comments received before July 24, 1995 will be considered before final action is taken. Late filed comments will be considered so far as practicable. No public hearing is contemplated, but one may be held at a time and place set in a Notice in the **Federal Register** if requested by an interested person desiring to comment at a public hearing and raising a genuine issue.

Issued in Washington, DC on June 1, 1995.

Cesar De Leon,

Acting Associate Administrator for Pipeline Safety.

[FR Doc. 95–13930 Filed 6–6–95; 8:45 am]

BILLING CODE 4910–60–P

[Docket No. P–95–1W; Notice 1]

Transportation of Hazardous Liquid by Pipeline Petition for Waiver; Alyeska Pipeline Service Company

SUMMARY: Alyeska Pipeline Service Company (Alyeska) has petitioned the Research and Special Programs Administration (RSPA) for an amendment to the August 16, 1975, waiver (Docket No. Pet. 75–13W) from compliance with the coating and cathodic protection requirements of 49 CFR 195.238(a)(5) and 195.242(a) regarding buried pump station and terminal insulated piping. RSPA proposes to grant this amendment subject to the noted stipulations.

DATES: Comments must be submitted on or before July 24, 1995.

FOR FURTHER INFORMATION CONTACT: L.E. Herrick, 202–366–5523 regarding the subject matter of this notice or the Dockets Branch, 202–366–5046, regarding copies of this notice or other material that is referenced herein.

ADDRESSES: Comments may be mailed to the Dockets Branch, U.S. Department of Transportation, 400 Seventh Street, Washington, DC 20590. All comments and Docket material may be reviewed in the Dockets Branch, room 8421, between the hours of 8:30 a.m. to 5:00 p.m. Monday through Friday, except federal holidays.

SUPPLEMENTARY INFORMATION: By letter dated November 24, 1975, Alyeska requested a waiver from compliance with the coating and cathodic protection requirements of 49 CFR 195.238(a)(5) and 195.242(a) with respect to thermally insulated pump station and terminal piping on the Trans-Alaska Pipeline System (TAPS). 49 CFR 195.238(a)(5) requires that each component in a hazardous liquid pipeline that is to be buried or submerged must have an external protective coating that supports any supplemental cathodic protection. In addition, if an insulating-type coating is used, it must have low moisture absorption and provide high electrical resistance. 49 CFR 195.242(a) requires a cathodic protection system be installed for all buried or submerged hazardous liquid facilities to mitigate corrosion that might result in structural failure. A test procedure must also be developed to determine whether adequate cathodic protection has been achieved.

On August 16, 1976, RSPA granted Alyeska this waiver (Docket No. Pet. 75–13W) on the premise that the applied thermal insulation design would prevent corrosion from occurring on the piping. However, subsequent inspections of the insulated piping discovered that the annular insulation

system was not sufficiently effective in preventing external corrosion on portions of the buried piping.

Alyeska estimates 14,500 linear feet of piping was originally installed subject to the 1976 waiver. To date, Alyeska has rerouted approximately 11,000 linear feet of above ground piping or installed cathodic protection with a design meeting the requirements of 195.238(a)(5) and 195.2424(a). In general, this rerouting or repair was made on areas with the greatest corrosion. For the remaining approximately 3500 feet of below ground insulated piping, RSPA proposes to prohibit any further use of thermal insulation design installed during construction and to amend the waiver on the existing insulated piping subject to the following stipulations: 1. At Pump Station No. 1. In 1995, Alyeska will install an insulated box containing cathodic protection on approximately 450 feet of 48-inch mainline piping and will also complete tie-in of the 2-inch fuel gas separator drain line. This will complete the installation of cathodic protection to all active piping at Pump Station No. 1 that is subject to 49 CFR 195.

2. At Pump Station No. 2. Alyeska will conduct annual sample inspections of approximately 220 feet of piping for injurious corrosion and repair as required until pump station No. 2 is removed from service.

3. Pump Station No. 5 piping subject to this amendment is approximately 1490 feet. At Pump Station No. 5 Alyeska will either:

A. Install insulated boxes containing cathodic protection or move the piping above ground by December 31, 1996; or,

B. If Alyeska determines by September 1995 that Pump Station No. 5 will be removed from service prior to December 31, 1999, continue to perform annual sample inspections for corrosion and repair as required until Pump Station No. 5 is removed from service.

4. The North Pole Meter Station piping subject to this amendment and extension is approximately 560 feet between the 48-inch mainline and the meter building. At the North Pole Meter Station Alyeska will either:

A. Provide cathodic protection to existing 8-inch crude supply and 6-inch residuum return piping by December 31, 1996, and conduct sample inspections for corrosion in 1995, or

B. Upgrade the meter station connection and replace with new larger diameter piping meeting 49 CFR Part 195 requirements by December 31, 1996.

5. At transition piping at pump stations and Valdez Marine Terminal (VMT), the above ground insulated piping that transitions to below ground non-insulated piping occurs at the seven non-permafrost stations (pump station No. 4 and Nos. 7–12) and the VMT. Typical repair consists of removal of the below ground insulation and coating, followed by coating replacement and an outer mechanical protective layer. Alyeska will repair and complete inspections of ten percent of the insulated transitions at each of the applicable pump stations and at VMT by the end of 1995.

Inspections of ten percent of the transitions were completed at each of the pump stations 4, 9, and 12 in 1994 with the following results: PS–4, two transitions inspected with no corrosion; PS–9, three transitions inspected, two with no corrosion and one with slight corrosion with a 65 mil pit; and PS–12, three transitions inspected with no corrosion at two locations and less than 30 mils pitting at the other location. A total of five transitions were inspected at the VMT in 1994, a total of five per cent, with no corrosion found at any location.

In 1995, Alyeska will conduct inspections of ten percent of the transitions at pump stations Nos. 7,8,10, and 11 and an additional five transitions at VMT. Alyeska will continue an inspection and repair program based upon the results of these and future inspections. Transition piping subject to this amendment and extension is approximately 800 feet.

For the purpose of this amendment sample inspect/sample inspection means to excavate and expose a portion of a line segment, typically 3 feet to 20 feet in length, for the purpose of visual examination and measurement of corrosion. Portions of pipe segments with no inspection information will be given priority, and reinspection frequency will be based upon the severity of corrosion found, line service, and pipe accessibility. The maximum interval for sample inspection will not exceed 5 years.

Injurious corrosion means corrosion to the extent that replacement or repair is required as determined by 49 CFR 195.416(h). Repair means structural repair of piping and/or coating repairs.

Interested parties are invited to comment on the proposed amendment to waiver by submitting in duplicate such data, views, or arguments as they may desire. RSPA specifically requests comments on the adequacy of the proposed action regarding 195.238(a)(5) and 195.242(a). Comments should identify the Docket and Notice numbers, and be submitted to the Dockets Unit, Room 8421, Research and Special Programs Administration, 400 Seventh Street, SW, Washington, D.C. 20590.

All comments received before July 24, 1995 will be considered before final action is taken. Late filed comments will be considered as practicable. No public hearing is contemplated, but one may be held at a time and place set in a Notice in the **Federal Register** if requested by an interested person desiring to comment at a public hearing and raising a genuine issue.

Issued in Washington, D.C. on June 1, 1995.

Cesar De Leon,

Acting Associate Administrator for Pipeline Safety.

[FR Doc. 95–13931 Filed 6–6–95; 8:45 am]

BILLING CODE 4910–60–P

Sunshine Act Meetings

Federal Register
Vol. 60, No. 109
Wednesday, June 7, 1995

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).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, June 12, 1995.

PLACE: William McChesney Martin, Jr. Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Research System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 2, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–14010 Filed 6–5–95; 9:15 am]

BILLING CODE 6210–01–M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 10:00 a.m. (EDT), June 19, 1995.

PLACE: 4th Floor, Conference Room, 1250 H Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the May 15, 1995, Board meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Annuity vendor evaluation criteria.

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: June 2, 1995.

John J. O'Meara,

Executive Director (Acting), Federal Retirement Thrift Investment Board.

[FR Doc. 95–14011 Filed 6–5–95; 9:16 am]

BILLING CODE 6760–01–M

LEGAL SERVICES CORPORATION

Board of Directors Meeting Notice; Changes

CITATION OF PREVIOUS ''FEDERAL REGISTER'' NOTICE: June 7, 1995.

PREVIOUSLY ANNOUNCED TIME AND DATE: Friday, June 14, 1995, at 12 p.m.

CHANGES IN THE MEETING: The meeting will be held on Wednesday, June 14, 1995, at 12 p.m.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, (202) 336-8810.

Date issued: June 5, 1995.

Victor M. Fortuno,

General Counsel.

[FR Doc. 95–14078 Filed 6–5–95; 2:26 pm]

BILLING CODE 7050-01-P

Corrections

Federal Register
Vol. 60, No. 109
Wednesday, June 7, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 91–074–6]

RIN 0579–AA47

Importation of Logs, Lumber, and Other Unmanufactured Wood Articles

Correction

In rule document 95–12789 beginning on page 27665 in the issue of Thursday, May 25, 1995, make the following corrections:

§ 319.40–6 [Corrected]

1. On page 27679, in § 319.40–6(b)(2), in the fourth line, delete ''wholly''.
2. On the same page, in § 319.40–6(c), the third line should read ''except places in Asia that are''.
3. On the same page, in § 319.40–6(c), in the fourth and fifth lines, delete the phrase ''wholly or in part''.

BILLING CODE 1505–01–D

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 130

[Docket No. 92-174-1]

RIN 0579-AA67

Import/Export User Fees

Correction

In proposed rule document 95–12999 beginning on page 27913 in the issue of Friday, May 26, 1995, make the following corrections:

§130.7 [Corrected]

On page 27921, in §130.7(a), in the third column, in the table, under the ''User fee'' column, in the 7th line, ''0.50 per head'' should read ''0.25 per head'' and in the 13th line, ''0.025 per head'' should read ''0.25 per head''.

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[Docket No. 950410096–5135–02; I.D. 050595B]

RIN 0648–AH66

Northeast Multispecies Fishery; Exemption Supplement to Framework 9

Correction

In rule document 95–12320 beginning on page 26841 in the issue of Friday, May 19, 1995, make the following corrections:

§ 651.20 [Corrected]

1. On page 26843, in § 651.20(8)(i), in the third line, insert ''Small Mesh Area 1; '' after ''in''.
2. On the same page, in § 651.20(8)(ii), in the third line, insert ''Small Mesh Area 2; and'' after ''in''.

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 950501124–5124–01]

RIN 0651–AA74

Revision of Patent and Trademark Fees

Correction

In proposed rule document 95–12751 beginning on page 27934 in the issue of Friday, May 26, 1995, make the following corrections:

1. On page 27935, in the first column, under *Statutory Provisions*, in the second full paragraph, in the third line, ''34 U.S.C.'' should read ''35 U.S.C.''.

§ 1.19 [Corrected]

2. On page 27938, in § 1.19(a)(1)(iii), in the fifth line, ''consumer'' should read ''customer''.

§ 1.20 [Corrected]

3. On the same page, in § 1.20(g), in the fifth line, ''field'' should read ''filed''.

§ 1.492 [Corrected]

4. On page 27939, in § 1.492(a)(5), in the fourth line, ''Patient'' should read ''Patent''.
5. On the same page, in § 1.492(d), in the fifth line, ''applicant.'' should read ''application.''.

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD11-94-007]

RIN 2115-AE84

Regulated Navigation Area; San Francisco Bay Region, CA

Correction

In rule document 95–8124 beginning on page 16793 in the issue of Monday, April 3, 1995, make the following corrections:

1. On page 16793, in the **SUMMARY** section, in the third column, in the eighth line, ''with'' should read ''will''.

§165.1114 [Corrected]

2. On page 16797, in the first column, in §165.1114(c)(1)(i), in the first line, the coordinate ''27°47′18″N'' should read ''37°47′18″N''.
3. On the same page, in the same column, in the same section, in the 11th line, the coordinate ''27°49′22″N'' should read ''37°49′22″N''.
4. On the same page, in the third column, in §165.1114(c)(1)(ii)(F)(4), in the nineth line, the coordinate ''38°03′23″N''should read ''38°03′13″N''.
5. On page 16798, in the first column, in §165.1114(c)(1)(ii)(F)(7), in the 10th line, the coordinate ''122°21′12″W;'' should read ''122°22′12″W;''.
6. On the same page, in the same column, in the same paragraph, in the 11th line, the coordinate ''37°48′26″N;'' should read ''37°47′26″N;''.
7. On the same page, in the third column, in §165.1114(e)(3)(i)(B)(*2*), in the third line, ''transmit'' should read ''transit''.

BILLING CODE 1505–01–D

federal register

Wednesday
June 7, 1995

Part II

Department of Education

34 CFR Part 700

Standards for the Conduct and Evaluation of Activities Carried Out by the Office of Educational Research and Improvement—Evaluation of Applications for Grants and Cooperative Agreements and Proposals for Contracts; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 700

RIN 1850–AA51

Standards for the Conduct and Evaluation of Activities Carried Out by the Office of Educational Research and Improvement (OERI)—Evaluation of Applications for Grants and Cooperative Agreements and Proposals for Contracts

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Assistant Secretary for Educational Research and Improvement proposes to add regulations that establish standards for the evaluation of applications for grants and cooperative agreements and proposals for contracts. The development of these standards is required by the Office of Educational Research and Improvement's authorizing legislation, the ''Educational Research, Development, Dissemination, and Improvement Act of 1994.'' The standards will ensure that such application and proposal evaluation activities meet the highest standards of professional excellence.

DATES: Comments must be received on or before July 24, 1995.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Edward J. Fuentes, U.S. Department of Education, 555 New Jersey Avenue, N.W., Room 600, Washington, D.C. 20208–5530. Comments may also be sent through Internet to stan____comments@inet.ed.gov.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Edward J. Fuentes. Telephone (202) 219–1895. Internet electronic mail address: stan____questions@inet.ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

On March 31, 1994, President Clinton signed Public Law 103–227, which includes Title IX—the ''Educational Research, Development, Dissemination, and Improvement Act of 1994'' (the Act). The Act restructured the Office of Educational Research and Improvement (OERI) and endowed it with a broad mandate to conduct an array of research, development, dissemination, and improvement activities aimed at strengthening the education of all students. The Act also required the establishment of a National Educational Research Policy and Priorities Board (the Board) to work collaboratively with the Assistant Secretary to identify priorities to guide the work of OERI.

Statutory Requirements

The legislation directed the Assistant Secretary to develop, in consultation with the Board, such standards as may be necessary to govern the conduct and evaluation of all research, development, and dissemination activities carried out by the Office to ensure that such activities meet the highest standards of professional excellence. Such standards shall at a minimum—

(a) Require that a process of open competition be used in awarding or entering into all grants, contracts, and cooperative agreements under the Act;

(b) Require that a system of peer review be utilized by the Office for—

(1) Reviewing and evaluating all applications for grants and cooperative agreements and proposals for those contracts which exceed $100,000;

(2) Evaluating and assessing the performance of all recipients of grants from and cooperative agreements and contracts with the Office; and

(3) Reviewing and designating exemplary and promising programs in accordance with section 941(d) of the Act;

(c) Describe the general procedures which shall be used by each peer review panel in its operations;

(d)(1) Describe the procedures which shall be utilized in evaluating applications for grants and cooperative agreements and contract proposals; and

(2) Specify the criteria and factors which shall be considered in making such evaluations;

(e) Describe the procedures which shall be utilized in reviewing educational programs for designation as exemplary or promising programs; and

(f) Require that the performance of all recipients of grants from and contracts and cooperative agreements with the Office shall be periodically evaluated, both during and at the conclusion of their receipt of assistance.

The Act also requires that the Assistant Secretary review the procedures utilized by the National Institutes of Health (NIH), the National Science Foundation (NSF), and other Federal departments or agencies engaged in research and development and actively solicit recommendations from research organizations and members of the general public. OERI has: (1) Reviewed peer review procedures used by NIH, NSF, and various program offices within the Department of Education; (2) requested recommendations from research organizations and associations; and (3) solicited public comment on standards of peer review and program evaluation activities through a general notice requesting comments on the implementation of the Office's new authorizing legislation published in the **Federal Register** on July 7, 1994 (59 FR 34802).

Proposed Standards

These proposed standards have been developed by the Assistant Secretary in consultation with the Board. The standards proposed in this NPRM—

- Require that a process of open competition be used in awarding or entering into all grants, cooperative agreements and contracts funded under the Act;
- Require that a system of peer review be used for reviewing and evaluating all applications for grants and cooperative agreements and proposals for those contracts which exceed $100,000;
- Establish principles for selecting qualified peer reviewers to evaluate and review applications for grants and cooperative agreements and proposals for contracts;
- Establish general procedures to be followed by the peer reviewers when evaluating applications or proposals;
- Establish improved evaluation criteria; and
- Describe the process by which applications or proposals are selected for funding.

In accordance with section 912(i)(3)(C) of the Act, § 700.2 of the proposed regulations provides that these standards shall be binding on all activities carried out by OERI using funds appropriated under section 912(m) of the Act. The OERI activities carried out with funds appropriated pursuant to section 912(m) of the Act are specified in § 700.2(b) of the proposed regulations.

The Secretary believes that these standards will ensure that applications for grant and cooperative agreement awards and proposals for contract awards are reviewed and evaluated in a rigorous, nonpartisan manner by highly qualified experts. The standards require that each application for a grant or cooperative agreement be evaluated by at least three peer reviewers except for awards of less than $50,000 when fewer

reviewers may be used and for awards of more than $1,000,000 when at least five reviewers must be used. These requirements reflect the Secretary's belief that the number of reviewers used should reflect the complexity of the activities that are the subject of the competition and that competitions involving larger awards generally are more complex than those involving smaller awards. Therefore, applications for grant awards should be reviewed by a group large enough to provide the breadth of perspectives necessary to evaluate the proposed work.

The Secretary believes that conflicts of interest for peer reviewers should be determined by applying established Department policy. Accordingly, peer reviewers for grants and cooperative agreements will be considered employees of the agency for the purposes of conflicts of interest analysis. As employees of the agency, peer reviewers will be subject to 18 U.S.C. Section 108, the criminal statute regarding conflicts of interest for government employees and, 5 CFR Section 2635.502, the Office of Government Ethics regulations.

To the extent practicable, the Secretary believes that these standards should apply to all research, development, dissemination, demonstration, and school improvement activities carried out by OERI. Furthermore, the Secretary believes that in many instances, the proposed peer review standards and evaluation criteria may be relevant to the research, development, and dissemination activities carried out by other offices in the Department. Therefore, § 700.3 authorizes the Secretary to elect to apply these standards to other activities carried out by the Department. The Secretary will announce through the grant application notice published in the **Federal Register**, the extent to which the standards are applicable for a given competition.

In accordance with section 912(i)(2)(D)(ii) of the Act, Subpart D of these proposed regulations specifies the evaluation criteria that may be used by reviewers to evaluate applications for grant and cooperative agreements and proposals for contracts. For each competition, the Secretary will select the criteria that best enable the Department to identify the highest quality applications consistent with the program purpose, statutory requirements and any priorities established. The Secretary may add to any individual criterion one or more specific factors within that criterion. For example, in the case of a national research center competition, the Secretary may select the criterion ''National Significance''; the Secretary may evaluate a national research center in terms of its potential contribution to increased knowledge or understanding of educational problems, issues, or effective strategies and the potential contribution of the project to the development and advancement of theory and knowledge in the field of study. In the case of a field initiated study competition, the Secretary may evaluate the national significance of a project in terms of the importance of the problem to be addressed and the potential of the project to contribute to the development and advancement of theory and knowledge in the field of study. In the case of a competition for demonstration activities, the Secretary may evaluate the national significance of a project in terms of whether the project involves the development or demonstration of creative or innovative strategies that build on, or are alternatives to, existing strategies and the potential for generalizing from project findings or results. For some competitions, the Secretary may select the criterion, ''National Significance'' without selecting specific factors.

The proposed standards provide an opportunity to improve significantly the manner in which OERI carries out its mandate by establishing a menu of evaluation criteria that: (1) Provide OERI the flexibility to choose a set of criteria tailored to a given competition; and (2) obviate the need to create specific evaluation criteria through individual program regulations.

The Assistant Secretary will publish at a later date additional proposed regulations to establish procedures to be used to designate programs as exemplary or promising and to evaluate the performance of all recipients awarded grants, cooperative agreements, or contracts by the Office.

Executive Order 12866

Assessment of Costs and Benefits

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those determined by the Secretary as necessary for administering this program effectively and efficiently. Burdens specifically associated with information collection requirements, if any, are identified and explained elsewhere in this preamble under the heading Paperwork Reduction Act of 1980.

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has determined that the benefits of the proposed regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the program.

Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed regulations clearly stated? (2) Do the regulations contain technical terms or other wording that interferes with their clarity? (3) Does the format of the regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§ '' and a numbered heading; for example, § 700.11 Who may serve as peer reviewers.) (4) Is the description of the regulations in the ''Supplementary Information'' section of this preamble helpful in understanding the regulations? How could this description be more helpful in making the regulations easier to understand? (5) What else could the Department do to make the regulations easier to understand?

A copy of any comments that concern how the Department could make these proposed regulations easier to understand should be sent to Stanley M. Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Avenue, S.W. (Room 5121, FB–10B), Washington, D.C. 20202–2241.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by these proposed regulations are small local educational agencies (LEAs) and private schools receiving Federal funds under this program. However, the regulations would not have a significant economic impact on the small LEAs and private schools affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1980

Section 700.30 contains information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of this section to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

These regulations affect the following types of entities eligible to apply for grants and cooperative agreements: State or local governments, businesses or other for profit organizations, nonprofit institutions, and any combinations of these types of entities. The Department needs and uses the information to evaluate applications for funding.

Annual public reporting and recordkeeping burden for this collection of information is estimated to range from 15 hours for each of the approximately 750 applications expected for a field initiated study competition to 150 hours for ten or fewer applications expected for a national research center. Therefore, the actual burden will be determined by the type of project to be supported in the particular competition.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, D.C. 20503; Attention: Daniel J. Chenok.

Intergovernmental Review

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

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

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 600, 555 New Jersey Avenue, N.W., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

List of Subjects in 34 CFR Part 700

Education, Educational research, Elementary and secondary education, Government contracts, Grant programs—education, Libraries, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number does not apply.)

Dated: May 31, 1995.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

The Secretary proposes to amend chapter VII of Title 34 of the Code of Federal Regulations by adding a new Part 700 to read as follows:

PART 700—STANDARDS FOR THE CONDUCT AND EVALUATION OF ACTIVITIES CARRIED OUT BY THE OFFICE OF EDUCATIONAL RESEARCH AND IMPROVEMENT (OERI)—EVALUATION OF APPLICATIONS FOR GRANTS AND COOPERATIVE AGREEMENTS AND PROPOSALS FOR CONTRACTS

Subpart A—General

Sec.
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Subpart E—Selection for Award

700.40 How are grant and cooperative agreement applications selected for award?
700.41 How are contract proposals selected for award?

Authority: 20 U.S.C. 6011(i), unless otherwise noted.

Subpart A—General

700.1 What is the purpose of these standards?

(a) The standards in this part implement section 912(i) of the Educational Research, Development, Dissemination, and Improvement Act of 1994.

(b) These standards are intended to ensure that activities carried out by the Office of Educational Research and Improvement meet the highest standards of professional excellence.

(Authority: 20 U.S.C. 6011(i)(1))

§ 700.2 What activities must be governed by these standards?

(a) The standards in this part are binding on all activities carried out by the Office using funds appropriated under section 912(m) of the Educational Research, Development, Dissemination, and Improvement Act of 1994.

(b) Activities carried out with funds appropriated under section 912(m) of the Act include activities carried out by the following entities or programs:

(1) The National Research Institutes.

(2) The Office of Reform Assistance and Dissemination.

(3) The Educational Resources Information Center Clearinghouses.

(4) The Regional Educational Laboratories.

(5) The Teacher Research Dissemination Demonstration Program.

(6) The Goals 2000 Community Partnerships Program.

(7) The National Educational Research Policy and Priorities Board.

(Authority: 20 U.S.C. 6011(i)(1))

§ 700.3 What additional activities may be governed by these standards?

(a) The Secretary may elect to apply the standards in this part to activities carried out by the Department using funds appropriated under an authority other than section 912(m) of the Act.

(b)(1) If the Secretary elects to apply these standards to a competition for new grant or cooperative agreement awards, the Secretary announces in a notice published in the **Federal Register**, the extent to which these standards are applicable to the competition.

(2) If the Secretary elects to apply these standards to a solicitation for a contract award, the Secretary announces in the request for proposals the extent to which these standards are applicable to the solicitation.

(Authority: 20 U.S.C. 6011(i))

§ 700.4 What definitions apply?

(a) *Definitions in the Educational Research, Development, Dissemination, and Improvement Act of 1994.* The following terms used in this part are defined in 20 U.S.C. 6011(l):

Development
Dissemination
Educational Research Office
National Research Institute
Technical Assistance

(b) *Definitions in Education Department General Administrative Regulations.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Department
Grant
Project
Secretary

(c) *Definitions in the Federal Acquisition Regulation.* The following terms used in this part are defined in 48 CFR Chapter 1:

Contracting Officer
Employee of an Agency
Proposal
Solicitation

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

Act means the Educational Research, Development, Dissemination, and Improvement Act of 1994 (title IX of Pub. L. 103–227, 108 Stat. 212).

EDAR means the Department of Education Acquisition Regulation, 48 CFR chapter 34.

EDGAR means the Department of Education General Administrative Regulations, 34 CFR parts 74, 75, 76, 77, 79, 80, 81, 82, 85 and 86.

FAR means the Federal Acquisition Regulation, 48 CFR chapter 1.

(Authority: 20 U.S.C. 6011)

§ 700.5 What are the processes of open competition?

The Secretary uses a process of open competition in awarding or entering into all grants, cooperative agreements, and contracts governed by these standards. The processes of open competition are the following:

(a) For all new awards for grants and cooperative agreements, the Secretary will make awards pursuant to the provisions of EDGAR with the exception of the provisions in 34 CFR 75.100(c)(5), 75.200 (b)(3), (b)(5), 75.210, and 75.217 (b)(1), (b)(2), (c), and (d).

(b) For contracts, the Department will conduct acquisitions pursuant to this part in accordance with the requirements of the Competition in Contracting Act, 41 U.S.C. 253, and the FAR.

(Authority: 20 U.S.C. 6011(i)(2); 41 U.S.C. 253)

Subpart B—Selection of Peer Reviewers

§ 700.10 When is the peer review process used?

The Secretary uses a peer review process—

(a) To review and evaluate all applications for grants and cooperative agreements and proposals for those contracts which exceed $100,000;

(b) To review and designate exemplary and promising programs in accordance with section 941(d) of the Act; and

(c) To evaluate and assess the performance of all recipients of grants from and cooperative agreements and contracts with the Office.

(Authority: 20 U.S.C. 6011(i)(2)(B))

§ 700.11 Who may serve as peer reviewers?

(a) An individual may serve as a peer reviewer for purposes of reviewing and evaluating applications for new awards for grants and cooperative agreements and contract proposals if the individual—

(1) Possesses one or more of the following qualifications:

(i) Demonstrated expertise, including training and experience, relevant to the subject of the competition.

(ii) In-depth knowledge of policy and practice in the field of education.

(iii) In-depth knowledge of theoretical perspectives or methodological approaches relevant to the subject of the competition; and

(2) Does not have a conflict of interest, as determined in accordance with § 700.12.

(b)(1) Except as provided in paragraph (b)(2) of this section, for each competition for new awards for grants and cooperative agreements—

(i) Department staff shall not serve as peer reviewers except in exceptional circumstances as determined by the Secretary; and

(ii) The majority of reviewers shall be persons not employed by the Federal Government.

(2) For each review of an unsolicited grant or cooperative agreement application—

(i) Department employees may assist the Secretary in making an initial determination under 34 CFR 75.222(b); and

(ii) Department employees may not serve as peer reviewers in accordance with 34 CFR 75.222(c).

(c) To the extent feasible, the Secretary selects peer reviewers for each competition who represent a broad range of perspectives.

(Authority: 20 U.S.C. 6011(i)(2)(B))

§ 700.12 What constitutes a conflict of interest for grants and cooperative agreements?

(a) Peer reviewers for grants and cooperative agreements are considered employees of the agency for the purposes of conflicts of interest analysis.

(b) As employees of the agency, peer reviewers are subject to the provisions of 18 U.S.C. 208, 5 CFR 2635.502, and the Department policies used to implement those provisions.

(Authority: 20 U.S.C. 6011(i)(2)(B))

§ 700.13 What constitutes a conflict of interest for contracts.

(a) Peer reviewers for contract proposals are considered employees of the agency in accordance with FAR, 48 CFR 3.104–4(h)(2).

(b) As employees of the agency, peer reviewers are subject to the provisions of the FAR, 48 CFR Part 3 Improper Business Practices and Personal Conflict of Interest.

(Authority: 41 U.S.C. 423)

Subpart C—The Peer Review Process

§ 700.20 How many peer reviewers will be used?

(a) Each application for a grant or cooperative agreement award shall be reviewed and evaluated by at least three peer reviewers except—

(1) For those grant and cooperative agreement awards under $50,000, fewer than three peer reviewers may be used if the Secretary determines that adequate peer review can be obtained using fewer reviewers; and

(2) For those grant and cooperative agreement awards of more than

$1,000,000, at least five reviewers will be used.

(b) Each contract proposal shall be read by at least three reviewers unless the contracting officer determines that an adequate peer review can be obtained by fewer reviewers.

(c) Before releasing contract proposals to peer reviewers outside the Federal Government, the contracting officer shall comply with FAR, 48 CFR 15.413–2(f).

(Authority: 20 U.S.C. 6011(i)(2)(B))

§ 700.21 How are applications for grants and cooperative agreements evaluated?

(a) Each peer reviewer shall be given a number of applications to evaluate.

(b) Each peer reviewer shall—

(1) Independently evaluate each application;

(2) Evaluate and rate each application based on the reviewer's assessment of the quality of the application according to the evaluation criteria and the weights assigned to those criteria; and

(3) Support the rating for each application with concise written comments based on the reviewer's analysis of the strengths and weaknesses of the application with respect to each of the applicable evaluation criteria.

(c) After each peer reviewer has evaluated and rated each application independently, those reviewers who evaluated a common set of applications will be convened to discuss the strengths and weaknesses of those applications. Each reviewer may then independently reevaluate and re-rate an application with appropriate changes made to the written comments.

(d) Following discussion and any reevaluation and re-rating, reviewers shall independently place each application in one of two categories, either ''recommended for funding'' or ''not recommended for funding.''

(e) After the peer reviewers have evaluated, rated, and made funding recommendations regarding the applications, the Secretary prepares a rank order of the applications based solely on the peer reviewers' evaluations.

(Authority: 20 U.S.C. 6011(i)(2)(C))

§ 700.22 How are proposals for contracts evaluated?

(a) Each peer reviewer shall be given a number of technical proposals to evaluate.

(b) Each peer reviewer shall—

(1) Independently evaluate each technical proposal;

(2) Evaluate and rate each proposal based on the reviewer's assessment of the quality of the proposal according to the technical evaluation criteria and the importance or weight assigned to those criteria; and

(3) Support the rating for each proposal with concise written comments based on the reviewer's analysis of the strengths and weaknesses of the proposal with respect to each of the applicable technical evaluation criteria.

(c) After each peer reviewer has evaluated each proposal independently, those reviewers who evaluated a common set of proposals may be convened to discuss the strengths and weaknesses of those proposals. Each reviewer may then independently reevaluate and re-rate a proposal with appropriate changes made to the written comments.

(d) Following discussion and any reevaluation and re-rating, reviewers shall rank proposals and advise the contracting officer of each proposal's acceptability for contract award as ''acceptable,'' ''capable of being made acceptable without major modifications,'' or ''unacceptable.'' Reviewers may also submit technical questions to be asked of the offeror regarding the proposal.

(Authority: 20 U.S.C. 6011(i)(2)(C))

Subpart D—Evaluation Criteria

§ 700.30 What evaluation criteria are used for grants and cooperative agreements?

(a) Except as provided in paragraph (d) of this section, the Secretary announces the applicable evaluation criteria for each competition and the assigned weights in a notice published in the **Federal Register**.

(b) In determining the evaluation criteria to be used in each grant and cooperative agreement competition, the Secretary selects from among the evaluation criteria in paragraph (e) of this section and may select from among the specific factors listed under each criterion.

(c) The Secretary assigns relative weights to each selected criterion and factor.

(d) In determining the evaluation criteria to be used for unsolicited applications, the Secretary selects from among the evaluation criteria in paragraph (e) of this section, and may select from among the specific factors listed under each criterion, the criteria which are most appropriate to evaluate the activities proposed in the application.

(e) The Secretary establishes the following evaluation criteria:

(1) *National significance.* (i) The Secretary considers the national significance of the proposed project.

(ii) In determining the national significance of the proposed project, the Secretary may consider one or more of the following factors:

(A) The importance of the problem or issue to be addressed.

(B) The potential contribution of the project to increased knowledge or understanding of educational problems, issues, or effective strategies.

(C) The scope of the project.

(D) The potential for generalizing from project findings or results.

(E) The potential contribution of the project to the development and advancement of theory and knowledge in the field of study.

(F) Whether the project involves the development or demonstration of creative or innovative strategies that build on, or are alternatives to, existing strategies.

(G) The nature of the products (such as information, materials, processes, or techniques) likely to result from the project and the potential for their effective use in a variety of other settings.

(H) The extent and quality of plans for disseminating results in ways that will allow others to use the information.

(2) *Quality of the project design.* (i) The Secretary considers the quality of the design of the proposed project.

(ii) In determining the quality of the design of the proposed project, the Secretary may consider one or more of the following factors:

(A) Whether the goals, objectives, and outcomes to be achieved by the project are clearly specified and measurable.

(B) Whether there is a conceptual framework underlying the proposed activities and the quality of that framework.

(C) Whether the proposed activities constitute a coherent, sustained program of research and development in the field, including a substantial addition to an ongoing line of inquiry.

(D) Whether a specific research design has been proposed, and the quality and appropriateness of that design, including the scientific rigor of the studies involved.

(E) The extent to which the research design includes a thorough, high-quality review of the relevant literature, a high-quality plan for research activities, and the use of appropriate theoretical and methodological tools, including those of a variety of disciplines, where appropriate.

(F) The quality of the demonstration design and procedures for documenting project activities and results.

(G) The extent to which development efforts include iterative testing of products and adequate quality controls.

(H) The likelihood that the design of the project will successfully address the intended, demonstrated educational needs or needs.

(I) How well and innovatively the project addresses statutory purposes, requirements and any priority or priorities announced for the program.

(J) The quality of the plan for evaluating the functioning and impact of the project, including the objectivity of the evaluation and the extent to which the methods of evaluation are appropriate to the goals, objectives, and outcomes of the project.

(3) *Quality and potential contributions of personnel.* (i) The Secretary considers the quality and potential contributions of personnel for the proposed project.

(ii) In determining the quality and potential contributions of personnel for the proposed project, the Secretary may consider one or more of the following factors:

(A) The qualifications, including training and experience, of the project director or principal investigator.

(B) The qualifications, including training and experience, of key project personnel.

(C) The qualifications, including training and experience, of proposed consultants or subcontractors.

(D) Past performance of any personnel in any previous Department-supported grants or cooperative agreements.

(4) *Adequacy of resources.* (i) The Secretary considers the adequacy of resources for the proposed project.

(ii) In determining the adequacy of resources for the proposed project, the Secretary may consider one or more of the following factors:

(A) The adequacy of support from the lead applicant organization.

(B) The relevance and commitment of each partner in the project to the implementation and success of the project.

(C) Whether the budget is adequate to support the project.

(D) Whether the costs are reasonable in relation to the objectives, design, and potential significance of the project.

(E) The cost-effectiveness of the project and the adequacy of the support provided by the applicant organization in any previous Department-supported grant or cooperative agreement.

(F) The potential for continued support of the project after federal funding ends.

(5) *Quality of the management plan.* (i) The Secretary considers the quality of the management plan of the proposed project.

(ii) In determining the quality of the management plan of a proposed project, the Secretary may consider one or more of the following factors:

(A) The adequacy of the management plan to achieve the objectives of the project, including the specification of staff responsibility, timelines, and benchmarks for accomplishing project tasks.

(B) The adequacy of plans for ensuring high-quality products and services.

(C) The adequacy of plans for ensuring continuous improvement in the operation of the project.

(D) Whether time commitments of the project director or principal investigator and other key personnel are appropriate and adequate to meet project objectives.

(E) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the project, including those of parents and teachers, where appropriate.

(F) How the applicant will ensure that persons who are otherwise eligible to participate in the project are selected without regard to race, color, national origin, gender, age, or disability.

(G) The adequacy of plans for widespread dissemination of project results and products in ways that will assist others to use the information.

(Authority: 20 U.S.C. 6011(i)(2)(D)(ii))

§ 700.31 What additional evaluation criteria shall be used for grants and cooperative agreements?

In addition to the evaluation criteria established in § 700.30(e), criteria or factors specified in the applicable program statute shall be used to evaluate applications for grants and cooperative agreements.

(Authority: 20 U.S.C. 6011(i)(2)(D)(ii))

§ 700.32 What evaluation criteria shall be used for contracts?

(a) The evaluation criteria to be considered in the technical evaluation of contract proposals are contained in the FAR at 48 CFR 15.605. The evaluation criteria that apply to an acquisition and the relative importance of those factors are within the broad discretion of agency acquisition officials.

(b) At a minimum, the evaluation criteria to be considered shall include cost or price and quality. Evaluation factors related to quality are called technical evaluation criteria.

(c) Technical evaluation criteria may include, but are not limited to, the following:

(1) Technical excellence.

(2) Management capability.

(3) Personnel qualifications.

(4) Prior experience.

(5) Past performance.

(6) Schedule compliance.

(Authority: 20 U.S.C. 6011(i)(2)(D)(ii))

Subpart E—Selection for Award

§ 700.40 How are grant and cooperative agreement applications selected for award?

(a) The Secretary determines the order in which applications will be selected for grants and cooperative agreement awards. The Secretary considers the following in making these determinations:

(1) An applicant's ranking.

(2) Recommendations of the peer reviewers with regard to funding or not funding.

(3) Information concerning an applicant's performance and use of funds under a previous Federal award.

(4) Amount of funds available for the competition.

(5) Any other information relevant to a priority or other statutory or regulatory requirement applicable to the selection of applications for new awards.

(b) In the case of unsolicited applications, the Secretary uses the procedures in EDGAR (34 CFR 75.222 (d) and (e)).

(Authority: 20 U.S.C. 6022(i)(2)(D)(i))

§ 700.41 How are contract proposals selected for award?

Following evaluation of the proposals, the contracting officer shall select for award the offeror whose proposal is most advantageous to the Government considering cost or price and the other factors included in the solicitation.

(Authority: 20 U.S.C. 6011(i)(2)(D)(i))

[FR Doc. 95–13690 Filed 6–6–95; 8:45 am]

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federal register

Wednesday
June 7, 1995

Part III

Department of the Interior

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.9(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the Fernandeno/Tataviam Tribal Council, 11640 Rincon Avenue, Sylmar, California 91342 has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs (BIA) on April 24, 1995, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under Section 83.9(a) (formerly 54.8(d)) of the Federal regulations, interested parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined, by appointment, in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, Room 1362–MIB, 1849 C Street, N.W., Washington, D.C. 20240, Phone: (202) 208–3592.

Dated: May 30, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–13864 Filed 6–6–95; 8:45 am]

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federal register

Wednesday
June 7, 1995

Part IV

Department of Agriculture

Agricultural Marketing Services

7 CFR Part 982

Filberts/Hazelnuts Grown in Oregon and Washington; Recommended Decision on Proposed Further Amendment of Marketing Agreement and Order No. 982; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 982

[Docket No. AO–205–A7; FV94–982–1]

Filberts/Hazelnuts Grown in Oregon and Washington; Recommended Decision on Proposed Further Amendment of Marketing Agreement and Order No. 982

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and opportunity to file exceptions.

SUMMARY: This recommended decision invites written exceptions on proposed amendments to Marketing Agreement and Order No. 982 (order). The agreement and order regulate the handling of filberts/hazelnuts grown in Oregon and Washington. The proposed amendments would make changes in order provisions regarding: Volume control; nomination and membership of the Filbert/Hazelnut Marketing Board (Board); collecting assessments; and the administration and operation of the program. The proposed amendments were submitted by the Board to make the order more consistent with current industry conditions and needs. The Fruit and Vegetable Division, Agricultural Marketing Service (AMS), is proposing conforming and other necessary changes. The proposed amendments are designed to improve order operations.

DATES: Written exceptions must be filed by July 7, 1995.

ADDRESSES: Written exceptions should be filed with the Hearing Clerk, U.S. Department of Agriculture, room 1081–S, Washington, D.C. 20050–9200, FAX (202) 720–9776. Four copies of all written exceptions should be submitted and should reference the docket number and the date and page number of this issue of the **Federal Register**. Exceptions will be made available for public inspection in the Office of the Hearing Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Teresa Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, 1220 SW Third Ave., room 369, Portland, OR 97204; telephone (503) 326–2724, FAX (503) 326–7440; or Tom Tichenor, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, D.C. 20090–6456; telephone: 202–720–6862; FAX 202–720–5698.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Public Hearing issued on February 24, 1994, and published in the February 28, 1994, issue of the **Federal Register** (59 FR 9425).

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.

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to the proposed further amendment of Marketing Agreement and Order No. 982 and of the opportunity to file written exceptions thereto. For the purposes of this document and this formal rulemaking proceeding, Marketing Agreement and Order No. 982 is referred to as the ''order'' and the term filberts and filberts/hazelnuts is hereinafter referred to as hazelnuts. Copies of this decision may be obtained from Teresa Hutchinson or Tom Tichenor, at the addresses listed above.

This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the ''Act,'' and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

The proposed further amendment of the order is based on the record of a public hearing held in Newberg, Oregon, on March 8, 1994. Notice of this hearing was published in the **Federal Register** on February 28, 1994. The notice of public hearing listed 12 proposals submitted by the Board, the agency responsible for local administration of the order, and one proposal by the Fruit and Vegetable Division (Division), of the Agricultural Marketing Service (AMS), U.S. Department of Agriculture (Department), concerning conforming changes.

The proposals would: (1) Change the name of the commodity covered under the order from ''filberts'' to ''hazelnuts;'' (2) for purposes of volume regulation, establish the trade demand area as the entire United States and allow the Board, with the Secretary's approval, to make changes in the inshell trade acquisition distribution area; (3) change the length of Board members' terms of office and the number of consecutive terms that may be held, make changes in the criteria used for nominating handler members and for weighting handler votes when electing handler nominees, and change the voting procedures used for nominating members; (4) allow Board telephone votes to remain unconfirmed until the next public Board meeting; (5) remove the ''verbatim'' reporting requirement on Board marketing policy meetings; (6) provide the Board with some flexibility in recommending final free and restricted percentages; (7) authorize different identification standards for inspected and certified hazelnuts; (8) correct current language that specifies handler credit for ungraded hazelnuts; (9) change the procedures for establishing bonding requirements for deferred restricted obligations and allow the Board to purchase excess restricted credits from handlers; (10) clarify that mail order sales outside the production area are not exempt from order requirements; (11) allow the Board to accept advance assessment payments, provide discounts for such payments, and accept voluntary contributions; and (12) make such changes as are necessary to conform with any amendment that may result from the hearing.

The public hearing was held to: (1) Receive evidence about the economic and marketing conditions which relate to the proposed amendments of the order; (2) determine whether there is a need for the proposed amendments to the order; and (3) determine whether the proposed amendments, or appropriate modifications thereof, will tend to effectuate the declared policy of the Act.

No person testified in opposition to the proposals offered at the hearing and no alternative proposals were offered.

At the conclusion of the hearing, the administrative law judge fixed April 8, 1994, as the final date for interested persons to file corrections to the hearing transcript, proposed findings and conclusions, and written arguments or briefs based on the evidence received at the hearing. Corrections to the hearing transcript were filed by the Division with the Hearing Clerk on April 5, 1994. No other corrections, findings, conclusions, arguments or briefs were filed.

Small Business Considerations

In accordance with the provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities. Small agricultural service firms, which include handlers regulated under this order, have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts for the last three years of less

than $5,000,000. Small agricultural producers are defined as those having annual receipts of less than $500,000.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments on small businesses. The record indicates that handlers would not be unduly burdened by any additional regulatory requirements, including those pertaining to reporting and recordkeeping, that might result from this proceeding. The record also indicates that a majority of handlers and producers would meet the SBA definitions of small agricultural service firms and small agricultural producers, respectively.

During the 1993–94 marketing year, approximately 25 handlers were regulated under the order. In addition, there were approximately 950 producers of hazelnuts in the production area. The Act requires the application of uniform rules on regulated handlers. Since handlers covered under the order are predominantly small businesses, the order itself is tailored to the size and nature of small businesses. Marketing orders and amendments thereto, are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are compatible with respect to small entities.

For discussion of the anticipated impact on small businesses, the proposed amendments have been grouped into programmatic categories. Amendments concerning the order's marketing and volume control programs would: Change the name of the commodity to ''hazelnuts'' (§ 982.4); add the State of Hawaii to the trade demand area and allow the Board to make changes in the trade demand area, with the approval of the Secretary (§ 982.16); provide the Board the flexibility to release up to 15 percent of the average three year inshell trade acquisitions for desirable carryout (§ 982.40); correct the current language that determines handler credit for ungraded hazelnuts (§ 982.51); establish the bonding rate for deferred restricted obligations at the estimated value of restricted credits for the current marketing year and allow the Board to use defaulted bond payments to purchase excess restricted credits (§ 982.54); and clarify that mail order sales are not exempt from order requirements (new § 982.57). These proposed amendments are designed to assist the Board in its domestic and export marketing efforts. The amendments would allow the Board to make program and management decisions that are more consistent with changing market conditions and better respond to changing marketing needs. Because the Board acts in the best interests of the industry, increased Board decision making flexibility should benefit the industry and, thus, small businesses in the industry.

Regarding nomination and Board membership, the proposed amendments would: Change from one to two years the length of Board member and alternate member terms of office (§ 982.33); limit the number of consecutive terms members and alternate members may hold to three two-year terms (§ 982.33); and make conforming changes and a correction in the qualifications for nominating members (§§ 982.30 and 982.32). The amendments are proposed to ease the burden of conducting nomination meetings every year and enhance the Board's efficiency. The amendments are administrative in nature and would not impose additional costs on small businesses.

Other recommended amendments to the order's administrative procedures and operations would: Allow Board telephone votes to remain unconfirmed in writing until the next public Board meeting (§ 982.37); remove the ''verbatim'' reporting requirement on Board marketing policy meetings (§ 982.39); allow the Board to accept advance assessment payments and provide discounts for such payments (§ 982.61); and allow the Board to accept voluntary contributions (new § 982.63). These proposed amendments are intended to improve the operations of the Board, lessen the administrative burden on Board members and staff, and improve management of the order's financial resources. As such, the proposed changes would have negligible, if any, economic impact on small entities.

Finally, one amendment would provide the Board with the authority to establish more up-to-date identification standards (§ 982.46), which would make order identification and certification provisions consistent with current industry practices and enable handlers more flexibility in meeting identification requirements.

All of these changes are designed to enhance the administration and functioning of the order and benefit the entire industry. Any added costs are not expected to be significant because the benefits of the proposed amendments are expected to outweigh the costs. Finally, the proposed amendments would have no significant impact or burden on small businesses' recordkeeping and reporting requirements.

The amendments proposed herein have been reviewed under Executive Order 12778, Civil Justice Reform and are not intended to have retroactive affect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the amendments.

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

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), any additional reporting and recordkeeping requirements that might result from the proposed amendments would be submitted to the Office of Management and Budget (OMB). The provisions would not be effective until after receiving OMB approval.

Material Issues

The material issues of record addressed in this decision are:

(1) Whether to change the name of the commodity from ''filberts'' to ''hazelnuts;''

(2) whether the inshell trade acquisition (trade demand) distribution area should be expanded to include the entire United States; whether the Board, with the approval of the Secretary, should be allowed to make changes in the trade demand distribution area; and, whether inshell hazelnuts shipped to export markets should be restricted from importation into all trade demand distribution areas;

(3) whether to extend the length of Board members' and alternate members'

terms of office to two years, limit the number of consecutive terms which may be held to three two-year terms, make conforming changes to the qualifications for nominating members, make a correction in the weighting of handler votes, and clarify voting procedures;

(4) whether Board telephone votes should remain unconfirmed in writing until the next public Board meeting;

(5) whether to remove the ''verbatim'' reporting requirement on Board marketing policy meetings;

(6) whether the Board should have additional flexibility in recommending final free and restricted percentages;

(7) whether to provide the Board with the authority, subject to the approval of the Secretary, to establish different identification standards for inspected and certified hazelnuts;

(8) whether to correct the factor used to convert kernel weight to inshell equivalent weight when calculating the volume of hazelnuts withheld for restricted credit;

(9) whether the Board should use the estimated value of restricted credits when establishing bonding rates, and whether to allow the Board to purchase restricted credits;

(10) whether to clarify that mail order sales are not exempt from order requirements;

(11) whether the Board should have authority to accept advance assessment payments, provide discounts for such payments, borrow money, and accept voluntary contributions; and

(12) whether any conforming changes should be made to the order if any or all of these proposals were to become effective.

Findings and Conclusions

The findings and conclusions on the material issues, all of which are based on evidence provided at the hearing and the record thereof, are:

(1) The terms ''filberts'' and ''filberts/hazelnuts'' should be revised to read ''hazelnuts.'' Section 982.4 defines filberts to mean filberts or hazelnuts produced in the States of Oregon and Washington from trees of the genus Corylus.

Over the years, the use of the term ''filberts'' has lessened both within and outside the industry. ''Hazelnuts'' is widely used in the industry to describe the tree nut covered under the order and in international marketing efforts.

While some handlers continue to refer to the product as filberts, record evidence indicates that changing the name in the order will not have an adverse effect on those handlers who have traditionally referred to the product as ''filberts'' or use the term in the company name or logo. Further, changing the term would be consistent with public practice because, in 1989, the hazelnut—not filbert—was declared the official state nut of Oregon. Record evidence indicates that, in the production area, the tree is generally referred to as a filbert tree while the nuts are referred to as hazelnuts.

In recognition of the more prominent use of the term ''hazelnuts,'' the Board recommended that the tree nut defined as ''filberts'' in the order and the title of the Board, and the term ''filbert/hazelnut'' in the order's title be defined as ''hazelnuts'' throughout the order and the order's rules and regulations. Thus, the title of the order should be amended to read ''Hazelnuts Grown in Oregon and Washington,'' the definition for filberts should be amended to read, ''Hazelnuts means hazelnuts or filberts produced in the States of Oregon and Washington from trees of the genus Corylus,'' and the title ''Filbert Control Board'' should be changed to ''Hazelnut Marketing Board.'' Wherever the term ''filberts'' appears in *Subpart—Order Regulating Handling* and *Subpart—Grade and Size Regulations*, it should be changed to ''hazelnuts.'' Such changes should be made in the table of contents and the following sections: 982.4, 982.6, 982.7, 982.8, 982.11, 982.12, 982.13, 982.14, 982.15, 982.16, 982.18, 982.19, 982.20, 982.30, 982.32, 982.34, 982.39, 982.40, 982.41, 982.45, 982.46, 982.50, 982.51, 982.52, 982.53, 982.54, 982.55, 982.56, 982.57, 982.58, 982.61, 982.65, 982.66, 982.67, 982.69, 982.71, 982.86, and 982.101, including Exhibit A. Wherever the term ''filberts/hazelnuts'' appears in *Subpart—Administrative Rules and Regulations*, it should be changed to ''hazelnuts.'' Such changes should be made in the following sections: 982.446, 982.450, 982.452, 982.453, 982.455, 982.456, 982.466, 982.468, and 982.471. Finally, references to ''F/H Form * * *'', followed by a letter or number, or both, should be changed to read ''H Form'', followed by a letter or number, or both sections 982.450, 982.452, 982.453, 982.454, 982.455, 982.456, 982.460, 982.466, and 982.468.

(2) In § 982.16, Inshell trade acquisitions, the inshell trade demand area should include all 50 states of the United States, and not just the continental United States, and the Board, with the Secretary's approval, should be authorized to make changes in the distribution area. Therefore, this amendment would make two changes in the order: (1) Include all 50 states of the United States in the trade demand area, thus, adding Hawaii, and (2) provide authority to the Board to make changes to the trade demand area through informal rulemaking procedures. For the purposes of these findings and conclusions, trade demand area is synonymous with inshell trade acquisition distribution area.

Under the order's volume regulations, shipments of inshell hazelnuts to the continental U.S. are limited to a prescribed percentage of the industry's supply, subject to regulation each marketing year. Currently, the continental U.S. comprises the ''domestic market'' under the order. All markets outside the continental U.S., including Hawaii, are currently export markets to which handlers may ship inshell hazelnuts without regard to volume regulations established under the order. This amendment would expand the trade demand area to include Hawaii, thus, making that state part of the ''domestic market.''

Inshell trade acquisitions are defined as the quantity of inshell hazelnuts acquired by the trade (commercial buyers) from all handlers during a marketing year for distribution in the continental United States. The trade demand for any given year is based on inshell trade acquisitions during the preceding three years. The domestic inshell market volume is restricted under volume regulations. Restricted hazelnuts are shelled or exported inshell to other countries, or are held in satisfaction of the handler's restricted obligation.

The effect of the first change would be to add Hawaii to the trade demand area. When the order was promulgated in 1949, ''trade demand'' was defined as the quantity of filberts/hazelnuts acquired for ''distribution in the continental U.S., Alaska, Hawaii, Puerto Rico and the Canal Zone; except that there may also be considered in the making of such computations such acquirements for distribution in Canada or Cuba, whenever the Board is of the opinion that such distribution may be made to the particular country at prices to handlers approximating such prices on distribution in the Continental United States.'' (14 FR 5657, September 15, 1949.) This definition was amended in 1959 (24 FR 5305, June 30, 1959) to include only the continental U.S. because it was determined that the other areas would better serve the industry as export outlets for restricted hazelnuts. The Board now recommends that all 50 states be included in the trade demand area.

However, testimony presented at the hearing did not provide any economic analysis, data, or other persuasive reasons that would support adding Hawaii to the trade demand area. The

Department believes that the addition of Hawaii to the trade demand area should be evaluated on the same bases as other markets which might be added to the trade demand area. Should the second part of this material issue, as described below, be approved in this formal rulemaking procedure, the Board would be able to recommend adding Hawaii to the trade demand area through informal rulemaking procedures. Thus, this recommended decision denies that portion of the second material issue which recommends adding Hawaii to the trade demand area.

The second change would provide authority to the Board to make changes to the trade demand area, through informal rulemaking procedures. The Board now believes that it is in the best interest of the industry that the Board have the flexibility to respond to changing market conditions by adding a country or marketing region, when appropriate, to the trade demand area.

As currently provided, changes to the trade demand area require formal rulemaking procedures which include a public hearing, a recommended decision, an industry referendum and a final rulemaking decision. However, marketing policy decisions need to be made on a yearly basis, particularly those decisions that require computation to determine the amount of inshell hazelnuts available to be sold without restriction. The formal rulemaking procedure does not provide the Board with the flexibility or the timeliness it needs to respond to changing markets in other countries. Informal rulemaking authority, which requires a Board recommendation and Secretarial approval, would enable the Board to make more timely responses to changing market conditions in countries or regions outside the U.S.

The record indicates that a recommendation to add a country or region to the trade demand area would first be considered by the Board's Export Committee when it develops and recommends to the Board an annual export marketing policy. Changes in the trade demand area would then be considered by the Board and recommended to the Secretary. Notice of these meetings would be made to hazelnut growers and handlers in Oregon and Washington and the meetings would be open to all members of the industry.

According to the hearing record, a Board recommendation to add a country or region to the trade demand area would be based primarily on the potential market conditions and opportunities in the country or region. Market considerations could include: Transportation modes and costs for getting product to the country or region; non-restrictive or at least neutral import and customs requirements; marketing infrastructure; consumption habits, holidays or cultural factors to which marketing efforts could be tied; economic outlook in the country; and other financial and economic factors.

The record evidence indicates that the characteristics of markets in some countries are very close to market characteristics in the United States. For instance, Canada, an export market country, is an example of a market that could be reviewed in a Board recommendation to expand the trade demand area. There is a considerable difference in price between hazelnuts sold in the U.S. and the same product sold in Canada. Inshell hazelnuts are marketed primarily during the end-of-the-year holiday season—which is also widely celebrated in Canada. The standard of living and disposable income levels in Canada are similar to those in the U.S. Thus, the record indicates that, for instance, the Board could recommend including Western Canada, or possibly all of Canada, in the trade demand area. Other examples of countries or areas which could be considered for inclusion in the trade demand area include Puerto Rico, and all or part of Mexico.

The Board would necessarily need to consider the effect adding a new country or region to the trade demand area would have on the U.S. inshell market. If the inshell supply designated for the trade demand area is not increased to meet the expected demand increase in new countries or regions, the inshell supply available to the U.S. market would be reduced. Thus, the addition of one or more new inshell markets, without an increase in inshell supply, could affect the amount of inshell hazelnuts available for shipment to domestic U.S. markets.

Any Board recommendation to shift a country or region from the export market to the trade demand area would likely result in a corresponding recommendation regarding the free and restricted volumes shipped. The Board should include the projected volume for the new country or region in inshell trade acquisitions when determining free and restricted percentages in its marketing policy recommendation to the Secretary. For instance, if Canada is added to the trade demand area, inshell shipments to Canada would be included in inshell trade acquisitions.

''Export'' sales would be only hazelnut sales to those countries or regions that are not designated as being in the trade demand area.

Record evidence also indicates that the Board could recommend to the Secretary that a country or region be removed from the trade demand area if desired marketing results are not achieved. Indicators of failure could include: The volume of sales of hazelnuts in the new market were below expectations; the expected prices in the new market were not sustained; or the new market resulted in a negative or depressing affect on the marketing of hazelnuts in the remainder of the trade demand area.

The record does not suggest a minimum amount of time that a new country would be in the trade demand area before the Board could recommend its removal to the Secretary. The Board analyzes and recommends its marketing policy to the Secretary on an annual basis. Such analysis should include a complete and thorough review of any changes to the trade demand area that were made during the previous marketing season. Any recommendation to remove a country or region from the trade demand area would be reviewed by the Export Committee and recommended to the Board. Discussions for such a recommendation would be held at meetings open to industry members and the public prior to any recommendation to the Secretary. Thus, it is apparent that implementation of such a recommendation would preclude action to remove a country during the same marketing year it was added to the trade demand area.

A conforming change should be made in paragraph (b) of § 982.52 Disposition of restricted filberts. This amendment was listed as proposed material issue 9 in the Notice of Hearing but is discussed in this material issue as a conforming change.

Testimony submitted at the hearing indicates that free hazelnuts shipped to the trade demand area are marketed at prices higher than export prices. There is concern that exported inshell hazelnuts not be re-exported back to the U.S. at prices less than domestic market prices. The fourth sentence of § 982.52(b) currently provides that exporting handlers obtain certification from buyers that they will not re-export inshell hazelnuts back into the U.S. Record evidence indicates that, because foreign countries may be added to the trade demand area, inshell export sales to countries not in the trade demand area should not be exported or shipped onward to any country designated in the trade demand area. Thus, certifications signed by importers in export countries should include provisions that exported inshell hazelnuts not be exported again to any country or region that is part of

the trade demand area. Inshell hazelnut shipments may be shipped from one trade demand area country or market to other countries or markets that are also in the trade demand area. Based on hearing testimony, the United States is one region and should not be subdivided into two or more regions for the purpose of removing some states from the trade demand area.

The proposed amendments should provide the Board with the flexibility to take advantage of changing market conditions and do so on a timely basis. Thus, § 982.16 should be changed to: (1) Include all states in the U.S. in the inshell trade acquisition distribution area; and (2) allow the Board, with the approval of the Secretary, to add or remove countries or regions to or from the trade demand area. The proposed amendment would also make corresponding changes in the first sentence of paragraph (b) of § 982.52 to include all states of the United States in the trade demand area and add other countries or regions to the trade demand area, as recommended by the Board and approved by the Secretary. Likewise, a corresponding change should be made in the fourth sentence of paragraph (b) to prevent inshell export sales from being exported to countries or regions that are included in the trade demand area.

(3) In paragraph (b) of § 982.33, Selection and term of office, the length of Board member and alternate member terms of office should be changed from one to two years and the number of consecutive terms a member could serve should be limited to three terms. Conforming changes should be made in provisions covering the qualifications of handlers nominating handler members (§ 982.30(b)) and weighting handler votes in the nomination process (§ 982.32(b)), and a minor change should be made in § 982.32(a) to remove the reference to initial Board members. Finally, when nominating the fourth handler member and alternate member, as provided in § 982.32(c), a correction in the criteria used to calculate a handler's minimum weighted vote should be made and the voting procedure should be amended to provide that eligible handlers vote for both the fourth member and fourth alternate member.

The term of office for Board members and alternates has been amended twice since promulgation of the order. The record indicates the reason for this amendment to change the term of office from one to two years is to relieve the administrative burden that yearly nominations procedures place on industry members and the Board's administrative staff. Nomination meetings, industry voting and ballot counting, and resultant certification paperwork have been required of the industry and the Board every year since 1959. When two-year terms were in effect from 1959 to 1986, the terms were staggered, so that half the members were nominated and selected each year. Staggered terms required that nomination referenda be held each year and, thus, did not relieve the burden on industry members or the Board's administrative staff.

This amendment would establish two-year terms of office for Board members and alternate members with all terms beginning and ending at the same time. Thus, the nomination process would be conducted only once every two years, thereby reducing by half the administrative burden on industry members and the Board's administrative staff. Record evidence indicates that, because of the infrequent turnover of new members, the lack of staggered terms should not affect the continuity of Board membership.

Also, record evidence indicates that moving to two year terms of office would be beneficial to the Board's public member and alternate public member. The timing for annual nomination and selection of the Board's public member prevents that member from being an active and effective participant on the Board. Currently, the public member and alternate is nominated at the first meeting of the new Board, usually in late August. However, by the time the public member and alternate is subsequently selected by the Secretary, many important Board activities have been completed for the year. The proposed amendment to establish two-year terms of office would enable the public member and alternate public member to more actively participate in Board decisions because these members would be on the Board for a two-year period.

If the term of office is changed from one to two years, changes also should be made to three provisions regarding Board membership. Sections 982.30 and 982.32, regarding establishment of the Board and nomination of Board members, respectively, should be amended to provide that nominations of the three largest handler members be based on the handlers' tonnage during the previous two marketing years. Currently, nominations are based on the previous year's handled volume.

Paragraph (c) of § 982.32 contains an error in the wording which specifies the minimum weighted vote handlers may cast in nominating the fourth handler member and alternate to serve on the Board. The current language says that if a handler eligible to vote for the fourth handler position handles less than one ''percent,'' the handler's vote should be weighted as one ton. The term ''percent'' does not have any meaning without a reference as a percent of something. Testimony on this provision in the 1986 formal rulemaking proceeding shows that the intent of the industry was for the term to be ton and not percent. This error inadvertently occurred between publication of the proposed rule (50 FR 42545, October 21, 1985) and final rule (51 FR 29547, August 19, 1986) in the previous formal rulemaking proceeding in 1985/86. The Board has recognized the intent of the provision and has correctly recorded handlers' weighted votes when tabulating votes for the fourth handler member and alternate member. Thus, in the third sentence of paragraph (c) of § 982.32, the term ''percent'' should be replaced with the term ''ton.''

Paragraph (c) of § 982.32 should also be amended by changing the last sentence regarding the casting of votes for the fourth handler member and alternate member. Current paragraph (c) provides that handlers vote for one candidate and the candidate receiving the highest number of votes shall be the fourth handler member nominee and the candidate receiving the second highest number of votes shall be the fourth handler alternate member nominee. This proposal provides that each eligible handler shall cast two separate votes: one for the fourth handler member and one for the fourth handler alternate member. The candidates who receive the highest numbers of votes in each category would be the nominees.

Currently, paragraph (b) of § 982.33 limits the number of consecutive one year terms a member may serve to six terms. To maintain the order's intent that members and alternates should not serve more than six consecutive years, paragraph (b) should be amended to provide for a maximum of three consecutive two-year terms of office. If approved in referendum and by the Secretary, the three term limit would begin with the first nominations held after completion of this formal rulemaking process. Thus, any standing Board members and alternates nominated and selected for the first two year term would be eligible to serve two additional terms, regardless of past service. Also, this amendment would not restrict a member who has served three consecutive terms from then serving three consecutive terms as an alternate member or for an alternate member who has served three

consecutive terms from then serving three consecutive terms as a member.

The Board recommended a minor wording change in § 982.32(a) which would remove the reference to ''initial'' Board members as those members serving prior to the amendment of the order. This change would simplify the wording of the paragraph and make it consistent with the changing nature of Board membership. The proposed amended paragraph would provide that members and alternate members of the Board serving immediately prior to the effective date of this amended subpart shall continue to serve until their respective successors have been selected.

Thus, § 982.33 should be amended to provide two year terms of office for Board members and alternate members. Sections 982.30 and 982.32 covering nominating qualifications, weighting handler votes, voting procedures, and consecutive terms should also be changed for consistency and conformity with two-year office terms.

(4) In paragraph (b) of § 982.37, Procedure, the requirement that Board votes by telephone, telegraph or other means of long distance communication be confirmed in writing should be amended to provide that such votes remain unconfirmed until the next public Board meeting.

The Board generally meets twice a year. At least once each year over the last five years, the Board has found it necessary to vote on an issue by telephone. The issue has been the final budget which must be submitted to the Department at a time when there are no scheduled Board meetings.

Record evidence indicates that it is difficult to obtain written confirmation of all telephone votes cast by Board members. All telephone votes must be confirmed, and written confirmation must be unanimous. Even though a ballot is mailed to each member, and follow-up calls are made to those who have not submitted their written ballot, some members fail to respond.

Because of such confirmation delays, some telephone votes have been confirmed at the next public Board meeting. At these meetings, the members confirm their original vote and reaffirm their position. This procedure should be on the record and so recorded in the committee minutes. Reaffirmation must be unanimous. The record indicates that, under the proposed amendment, if any member were to change his or her original vote, the issue would be debated again and a new vote by all committee members would be taken. The second vote would require passage by a simple majority.

The record indicates that telephone votes should be taken only on issues that are known to be non-controversial. If an issue is known to have any one member or industry group against it, a telephone vote on the issue would not be taken and a public meeting would have to be called for consideration of the issue.

The record also indicates that a vote cast by facsimile transmission is considered a vote by ''other means of communication.'' While a facsimile transmission produces a piece of paper which is received and held by the Board staff, the vote would still have to be confirmed at the next public Board meeting.

Thus, § 982.37(b) should be amended to provide that Board votes cast by telephone, telegraph or other means of communication shall be confirmed at the next regularly scheduled Board meeting and that such confirmation shall require ten concurring votes.

(5) In paragraph (i) of § 982.39, Duties, the requirement that the Board furnish verbatim reports of its marketing policy meetings to the Secretary should be amended to require that summary reports of such meetings be furnished to the Secretary.

The promulgation documentation provided that a ''complete report of the proceedings'' of the Board meeting establishing a marketing policy recommendation be reported to the Secretary (14 FR 5669, September 15, 1949). Because the Board in 1959 was providing verbatim reports of marketing policy deliberations, the verbatim requirement was added to the reporting requirement (24 FR 4173, May 23, 1959) and the requirement was moved to paragraph (5) of § 982.39 Duties (24 FR 5307, June 30, 1959). The amendment stated that only that portion of a meeting dealing directly with marketing policy discussions be reported verbatim.

However, the record indicates that verbatim reports are impractical because either a court reporter has to be contracted or a recording would have to be exactly transcribed by a Board employee. Either of these alternatives requires an extra expense for the Board and results in a delay in completing the report.

This amendment would establish that the Board tape record all meetings and then summarize the proceedings using the tape recording to ensure a complete and thorough report. The record testimony reports that this process should take considerably less time and be less costly than making a direct transcript of the recording. This revised procedure is expected to maintain the accuracy of the meeting report.

Thus, § 982.39(i) should be amended to provide that the Board furnish the Secretary a report of the proceedings of each meeting of the Board held for the purpose of marketing policy recommendations.

(6) In paragraph (c)(2) of § 982.40, Marketing policy and volume regulation, the Board should be provided some flexibility in recommending final free and restricted percentages. In the 1985–86 amendment of the order, development of the Board's annual marketing policy and volume regulation action were established to follow specific procedures and formula computations. This amendment would enable the Board to better respond to market conditions when recommending the final free and restricted percentages.

On or before November 15, the Board meets to recommend to the Secretary, the establishment of interim final and final free and restricted percentages. The interim final percentage results in the release of 100 percent of the inshell trade demand previously computed by the Board. Paragraph (c)(2) of § 982.40 now requires that the final percentages release an additional 15 percent of the average of the preceding three years' trade acquisitions of inshell hazelnuts for desirable carryout.

This amendment focuses on the mandatory release of the final 15 percent. Record evidence indicates that the mandatory release of the entire tonnage resulting from the additional 15 percent can sometimes be harmful to the market and may not always be in the best interest of the industry. For instance, the mandatory release of the final 15 percent could place an excess supply of hazelnuts on the market and result in a weak market. Market conditions may be such that release of a smaller final percentage would be a wiser marketing policy. This amendment provides the Board with that flexibility when recommending the final free and restricted percentages.

In addition to complying with the provisions of the marketing order, the Board must also consider the Department's 1982 ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' (Guidelines) when recommending marketing policy computations. Volume control regulation provides the industry a means of collectively limiting the supply of inshell hazelnuts available for sale in the trade demand area. The Guidelines provide that the trade demand area have available a quantity equal to at least 110 percent of recent years' sales in the trade demand area before volume regulations can be implemented. This provides for

plentiful supplies for consumers and for market expansion while retaining a mechanism for dealing with oversupply situations.

The hazelnut industry in Oregon and Washington has satisfied the Guidelines' 110 percent requirement. Pursuant to § 982.40(b), each year the Board may, for market expansion purposes, increase inshell trade demand by an amount up to 25 percent of the previous 3 years' average inshell trade acquisitions. In addition, the Board must add to the adjusted inshell trade demand a total of 15 percent of the 3-year inshell trade acquisition average to meet the desirable carryout requirement of § 982.40(c)(2). This more than meets the 110 percent requirement.

Over the years, the authority for these increases has caused the Board to exceed the Guidelines' 110 percent requirement. It is possible that the Board could choose to recommend a market expansion increase and a final free and restricted percentage increase that totalled less than the Guidelines' 110 percent requirement. However, based on present Board practices, such a recommendation is not expected. Any Board recommendation that totalled less than the 110 percent requirement could be referred by the Secretary back to the Board.

Thus, § 982.40(c)(2) should be amended to provide that the final free and restricted percentages may release up to an additional 15 percent of the average of the preceding three years' trade acquisitions of inshell hazelnuts for desirable carryout.

(7) In paragraph (b) of § 982.46, Inspection and certification, specific identification practices for the handling and withholding of restricted obligation hazelnuts should be amended to provide that all inspected and certified hazelnuts shall be identified as prescribed by the Board.

Traditionally, hazelnuts were inspected and certified as either free or restricted before or during handling, or before being set aside as withheld for restricted obligation. Paragraph (b) provides that handlers use seals, stamps, tags or other identification fixed to the containers to identify lots set aside as either free or restricted hazelnuts. However, the record indicates that, since 1975, industry practices have changed significantly and now allow handlers to substitute fresh hazelnut lots for free and restricted lots that have been set aside. It is no longer necessary for handlers to meet their volume control obligations by maintaining restricted lots that are sealed, stamped, tagged, or otherwise so identified.

Under the proposed amendment, the Board may prescribe other methods of identification of restricted obligation hazelnuts. The record indicates that the Board currently allows handlers to carryover hazelnuts which are reported as either undeclared, declared restricted, or declared free. The hazelnuts are reported as one or the other, but do not have to be specifically so marked.

These relaxed identification procedures would enable handlers to continue to meet identification requirements for restricted obligation hazelnuts without setting aside specific, identifiable lots. The amended procedures would bring the marketing order provisions up-to-date with current industry practices. Thus, § 982.46(b) should be amended to provide that hazelnuts inspected and certified for free and restricted use shall be identified as prescribed by the Board.

(8) In paragraph (a) of § 982.51, Restricted credit for ungraded inshell hazelnuts and for shelled hazelnuts, the current language that authorizes handler credit for ungraded hazelnuts should be amended to delete an incorrect and misleading term.

This provision allows handlers to receive merchantable credit for ungraded inshell hazelnuts they hold to meet their restricted obligation. The hazelnuts must be inspected to determine kernel weight, which is converted back to an inshell equivalent. The industry uses a conversion factor of 60 percent shell or waste product and 40 percent kernel weight. Thus, it takes 2.5 pounds of inshell hazelnuts to make 1 pound of hazelnut kernels—a conversion factor of 2.5 to 1.

However, the first sentence of paragraph (a) of § 982.51 states that the conversion factor is 2.5 ''percent.'' The term ''percent'' is not correct and, in fact, greatly reduces the conversion factor. If the conversion factor was to be represented as a percentage, it would be 250 percent. This error evidently occurred when § 982.51 was amended in 1986. The Board and industry handlers have been operating on the correct conversion factor of 2.5 to 1. Thus, the language that specifies handler credit for ungraded hazelnuts in § 982.51 should be amended to correct the conversion factor as stated herein.

(9) In § 982.54, Deferment of restricted obligation, several changes and conforming changes should be made to provisions regarding bonding values and rates, the use of defaulted bond funds, and the Board's flexibility when dispensing defaulted bond funds.

Prior to or upon shipping inshell hazelnuts to the trade demand area, handlers are required to withhold from handling a quantity of hazelnuts equal to the restricted obligation resulting from that shipment. Hazelnuts so withheld may be exported inshell or shelled. The withholding obligation also may be deferred. Section 982.54 provides that a handler may post a bond as a guarantee that the handler will eventually fulfill the handler's restricted obligations. Hearing testimony indicates that the provision establishing the bonding rate currently specified in the order is too high and too burdensome on handlers under present marketing conditions.

Handlers may either shell or export inshell as many hazelnuts as they wish, but they are limited in the amount of inshell hazelnuts they can sell as free tonnage in the trade demand area when volume regulations are in effect. Volume regulations under the order require that, prior to or upon shipping inshell hazelnuts to the trade demand area, handlers shall withhold from handling a quantity of hazelnuts equal to the restricted obligation resulting from that shipment. Hazelnuts so withheld may be certified merchantable, inspected ungraded, or certified shelled. The domestic inshell market is extremely seasonal with most of the shipments occurring in October or early November, the same period when hazelnuts are harvested and delivered to handlers. During this period, handlers do not have enough hazelnuts certified, inspected, or shelled to meet their restricted obligations. Therefore, handlers use the bonding provisions in the order to defer a large part of their obligations.

As domestic use of inshell hazelnuts has declined and production has increased, the percent of the crop going to the primary inshell market has dropped. For example, in the 1993–94 marketing season, the free percentage was only 13 percent—resulting in a restricted obligation nearly 6.7 times the quantity handled for the free market. Such a high restricted obligation-to-handling ratio makes a bonding rate based on the price for inshell hazelnuts very burdensome. Such a high bonding rate is not necessary as long as the bonding rate reflects the difference between the domestic inshell price and the returns available in authorized markets for restricted hazelnuts such as inshell exports or shelling.

Inshell exports have been a large and growing market for restricted hazelnuts. In some years, the average reported value for inshell exports has exceeded domestic quotations for domestic sales of U.S. No. 1 large hazelnuts. This apparently results from a willingness of some foreign buyers to pay a significant

premium for the largest sizes of hazelnuts. Thus, restricted disposition credits earned by exporting inshell hazelnuts may reflect little or no loss compared to the domestic inshell market.

The order authorizes the transfer of restricted disposition credits between handlers, and some handlers use this authority.

The record shows that members of the Board, particularly its handler members, have knowledge of the marketing opportunities in various restricted outlets and knowledge of the transfer of restricted disposition credits. Thus, the Board should be capable of using these factors to calculate an appropriate bonding rate that is financially acceptable but not so low as to encourage handlers to default on their bonds.

The proposed amendments would change the method by which the Board determines the rate of the bond. Paragraphs (b), (c), (d), (e) and (f) of § 982.54 would be amended to replace terminology that ties bonding rates to the value of quantities handled or certified for handling. Instead, bonding rates would be tied to the estimated value of restricted credits as established by the Board. A bonding rate based on the value of restricted disposition credits should provide adequate protection against default and would be much less burdensome.

Paragraph (b) provides that the bonding value for each handler be established by multiplying the deferred restricted obligation poundage bearing the lowest bonding rate by the applicable bonding rate. Under the proposed amended paragraph (b), the bonding value would be determined by multiplying the deferred restricted obligation poundage by the applicable bonding rate.

Paragraph (c) provides for a bonding rate for each pack withheld which is the amount per pound as established by the Board. Under the proposed amended paragraph (c), the Board would establish the bonding rate based on the Board's estimated value of restricted credits. Record evidence indicates that the value of credits should be based on the value of hazelnuts in all markets—restricted as well as free. Because restricted market hazelnuts usually have less market value than free hazelnuts, the credit value usually is less than the actual market value of free hazelnuts. Thus, a bond based on credit value would lower the value of the bond, making it a more acceptable burden for handlers. The record also indicates that a bond value based on credits would be high enough to discourage handlers from voluntarily defaulting on their bond.

Paragraph (d) requires the Board to use the funds collected from defaulted bond payments to purchase quantities of certified merchantable hazelnuts on which the restricted obligations have been met. To make paragraph (d) consistent with amended paragraph (c), the Board would use defaulted bond funds to purchase restricted credits from handlers.

Paragraph (e) provides that unexpended funds resulting from defaulted bond payments remaining at the end of the marketing year would be used by the Board to pay its expenses and in the purchase of hazelnuts as provided in paragraph (d). Consistent with amended paragraph (d), a conforming change would be made in amended paragraph (e) to provide that unexpended funds resulting from defaulted bond payments remaining at the end of the marketing year could be used by the Board to purchase restricted credits, rather than merchantable hazelnuts, on which the restricted obligation has been met.

The last sentence in paragraph (e) provides that any balance of funds collected from defaulted bond obligations remaining at the end of the marketing year after payment of Board expenses, including administrative costs and the purchase of hazelnuts, would be returned pro-rata to all handlers. However, experience indicates that no such unused funds have remained at the end of recent marketing years to be refunded to handlers. Bond payments based on restricted credit values are expected to result in fewer defaults and less default funds collected. Thus, a marketing year that would produce an excess of defaulted bond funds is not likely to occur. In addition, paragraph (b) of § 982.62 provides Board authority to return excess funds at the end of each marketing year.

Paragraph (f) currently provides that merchantable hazelnuts purchased by the Board as provided in paragraph (d) shall be turned over to handlers who have defaulted on their bonds for disposal by the handlers as restricted hazelnuts. A conforming change would be made in amended paragraph (f) to provide that the restricted credits purchased by the Board under amended paragraph (d) would be turned over to those handlers who have defaulted on their bonds for liquidation of their restricted obligation.

The record indicates that some small handlers only shell hazelnuts and have no need to use the bonding authority. This proposed amendment would have no effect on these handlers. All handlers who use the bonding authority would benefit from the reduced cost of the lower bonding rates.

Therefore, paragraphs (b), (c) and (d) of § 982.54 should be amended to provide, respectively, that: the bonding value be determined by multiplying the deferred restricted obligation poundage by the applicable bonding rate; the bonding rate be based on the estimated value of restricted credits; and the Board use handlers' defaulted bond funds to purchase restricted credits. Conforming changes should also be made to paragraphs (e) unexpended sums and (f) transfer of purchases.

(10) Section 982.57, Exemptions, should be amended to clarify that mail order sales are not exempt from order requirements.

This provision was amended in 1986 to clarify that hazelnuts sold directly to end users (consumers) at a grower's ranch or orchard, or at roadside stands and farmers markets are exempt from regulatory and assessment provisions of the order. No testimony was provided at the amendment hearing in 1985 to suggest that mail order sales should be exempt from order regulations. However, some growers and handlers in the industry believe that the exemption provision applies also to mail order sales.

To help correct this misinterpretation, the Board proposed that § 982.57 be amended by adding a sentence at the end of paragraph (b) to clarify that mail order sales are not considered exempt from order requirements.

The added sentence that appeared in the Notice of hearing for this rulemaking (59 FR 9428; February 28, 1994) included a phrase that could cause further confusion among industry members. The proposed sentence in the Notice of hearing reads, ''Mail order sales to destinations outside the area of production are not considered to be exempt sales under this part.'' The phrase ''to destinations outside the area of production'' could be interpreted to mean that mail order sales to destinations inside the States of Oregon and Washington would be exempt from order requirements. However, this is not consistent with Board policy.

It is current Board policy that no exemptions are authorized for mail order sales, regardless of destination. Hearing testimony indicated that the Board has always considered that no mail order sales are exempt from order regulations. Testimony further indicates that this amendment is not a change in policy. Thus, the proposed clarifying sentence should read: ''Mail order sales are not exempt sales under this part.''

Therefore, paragraph (b) of 982.57 should be amended by adding the clarification that mail order sales are not exempt sales under the order.

(11) A new paragraph (b) of § 982.61, Assessments, should be established to allow the Board to accept advance assessment payments, provide discounts for such advanced payments, and borrow funds. Also, a new § 982.63 Contributions, should be established to allow the Board to accept voluntary contributions for payment of research, promotion, and market development activities.

The marketing order's fiscal period begins July 1, which is three months before the hazelnut harvest and four months before receipt of assessment payments for the new marketing year. During the initial four months, the Board's access to funds is limited. The first proposed amendment is intended to increase the Board's ability to obtain funds on a temporary basis early in the marketing year. While marketing order reserve funds may be used to pay for planned research and promotion programs and other administrative obligations, record evidence indicates that the Board would prefer to accept advance assessment payments or borrow funds rather than draw from the order's reserve funds to pay for financial obligations that might occur prior to the accumulation of assessment funds.

The second amendment would allow the Board to increase funds—through contributions—to pay expenses incurred under § 982.58, Research, promotion and market development. A minor change would be added to § 982.52 to make that provision consistent with the proposed new paragraph. The record indicates that these amendments are not proposed in response to any specific program or current need.

Testimony indicates that with access to additional funds the Board would have the opportunity to enter into significant marketing or promotional programs in conjunction with other commodity groups. Likewise, the Board would have the ability to meet unforeseen increases in administrative obligations that may occur at the start of a marketing year. While such promotional opportunities or emergency needs have not occurred in the past, the Board believes it is important that the Board have the ability to accrue additional funds, if needed.

Record evidence does not provide guidelines or procedures as to how the Board would announce and collect advanced assessment payments or borrow funds. The record does indicate, however, that after approval of the proposed amendment, guidelines and procedures to implement the amendment would be discussed by the Board in a public meeting and recommended to the Secretary for approval through informal rulemaking procedures.

To encourage advance payment, the Board recommended that advance assessment payments be discounted. Record evidence indicates that the amount of discount could be closely tied to prevailing commercial bank interest rates. A discount assessment rate based on commercial bank interest rates would encourage handlers who pay advanced assessments because they would not lose more money than they would accrue if their advanced assessment payment was held in a commercial bank interest bearing account. Discounted assessment payment opportunities should be available to all handlers throughout the production area.

The record confirms that a decision to accept advance assessment payments and offer discounts for such payments would be made at public meetings open to all industry members. Any additional administrative and operating procedures needed for the collection of advance assessment payments and the calculation of appropriate advance payment discounts should be recommended by the Board to the Secretary for approval. The record evidence indicates that the Board's administrative staff has the capability to assure that advance assessment payments and borrowed funds would be properly budgeted and expended for the authorized purposes for which they would be collected.

This recommendation would be established by designating the current assessment provision as paragraph (a) and adding a new paragraph (b) to provide that the Board should have the authority to offer handlers the opportunity to pay assessments in advance and receive a discount on such assessments paid. New paragraph (b) would provide the Board with authority, with Secretarial approval, to borrow funds early in the marketing year. Such borrowed funds would be used to meet program or fiscal needs as described above.

The record indicates that funds should be borrowed from lending institutions rather than from industry handlers. The Board would make the decision to borrow funds based on recommendations of the appropriate committee that establishes the need for the borrowed funds. For example, the Executive Promotion Committee and the Promotion Committee could recommend that the Board should borrow funds for a specified promotion project or program. The record also suggests that borrowed funds should be paid back within the same marketing year, so as not to encumber future Boards with the financial obligations of its predecessors.

The Board proposes that a new § 982.63, Contributions, be established to provide the Board with the authority to accept contributions. Such contributions would be used only to pay for production research, market research and development, and market promotion programs, including paid advertising. Such research and development programs would be designed to improve or promote the marketing, distribution, consumption or efficient production of hazelnuts. The Board would not be able to accept contributions that might have stipulations or other provisos on the expenditure of contributed funds. Thus, the Board would have complete control over the expenditure of contributed funds. The record indicates that the Board has not received contribution offers but would like the authority to accept contributions in the future should they be offered.

The record also indicates that the proviso specifying contributions be free from any encumbrances by the donor is not intended to prevent the Board from entering into joint promotional programs with other agencies. However, funding for such joint programs may not come from donations which specify the intended use of the donated funds.

Therefore, § 982.61 should be amended by adding a new paragraph (b) that provides the Board with the authority to collect advance assessment payments, offer discounts for such payments, and borrow money to provide funds for administration of the order during the early months of the marketing period. Also, a new § 982.63, Contributions, should be established to provide the Board with the authority to accept contributions, provided that such contributions are used to pay expenses incurred pursuant to § 982.58 and are free of any encumbrances by the donor. A conforming change should be made to § 982.58, adding contributions as a source of funds that may only be used to pay research, promotion and market development expenses.

(12) The Department proposed in the public hearing to make such changes as are necessary to conform with any amendment that may result from the hearing. This proposal was supported at the hearing without opposition. Record evidence supports these changes.

Rulings on Briefs of Interested Persons

The presiding officer of the hearing set April 8, 1994, as the final date for filing briefs with respect to the evidence presented at the hearing and the conclusions which should be drawn therefrom. No briefs were received.

General Findings

Upon the basis of the record, it is found that:

(1) The findings hereinafter set forth are supplementary to the previous findings and determinations which were made in connection with the issuance of the marketing agreement and order and each previously issued amendment thereto. Except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein, all of the said prior findings and determinations are hereby ratified and affirmed;

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

(3) The marketing agreement and order, as amended, and as hereby proposed to be further amended, regulate the handling of hazelnuts grown in the production area in the same manner as, and are applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which a hearing has been held;

(4) The marketing agreement and order, as amended, and as hereby proposed to be further amended, are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act; and

(5) All handling of hazelnuts grown in the production area as defined in the marketing agreement and order, as amended, and as hereby proposed to be further amended, is in the current of interstate or foreign commerce or directly burdens, obstructs or affects such commerce.

List of Subjects in 7 CFR Part 982

Filberts, Hazelnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 982 is proposed to be amended as follows:

PART 982—FILBERTS/HAZELNUTS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 982 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In part 982 all references to ''filbert'', ''filberts'', ''filbert/hazelnut'', ''filberts/hazelnuts'' are revised to read as ''hazelnut'', ''hazelnuts'', ''hazelnut'', and hazelnuts'', respectively.

3. Section 982.4 is revised to read as follows:

§ 982.4 Hazelnuts.

Hazelnuts means hazelnuts or filberts produced in the States of Oregon and Washington from trees of the genus Corylus.

4. Section 982.16 is revised to read as follows:

§ 982.16 Inshell trade acquisitions.

Inshell trade acquisitions means the quantity of inshell hazelnuts acquired by the trade from all handlers during a marketing year for distribution in the continental United States and such other distribution areas as may be recommended by the Board and established by the Secretary.

5. Section 982.30 is amended by revising paragraphs (a), (b)(1), (b)(2), and (b)(3) to read as follows:

§ 982.30 Establishment and membership.

(a) There is hereby established a Hazelnut Marketing Board consisting of 10 members, each of whom shall have an alternate member, to administer the terms and provisions of this part. Each member and alternate shall meet the same eligibility qualifications. The 10 member positions shall be allocated as follows:

(b) * * *

(1) One member shall be nominated by the handler who handled the largest volume of hazelnuts during the two marketing years preceding the marketing year in which nominations are made;

(2) One member shall be nominated by the handler who handled the second largest volume of hazelnuts during the two marketing years preceding the marketing year in which nominations are made;

(3) One member shall be nominated by the handler who handled the third largest volume of hazelnuts during the two marketing years preceding the marketing year in which nominations are made;

* * * * *

6. In § 982.32, paragraphs (a), (b), (c) and (f) are revised to read as follows:

§ 982.32 Initial members and nomination of successor members.

(a) Members and alternate members of the Board serving immediately prior to the effective date of this amended subpart shall continue to serve on the Board until their respective successors have been selected.

(b) Nominations for successor handler members and alternate members specified in § 982.30(b) (1) through (3) shall be made by the largest, second largest, and third largest handler determined according to the tonnage of certified merchantable hazelnuts and, when shelled hazelnut grade and size regulations are in effect, the inshell equivalent of certified shelled hazelnuts (computed to the nearest whole ton) recorded by the Board as handled by each such handler during the two marketing years preceding the marketing year in which nominations are made.

(c) Nominations for successor handler member and alternate handler member positions specified in § 982.30(b)(4) shall be made by the handlers in that category by mail ballot. All votes cast shall be weighted according to the tonnage of certified merchantable hazelnuts and, when shelled hazelnut grade and size regulations are in effect, the inshell equivalent of certified shelled hazelnuts (computed to the nearest whole ton) recorded by the Board as handled by each handler during the two marketing years preceding the marketing year in which nominations are made. If less than one ton is recorded for any such handler, the vote shall be weighted as one ton. Voting will be by position, and each eligible handler can vote for a member and an alternate member. The person receiving the highest number of weighted votes for each position shall be the nominee for that respective position.

* * * * *

(f) Nominations received in the foregoing manner by the Board for all handler and grower member and alternate member positions shall be certified and sent to the Secretary at least 60 days prior to the beginning of each two-year term of office, together with all necessary data and other information deemed by the Board to be pertinent or requested by the Secretary. If nominations are not made within the time and manner specified in this subpart, the Secretary may, without regard to nominations, select the Board members and alternates on the basis of the representation provided for in this subpart.

* * * * *

7. In § 982.33, paragraph (b) is revised to read as follows:

§ 982.33 Selection and term of office.

* * * * *

(b) *Term of office.* The term of office of Board members and their alternates shall be for two years beginning on July 1 and ending on June 30, but they shall serve until their respective successors are selected and have qualified: Provided, That beginning with the 199____–9____ marketing year, no member shall serve more than three consecutive two-year terms as member and no alternate member shall serve more than three consecutive two-year terms as alternate unless specifically exempted by the Secretary. Nomination elections for all Board grower and handler member and alternate positions shall be held every two years.

* * * * *

8. In § 982.37, paragraph (b) is revised to read as follows:

§ 982.37 Procedure.

* * * * *

(b) The Board may vote by mail, telephone, telegraph, or other means of communication: *Provided,* That any votes (except mail votes) so cast shall be confirmed at the next regularly scheduled meeting. When any proposition is submitted for voting by any such method, its adoption shall require 10 concurring votes.

* * * * *

9. In § 982.39, paragraph (i) is revised to read as follows:

§ 982.39 Duties.

* * * * *

(i) To furnish to the Secretary a report of the proceedings of each meeting of the Board held for the purpose of making marketing policy recommendations.

10. In § 982.40, paragraph (c)(2) introductory text is amended by removing the word ''shall'' in the third sentence and adding in its place the word ''may''.

11. In § 982.46, paragraph (b) is revised to read as follows:

§ 982.46 Inspection and certification.

* * * * *

(b) All hazelnuts so inspected and certified shall be identified as prescribed by the Board. Such identification shall be affixed to the hazelnut containers by the handler under direction and supervision of the Board or the Federal-State Inspection Service, and shall not be removed or altered by any person except as directed by the Board.

* * * * *

§ 982.51 [Amended]

12. In § 982.51, paragraph (a) is amended by removing the word ''percent'' at the end of the first sentence.

13. In § 982.52, paragraph (b) is revised to read as follows:

§ 982.52 Disposition of restricted hazelnuts.

* * * * *

(b) *Export.* Sales of certified merchantable restricted hazelnuts for shipment to destinations outside the United States and such other distribution areas as may be recommended by the Board and established by the Secretary shall be made only by the Board. Any handler desiring to export any part or all of that handler's certified merchantable restricted hazelnuts shall deliver to the Board the certified merchantable restricted hazelnuts to be exported, but the Board shall be obligated to sell in export only such quantities for which it may be able to find satisfactory export outlets. Any hazelnuts so delivered for export which the Board is unable to export shall be returned to the handler delivering them. Sales for export shall be made by the Board only on execution of an agreement to prevent exportation into the area designated in § 982.16. A handler may be permitted to act as an agent of the Board, upon such terms and conditions as the Board may specify, in negotiating export sales, and when so acting shall be entitled to receive a selling commission as authorized by the Board. The proceeds of all export sales, after deducting all expenses actually and necessarily incurred, shall be paid to the handler whose certified merchantable restricted hazelnuts are so sold by the Board.

* * * * *

14. In § 982.54, paragraphs (b), (c), (d), (e) and (f) are revised to read as follows:

§ 982.54 Deferment of restricted obligation.

* * * * *

(b) *Bonding requirement.* Such bond or bonds shall, at all times during their effective period, be in such amounts that the aggregate thereof shall be no less than the total bonding value of the handler's deferred restricted obligation. The bonding value shall be the deferred restricted obligation poundage multiplied by the applicable bonding rate. The cost of such bond or bonds shall be borne by the handler filing same.

(c) *Bonding rate.* Said bonding rate shall be an amount per pound as established by the Board. Such bonding rate shall be based on the estimated value of restricted credits for the current marketing year. Until bonding rates for a marketing year are fixed, the rates in effect for the preceding marketing year shall continue in effect. The Board should make any necessary adjustments once such new rates are fixed.

(d) *Restricted credit purchases.* Any sums collected through default of a handler on the handler's bond shall be used by the Board to purchase restricted credits from handlers, who have such restricted credits in excess of their needs, and are willing to part with them. The Board shall at all times purchase the lowest priced restricted credits offered, and the purchases shall be made from the various handlers as nearly as practicable in proportion to the quantity of their respective offerings of the restricted credits to be purchased.

(e) *Unexpended sums.* Any unexpended sums which have been collected by the Board through default of a handler on the handler's bond, remaining in the possession of the Board at the end of a marketing year, shall be used to reimburse the Board for its expenses, including administrative and other costs incurred in the collection of such sums, and in the purchase of restricted credits as provided in paragraph (d) of this section.

(f) *Transfer of restricted credit purchases.* Restricted credits purchased as provided for in this section shall be turned over to those handlers who have defaulted on their bonds for liquidation of their restricted obligation. The quantity delivered to each handler shall be that quantity represented by sums collected through default.

* * * * *

15. In § 982.57, paragraph (b) is revised to read as follows:

§ 982.57 Exemptions.

* * * * *

(b) *Sales by growers direct to consumers.* Any hazelnut grower may sell hazelnuts of such grower's own production free of the regulatory and assessment provisions of this part if such grower sells such hazelnuts in the area of production directly to end users at such grower's ranch or orchard or at roadside stands and farmers' markets. The Board, with the approval of the Secretary, may establish such rules, regulations, and safeguards and require such reports, certifications, and other conditions, as are necessary to ensure that such hazelnuts are disposed of only as authorized. Mail order sales are not exempt sales under this part.

16. In § 982.58, the last sentence of paragraph (a) is revised to read as follows:

§ 982.58 Research, promotion, and market development.

(a) * * * The expenses of such projects shall be paid from funds collected pursuant to § 982.61, § 982.63, or credited pursuant to paragraph (b) of this section.

* * * * *

17. Section 982.61 is amended by designating the existing undesignated paragraph as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 982.61 Assessments.

(a) * * *

(b) In order to provide funds for the administration of the provisions of this part during the first part of a fiscal period before sufficient operating income is available from assessments on the current year's shipments, the Board may accept the payment of assessments in advance, and may also borrow money for such purpose. Further, payment discounts may be authorized by the Board upon the approval of the Secretary to handlers making such advance assessment payments.

18. A new § 982.63 is added to read as follows:

§ 982.63 Contributions.

The Board may accept voluntary contributions but these shall only be used to pay expenses incurred pursuant to § 982.58. Furthermore, such contributions shall be free from any encumbrances by the donor and the Board shall retain complete control of their use.

Dated: May 24, 1995.

Lon Hatamiya,

Administrator.

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Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

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