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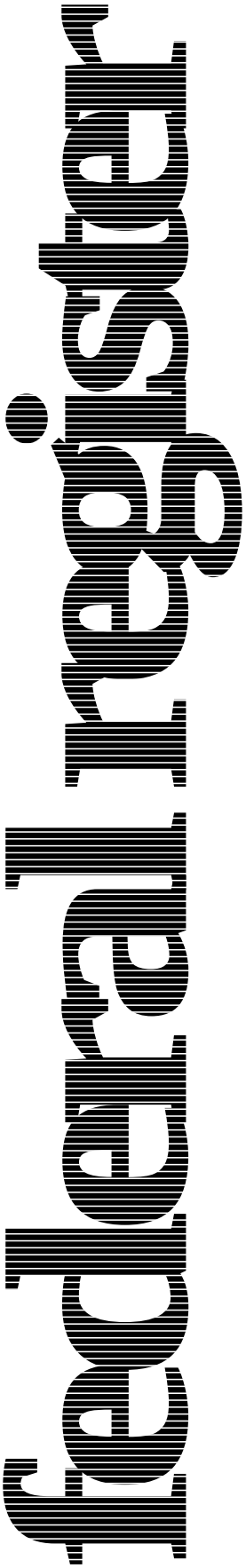

Wednesday
July 12, 1995

Briefings on How To Use the Federal Register
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WHO: The Office of the Federal Register.

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

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
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3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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

WASHINGTON, DC

WHEN: July 27 at 9:00 am

WHERE: Office of the Federal Register Conference Room, 800 North Capitol Street NW., Washington, DC (3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

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Separate Parts In This Issue

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
Vol. 60, No. 133
Wednesday, July 12, 1995

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 201

[Docket No. 93–126–3]

Imported Seed

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Federal Seed Act regulations by expanding the list of noxious weed seeds to include seeds of all of the weeds listed in the Federal Noxious Weed Act regulations. This rule will allow APHIS to prohibit the entry into the United States of any imported agricultural or vegetable seed shipment containing seeds of any noxious weed listed in the Federal Noxious Weed Act regulations. This action is necessary to prevent the introduction of noxious weeds into the United States.

EFFECTIVE DATE: August 11, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Polly Lehtonen, Botanist, Biological Assessment and Taxonomic Support, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236, (301) 734–8896.

SUPPLEMENTARY INFORMATION:

Background

In 1939, Congress enacted the Federal Seed Act (FSA), directing the U.S. Department of Agriculture (USDA) to, among other things, regulate foreign commerce in seeds in cooperation with the U.S. Department of the Treasury. Title III of the FSA, ''Foreign Commerce,'' requires shipments of imported agricultural and vegetable seeds to be labeled correctly and to be tested for the presence of the seeds of certain noxious weeds as a condition of entry into the United States. Since October 1, 1982, the Animal and Plant Health Inspection Service (APHIS) has had authority for issuing and enforcing regulations under Title III of the FSA (7 CFR 201.39 through 201.47b, 201.66, and 201.101 through 201.230); that authority had been held by the USDA's Agricultural Marketing Service prior to October 1982.

On March 23, 1995, we published in the **Federal Register** (60 FR 15257–15260, Docket No. 93–126–2) a proposal to amend the FSA regulations by: (1) Expanding the list of noxious weed seeds to include seeds of all of the weeds listed in the Federal Noxious Weed Act (FNWA) regulations; (2) modifying existing tolerances for certain weed seeds in imported shipments of agricultural and vegetable seeds; and (3) updating the taxonomic names of several weeds listed in the FSA regulations. We also announced that we would be hosting a public hearing on April 4, 1995, to provide interested persons with an opportunity to present their views regarding the proposed rule.

We solicited comments concerning our proposal for 30 days ending April 24, 1995. We received five comments by that date. The April 4, 1995, hearing was held as scheduled, but no members of the public attended to present comments. The five written comments we received were from four State agriculture agencies and a university. Four commenters fully supported the proposed rule. The fifth commenter also supported our proposal to expand the list of noxious weed seeds in the FSA regulations to include seeds of all of the weeds listed in the FNWA regulations, but he questioned whether two particular plants should be included in the list of weeds in the FNWA regulations and, consequently, on the list of noxious weed seeds in the FSA regulations. We have included a discussion of the commenter's position regarding the two plants and APHIS' response in a companion final rule, ''Noxious Weeds; Deletions and Additions to List,'' APHIS Docket No. 94–050–2, published elsewhere in the Rules and Regulations section of this issue of the **Federal Register**. We have, however, made no change in this final rule based on that comment because no change was made to the list of noxious weeds in the FNWA regulations.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

We are expanding the list of noxious weed seeds contained in FSA regulations by including the seeds of all weeds listed in FNWA regulations. The rule will allow APHIS to prohibit the entry of any agricultural or vegetable seed shipments containing noxious weed seeds listed in the FNWA regulations.

The weeds already established in the United States pose serious threats to the U.S. supplies of food and fiber, causing losses in both yield and quality of crops. As a result of increased weed competition, yields decline, production decreases, exports decrease, and prices of commodities increase. Weed management has a major influence on the production decisions made by agricultural producers. The use of additional land, livestock, labor, equipment and fuel, herbicides, insecticides and fungicides, fertilizers, and irrigation water may all be required in order to maintain economical commodity production when weeds are present.

Between 1989 and 1991, weeds in crops and forage cost producers using herbicides about $4.1 billion annually and cost producers unable to use herbicides about $19.6 billion annually. (These estimates represent the upper limits of costs related to weeds.) Although such losses varied between crops and regions, we estimate yield reduction to have been between 10 and 20 percent. Furthermore, certain weeds in pasture lands not only reduce production and availability but also poison livestock. Livestock losses related to weeds are estimated at about 3 to 5 percent annually.

Many of the nonindigenous weed species listed in the FNWA regulations attack important farm crops in their native lands. Among farm products attacked by such weeds are corn, wheat, sorghum, tobacco, tomatoes, sugarcane, potatoes, grapes, sunflowers, rice,

carrots, and pasture grasses. Those crops generate an annual income of approximately $50 billion in the United States and account for about an estimated $19 billion in U.S. exports. Therefore, even if yield losses related to new weeds were much less than the average loss related to established weeds (10 to 20 percent), the economic impact related to their introduction would be substantial.

Very few agricultural and vegetable seed shipments have been found to be contaminated with seeds of weeds listed in the FNWA regulations. The recent interception of goatsrue seeds in a carrot seed shipment from Chile was the first case of a noxious weed listed in the FNWA regulations, but not under the FSA regulations, being found in an agricultural or vegetable seed shipment since serrated tussock seed was found in a lawn grass seed shipment 6 years ago.

Goatsrue is a perennial weed that competes with and reduces yields of forage plants in moist or irrigated pastures, grassland, marshy areas, riverbanks, and along roadsides. The cost of eradicating goatsrue already introduced has been substantial to APHIS; since the eradication program began in 1981, APHIS has appropriated about $1.7 million to the ongoing effort.

Although we could not prohibit the entry of the imported carrot seed based on its contamination with goatsrue seed, the importer agreed not to distribute the seed in the United States. However, had we had the authority to prohibit the entry of the shipment based on its contamination with goatsrue, and had the importer subsequently destroyed the contaminated seed, we estimate that the importer would have incurred a loss of about $24,000. That sort of loss is insubstantial compared with the potential agricultural costs and production losses that could result from the introduction of a noxious weed.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

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

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 201

Advertising, Agricultural commodities, Imports, Labeling, Reporting and recordkeeping requirements, Seeds, Vegetables.

Accordingly, 7 CFR part 201 is amended as follows:

PART 201—FEDERAL SEED ACT REGULATIONS

1. The authority citation for part 201 continues to read as follows:

Authority: 7 U.S.C. 1592.

§ 201.66 [Removed and reserved]

2. Section 201.66 is removed and reserved.

3. Section 201.105 is revised to read as follows:

§ 201.105 Noxious weed seeds.

(a) Seeds of the following plants shall be considered noxious weed seeds:

[1] *Acroptilon repens* (L.) DC. (=*Centaurea repens* L.) (=*Centaurea picris*)
Aeginetia spp.
Ageratina adenophora (Sprengel) King & Robinson
Alectra spp.
Alternanthera sessilis (L.) R. Brown ex de Candolle
Asphodelus fistulosus L.
Avena sterilis L. (including *Avena ludoviciana* Durieu)
Azolla pinnata R. Brown
Borreria alata (Aublet) de Candolle
[1] *Cardaria draba* (L.) Desv.
[1] *Cardaria pubescens* (C. A. Mey.) Jarmol.
Carthamus oxycantha M. Bieberstein
Chrysopogon aciculatus (Retzius) Trinius
[1] *Cirsium arvense* (L.) Scop.
Commelina benghalensis L.
[1] *Convolvulus arvensis* L.
Crupina vulgaris Cassini
Cuscuta spp.
Digitaria abyssinica (=*D. scalarum*)
Digitaria velutina (Forsskal) Palisot de Beauvois
Drymaria arenarioides Humboldt & Bonpland ex Roemer & Schultes
Eichhornia azurea (Swartz) Kunth
[1] *Elytrigia repens* (L.) Desv. (=*Agropyron repens* (L.) Beauv.)
Emex australis Steinheil
Emex spinosa (L.) Campdera
[1] *Euphorbia esula* L.
Galega officinalis L.
Heracleum mantegazzianum Sommier & Levier
Hydrilla verticillata (Linnaeus f.) Royle
Hygrophila polysperma T. Anderson
Imperata brasiliensis Trinius
Imperata cylindrica (L.) Raeuschel
Ipomoea aquatica Forsskal
Ipomoea triloba L.
Ischaemum rugosum Salisbury
Lagarosiphon major (Ridley) Moss
Leptochloa chinensis (L.) Nees
Limnophila sessiliflora (Vahl) Blume
Lycium ferocissimum Miers
Melaleuca quinquenervia (Cav.) Blake
Melastoma malabathricum L.
Mikania cordata (Burman f.) B. L. Robinson
Mikania micrantha Humboldt, Bonpland & Kunth
Mimosa invisa Martius
Mimosa pigra L. var. *pigra*
Monochoria hastata (L.) Solms-Laubach
Monochoria vaginalis (Burman f.) C. Presl
Nassella trichotoma (Nees) Hackel ex Arechavaleta
Opuntia aurantiaca Lindley
Orobanche spp.
Oryza longistaminata A. Chevalier & Roehrich
Oryza punctata Kotschy ex Steudel
Oryza rufipogon Griffith
Ottelia alismoides (L.) Pers.
Paspalum scrobiculatum L.
Pennisetum clandestinum Hochstetter ex Chiovenda
Pennisetum macrourum Trinius
Pennisetum pedicellatum Trinius
Pennisetum polystachion (L.) Schultes
Prosopis alapataco R. A. Philippi
Prosopis argentina Burkart
Prosopis articulata S. Watson
Prosopis burkartii Munoz
Prosopis caldenia Burkart
Prosopis calingastana Burkart
Prosopis campestris Grisebach
Prosopis castellanosii Burkart
Prosopis denudans Bentham
Prosopis elata (Burkart) Burkart
Prosopis farcta (Solander ex Russell) Macbride
Prosopis ferox Grisebach
Prosopis fiebrigii Harms
Prosopis hassleri Harms
Prosopis humilis Gillies ex Hooker & Arnott
Prosopis kuntzei Harms
Prosopis pallida (Humboldt & Bonpland ex Willdenow) Humboldt, Bonpland & Kunth
Prosopis palmeri S. Watson
Prosopis reptans Bentham var. *reptans*
Prosopis rojasiana Burkart
Prosopis ruizlealii Burkart
Prosopis ruscifolia Grisebach
Prosopis sericantha Gillies ex Hooker & Arnott
Prosopis strombulifera (Lamarck) Bentham
Prosopis torquata (Cavanilles ex Lagasca y Segura) de Candolle
Rottboellia cochinchinensis (Lour.) Clayon (=*R. exaltata* (L.) L. f.)
Rubus fruticosus L. (complex)
Rubus moluccanus L.
Saccharum spontaneum L.
Sagittaria sagittifolia L.
Salsola vermiculata L.
Salvinia auriculata Aublet
Salvinia biloba Raddi
Salvinia herzogii de la Sota
Salvinia molesta D.S. Mitchell
Setaria pallide-fusca (Schumacher) Stapf & Hubbard
Solanum torvum Swartz
Solanum viarum Dunal
[1] *Sonchus arvensis* L.
[1] *Sorghum halepense* (L.) Pers.

Sparganium erectum L.
Striga spp.
Tridax procumbens L.
Urochloa panicoides Beauvois

[1] Seeds with tolerances applicable to their introduction.

(b) The tolerance applicable to the prohibition of the noxious weed seeds in paragraph (a) of this section marked with ([1]) shall be two seeds in the minimum amount required to be examined as shown in Table 1, § 201.46. If fewer than two seeds are found in an initial examination, the shipment from which the sample was drawn may be imported. If two seeds are found in an initial examination, a second sample must be examined. If two or fewer seeds are found in the second examination, the shipment from which the samples were drawn may be imported. If three or more seeds are found in the second examination, the shipment from which the samples were drawn may not be imported. If three or more seeds are found in an initial examination, the shipment from which the sample was drawn may not be imported.

Done in Washington, DC, this 3rd day of July 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–17017 Filed 7–11–95; 8:45 am]

BILLING CODE 3410–34–P

7 CFR Part 360

[Docket No. 94–050–2]

Noxious Weeds; Deletions and Additions to List

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the noxious weed regulations by removing *Stratiotes aloides* Linnaeus (water-aloe) from the list of aquatic weeds and *Euphorbia prunifolia* Jacquin (painted euphorbia) from the list of terrestrial weeds. We are also amending the noxious weed regulations by adding *Ottelia alismoides* (L.) Pers. to the list of aquatic weeds and *Solanum viarum* Dunal (tropical soda apple) to the list of terrestrial weeds. Listed noxious weeds may be moved into or through the United States only under a written permit and under conditions that would not involve a danger of dissemination of the weeds. This action is necessary to prevent the artificial spread of noxious weeds into noninfested areas of the United States, and to remove unnecessary restrictions.

EFFECTIVE DATE: August 11, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Polly Lehtonen, Botanist, Biological Assessment and Taxonomic Support, PPQ, APHIS, Suite 4A03, 4700 River Road Unit 113, Riverdale, MD 20737–1236, (301) 734–4394.

SUPPLEMENTARY INFORMATION:

Background

The noxious weed regulations (referred to below as the regulations) were promulgated under authority of the Federal Noxious Weed Act of 1974 (7 U.S.C. 2801 *et seq.*, referred to below as the Act) and are set forth in 7 CFR part 360. They contain restrictions on the movement of listed noxious weeds into or through the United States, but do not affect the movement of listed noxious weeds that are moved solely intrastate.

A listed noxious weed may be moved into or through the United States only pursuant to a written permit. The regulations provide that the Animal and Plant Health Inspection Service (APHIS) will issue a written permit only after determining that the importation and movement of the noxious weed would not involve a danger of dissemination of the noxious weed in the United States.

On March 23, 1995, we published in the **Federal Register** (60 FR 15260–15262, Docket No. 94–050–1) a proposal to amend § 360.200 by removing *Stratiotes aloides* Linnaeus (water-aloe) from the list of aquatic weeds and *Euphorbia prunifolia* Jacquin (painted euphorbia) from the list of terrestrial weeds. We also proposed to amend the noxious weed regulations by adding *Ottelia alismoides* (L.) Pers. to the list of aquatic weeds and *Solanum viarum* Dunal (tropical soda apple) to the list of terrestrial weeds.

We held a public hearing on the proposed rule on April 4, 1995. No one came to speak about the proposed rule. We also solicited written comments concerning our proposal for 30 days ending April 24, 1995. We received five comments by that date. They were from industry groups and representatives of State and Federal governments. We carefully considered all of the comments we received. They are discussed below.

All of the comments that we received were strongly in favor of adding tropical soda apple to the list of terrestrial weeds. Two commenters talked about how surveys conducted in Florida indicated that the original infestation of this noxious weed has spread dramatically and now poses a significant threat to other southern States. This noxious weed has spread through more than 500,000 acres of pasture and other land in Florida.

One commenter requested that APHIS consider setting aside funds to foster Federal and State cooperative efforts in keeping with APHIS' mission of excluding exotic plant pest species and enhancing trade opportunities for States threatened by tropical soda apple.

As resources permit, APHIS will continue to work closely with the weed research community, cooperators, and other interested parties to develop appropriate tropical soda apple control methods.

One commenter was concerned that APHIS did not propose measures to ensure the cleanliness of interstate shipments of cattle, manure, or grass seed.

At this time, available research on tropical soda apple is limited and inconclusive. Several efforts, such as ecological range studies and determining natural and artificial means of spread, are underway to determine the network of artificial and natural spread, but are not yet completed. One of the main vectors responsible for the artificial spread of tropical soda apple is cattle. APHIS, with the cooperation of the Florida State Veterinarian, has examined copies of all the certificates that accompanied the cattle moved interstate from Florida during the past 2 years. These records revealed the points of destination for the cattle shipments from Florida. These points of destination are considered by APHIS to be at high risk for becoming infested with tropical soda apple. These areas are being closely monitored by both APHIS and the States. Any tropical soda apple plants found will be destroyed. APHIS is aware of other avenues of artificial spread and is also monitoring those areas at risk in lieu of establishing quarantines.

Only one commenter was opposed to one of the additions to the list of noxious weeds. This commenter stated that *Ottelia alismoides* (L.) Pers. should not be added to the list of aquatic weeds. The commenter said that in 1977, *Otellia alismoides* (L.) Pers. was collected in California in an irrigation drainage ditch next to some rice fields, but was never treated, and has never been known to be a problem in the rice fields. This same commenter also asked that a weed already on the list, *Ipomea aquatica,* be deleted from the list because it is grown commercially in California.

APHIS recognizes that *Otellia alismoides* (L.) Pers. and *Ipomea aquatica* are not problems in California, but they pose a threat to Florida and other southern States. APHIS is taking

this action to reduce the risk that *Ottelia alismoides* (L.) Pers. and *Ipomea aquatica* will be introduced into other States and become established there.

One commenter suggested that APHIS add *Solanum tampincensis* to the list of noxious weeds. The commenter stated that *Solanum tampincensis* is a related species to tropical soda apple, but occupies much wetter habitats.

APHIS would welcome specific information on this weed that would help us to assess the pest risk potential of *Solanum tampincensis* and decide if it should be added to the list of noxious weeds. Information that APHIS needs in order to assess the risk posed by *Solanum tampincensis* would be its current distribution within and outside the United States, potential range within the United States (expressed, for example, in plant hardiness zones), biology, dispersal potential, potential economic and environmental impacts, and the source of any information provided.

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

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

In accordance with 5 U.S.C. 603, we have performed a Final Regulatory Flexibility Analysis, set forth below, regarding the impact of this rule on small entities.

In accordance with 7 U.S.C. 2803 and 2809, the Secretary of Agriculture is authorized to promulgate regulations to prevent the movement of any noxious weed into the United States, or interstate, except under conditions prescribed by the Secretary.

This rule will add tropical soda apple to the list of terrestrial noxious weeds. The reduction in usable acreage caused by the spread of tropical soda apple poses a significant threat to the cattle industry and to other agricultural entities. Tropical soda apple also poses a threat to natural ecosystems. The weed is spreading into citrus groves, vegetable farms, sugarcane production areas, and dairy farms. Preventing further introductions and curtailing spread will have a positive economic impact on ranchers and growers not yet affected.

With this rule, commodities offered for import found to be contaminated with propagules of tropical soda apple will be cleaned, treated, or reexported. This will have a minimal negative economic impact on various importers. However, information regarding importations of commodities contaminated with tropical soda apple is not available, nor is the number of importers of such material.

This rule will also remove *Euphorbia prunifolia* Jacquin (painted Euphorbia) from the list of terrestrial noxious weeds, and will therefore remove restrictions on its importation and interstate movement. From 1985 through 1993, 207 shipments of articles intended for entry into the United States were found to contain *Euphorbia,* possibly *prunifolia.*

This rule will also add *Ottelia alismoides* (L.) Pers. to the list of aquatic noxious weeds, and will remove *Stratiotes aloides* Linnaeus (water-aloe) from the list of aquatic noxious weeds. Data on the amount of *Ottelia alismoides* (L.) Pers., if any, currently being imported into the United States is unavailable. From 1985 through 1993, one shipment of articles intended for entry into the United States was found to contain *Stratiotes aloides* Linnaeus (water-aloe).

A listed noxious weed may be moved into or through the United States only pursuant to a written permit. The regulations provide that APHIS will issue a written permit only after determining that the importation and movement of the noxious weed will not involve a danger of dissemination of the noxious weed in the United States.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

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

Paperwork Reduction Act Statement

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

List of Subjects in 7 CFR Part 360

Imports, Plants (Agriculture), Quarantine, Reporting and recordkeeping requirements, Transportation, Weeds.

Accordingly, 7 CFR part 360 is amended as follows:

PART 360—NOXIOUS WEED REGULATIONS

1. The authority citation for part 360 continues to read as follows:

Authority: 7 U.S.C. 2803 and 2809; 7 CFR 2.17, 2.51, and 371.2(c).

§ 360.200 [Amended]

2. Section 360.200 is amended as follows:

a. In paragraph (a), by removing ''*Stratiotes aloides* Linnaeus (water-aloe)''.

b. In paragraph (a), by adding ''*Ottelia alismoides* (L.) Pers.'' immediately after ''*Monochoria vaginalis* (Burman f.) C. Presl''.

c. In paragraph (c), by removing ''*Euphorbia prunifolia* Jacquin (painted euphorbia)''.

d. In paragraph (c), by adding ''*Solanum viarum* Dunal (tropical soda apple)'' immediately after ''*Solanum torvum* Swartz (turkeyberry)''.

Done in Washington, DC, this 3rd day of July 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant and Health Inspection Service.

[FR Doc. 95–17018 Filed 7–11–95; 8:45 am]

BILLING CODE 3410–34–P

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AB27

Common Crop Insurance Regulations; Various Crop Provisions

AGENCY: Federal Crop Insurance Corporation.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation (''FCIC'') hereby amends the Common Crop Insurance Regulations, applicable for the 1995 crop year only, by revising the prevented planting coverage for the Small Grains, Coarse Grains, Cotton, and Extra Long Staple Cotton Crop Provisions. 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 September 11, 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, DC 20250. Hand or messenger delivery may be made to 2101 L Street NW., Suite 500, Washington, DC. Written comments will be available for public inspection and copying in the Office of the Manager, 2101 L Street NW., 5th Floor, Washington, DC, during regular business hours, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For further information and a copy of the Cost-Benefit Analysis to the Common Crop Insurance prevented planting provision, contact Diana Moslak, Regulatory and Procedural Development Staff, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 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 small grains is July 1, 1998 and for coarse grains, cotton and Extra Long Staple cotton is March 1, 1999.

This rule has been determined to be ''significant'' for purposes of Executive Order 12866, and therefore, has been reviewed by the Office of Management and Budget (''OMB'').

A Cost-Benefit Analysis has been completed and is available to interested persons at the address listed above. In summary, the analysis finds that this action will alleviate an inequity of the crop insurance rules that affect farmers who are unable to plant compared to farmers who are able to plant. The prevented planting rules promulgated in 1993 did not authorize a prevented planting guarantee on any acreage ''considered to have been left unplanted'' under other programs of the U.S. Department of Agriculture. The intent was to avoid double payments for the same loss so that the programs were less intrusive on economic incentives to plant. However, it has been determined that these payments are not for a loss of production, but rather are an income supplement. Producers who plant a crop that subsequently fails are entitled to a full indemnity from crop insurance in addition to the supplemental payments under the deficiency payment programs. Thus, removing the restriction on land ''considered to have been left unplanted'' places these producers on the same basis as those who plant.

The change in rules is not expected to have significant costs in most crop years since relatively small acreages normally cannot be planted. The cost will be greater in 1995, primarily to pay prevented planting payments to producers insured at the catastrophic level of protection who could have been expected to take the 0/92 payment in lieu of a prevented planting guarantee. These relatively small payments per acre are estimated to be made on 1.2 million acres and total $31.5 million. It has been determined that this will not have an adverse actuarial affect on the Federal Crop Insurance Program.

The information collection requirements contained in these regulations (7 CFR part 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 the 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 a prevented planting production guarantee 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'', ''50/92'' 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 in 7 CFR Part 457

Crop insurance, Small grains, Coarse grains, Cotton, ELS cotton.

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 Common Crop Insurance Regulations (7 CFR Part 457) by amending the Small Grains (§ 457.101), Cotton (§ 457.104), Extra Long Staple Cotton (§ 457.105), and Coarse Grains (§ 457.113) Crop Provisions, applicable for the 1995 crop year only, to read as follows:

PART 457—[AMENDED]

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

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

2. Section 457.101 is amended by revising paragraph 12.(d)(3)(iii)(C) to read as follows:

§ 457.101 Small Grains Crop Insurance.

* * * * *

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 seed, chemicals and other materials available to plant and produce a crop with the expectation of at least producing the production guarantee may be required.);

* * * * *

3. Section 457.104 is amended by revising paragraph 12.(d)(3)(iv)(C) to read as follows:

§ 457.104 Cotton Crop Insurance Provisions.

* * * * *

12. Late Planting and Prevented Planting

* * * * *

(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 seed, chemicals and other materials available to plant and produce a crop with the expectation of at least producing the production guarantee may be required.);

* * * * *

4. Section 457.105 is amended by redesignating paragraphs 12.(e) (3) and (4) as paragraphs 12.(e) (4) and (5), by redesignating the second paragraph 12.(e)(2) as paragraph 12.(e)(3), and revising paragraphs 12.(e) (3) and (4) and 12.(e)(4)(iii) to read as follows:

§ 457.105 Extra Long Staple Cotton Crop Insurance Provisions.

* * * * *

12. Prevented Planting

* * * * *

(e) * * *

(1) * * *

(2) * * *

(3) Acreage intended to be planted under an irrigated practice will be limited to the number of acres properly prepared to carry out an irrigated practice.

(4) A prevented planting production guarantee will not be provided for:

(i) * * *

(ii) * * *

(iii) 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 seed, chemicals and other materials available to plant and produce a crop with the expectation of at least producing the production guarantee may be required.);

* * * * *

5. Section 457.113 is amended by revising paragraph 13.(d)(3)(iv)(C) to read as follows:

§ 457.113 Coarse Grains Crop Insurance Provisions.

* * * * *

13. Late Planting and Prevented Planting

* * * * *

(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 seed, chemicals and other materials 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 29, 1995.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 95–16583 Filed 7–10–95; 10:33 am]

BILLING CODE 3410–08–P

Commodity Credit Corporation

7 CFR Part 1446

RIN 0560–AD90

Peanuts

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule adds to the peanut price support regulations in 7 CFR part 1446 a reference to crop insurance requirements contained in 7 CFR part 400 which effect the eligibility of peanut producers for price support. Under the provisions of part 400, producers generally must obtain crop insurance for all crops in which they have an interest in the county where the peanuts are produced. The crop insurance requirements of part 400, which implement provisions of the recently-enacted Federal Crop Insurance Reform Act of 1994 (1994 Act), are in addition to all existing eligibility requirements for price support for peanuts contained in part 1446 and elsewhere.

DATES: This interim rule is effective July 12, 1995. Written comments and data on this rule will be accepted until close of business August 11, 1995, and will be considered when the rule is to be made final.

ADDRESSES: All interested persons are invited to submit written comments and data concerning this interim rule to the Director, Tobacco and Peanuts Division, CFSA, U.S. Department of Agriculture, PO Box 2415, Washington, DC. 20013–2415, or deliver by hand or messenger to room 5750, South Building, USDA, 14th Street and Independence Avenue, SW, Washington, D.C. All written submissions received in response to this request will be made available for public inspection in room 5750, South Building, USDA, between the hours of 8:15 a.m. and 4:45 p.m., on regular Federal workdays.

FOR FURTHER INFORMATION CONTACT: Gary S. Fountain, Consolidated Farm Service Agency, USDA, PO Box 2415, Washington, DC. 20013–2415; telephone (202) 720–9106.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Federal Assistance Program

The title and number of the Federal assistance program, as found in the Catalog of Federal Domestic Assistance, to which this interim rule applies is: Commodity Loans and Purchases—10.051.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act (5 U.S.C. 601–611) is not applicable to this interim rule since the Commodity Credit Corporation (CCC) and the Consolidated Farm Service Agency (CFSA) are not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Executive Order 12372

This program/activity 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.

Paperwork Reduction Act

This interim rule does not change the CFSA information collection requirements that have been approved by OMB and assigned OMB control numbers 0560–0006, 0560–0014, and 0560–0033. The catastrophic risk protection insurance coverage requirements have been included in the following information collection packages and submitted to OMB for clearance: 0563–0001, 0563–0003 and 0563–0029.

Executive Order 12612

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this interim rule does not have significant 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.

Executive Order 12778

This interim rule has been reviewed in accordance with Executive Order 12778. The provisions of this interim rule are not retroactive and preempt State laws to the extent that such laws are inconsistent with the provisions of this interim rule. Before any legal action is brought regarding determinations made under provisions of 7 CFR part 1446, the administrative appeal provisions set forth at 7 CFR part 780 must be exhausted.

Environmental Evaluation

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.

Discussion

The 1994 Act, enacted on October 13, 1994, requires that persons who seek price support benefits for peanuts, and certain other farm program benefits, must acquire at least the catastrophic level of protection for all insurable crops of ''economic significance,'' in which they have an interest, that are grown in the same county as the crop for which price support, or other benefit, is sought. If insurance is available, the person must obtain insurance on all crops of ''economic significance'' in the county that he or she has an interest, not just the supported crop. A crop of ''economic significance'' is a crop that has contributed, or is expected to contribute, 10 percent or more of the total expected value of all crops grown by the person.

The provisions of the 1994 Act are administered by the Federal Crop Insurance Corporation (FCIC). FCIC has issued, by an interim rule published on January 6, 1995 (60 FR 1996), regulations which implement the 1994 Act and which will be codified in 7 CFR part 400.

Price support for peanuts is made available under the Agricultural Act of 1949, 7 USC 1421 *et seq.* The peanut price support regulations are found at 7 CFR part 1446. As the provisions of part 400 and of the 1994 Act are mandatory and binding, there would be no purpose in delaying the amendment to part 1446 adopted in this rule, as that amendment is merely a conforming amendment.

List of Subjects in 7 CFR Part 1446

Loan programs—Agriculture, Peanuts, Price support programs, Reporting and recordkeeping requirements, Warehouses.

For the reasons set forth in the preamble, 7 CFR part 1446 is amended to read as follows:

PART 1446—PEANUTS

1. The authority citation for 7 CFR part 1446 continues to read as follows:

Authority: 7 U.S.C. 1359a, 1375, 1421 *et seq.;* 15 U.S.C. 714b and 714c.

2. The definition of ''Eligible producer'' at § 1446.103 is amended by adding paragraph (3)(iv) to read as follows:

§ 1446.103 Definitions.

(3) * * *

(iv) Part 400 of this title relating to crop insurance requirements.

* * * * *

Signed at Washington, DC, on July 5, 1995.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 95–16993 Filed 7–11–95; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF ENERGY

10 CFR Part 1008

Records Maintained on Individuals (Privacy Act)

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) amends its Privacy Act regulation by adding two systems of records to the list of systems exempted from certain subsections of the Act. Exemption from certain subsections is needed to enable the Office of Counterintelligence to perform its duties and responsibilities. These include detering and neutralizing foreign industrial and intelligence activities in the United States that are directed at or involving the DOE, conducting administrative counterintelligence investigations, participating in law enforcement counterintelligence investigations with the Federal Bureau of Investigation (FBI) and other Federal agencies, performing analyses and producing intelligence on counterintelligence matters, and briefing and debriefing individuals regarding DOE foreign contacts and travel. These duties and responsibilities are carried out pursuant to Executive Order 12333, the *Department of Energy Procedures for Intelligence Activities*, and DOE Order 5670.3, ''Counterintelligence Program.''

EFFECTIVE DATE: This rule becomes effective July 12, 1995.

FOR FURTHER INFORMATION CONTACT: GayLa Sessoms, Privacy Act Officer (HR–78), (202) 586–6020, Abel Lopez, Attorney-Advisor (GC–80), (202) 586–8618, or Chuck Washington, Program

Officer (NN–53), (202) 586–5333, at the U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to the Privacy Act of 1974 (as amended) (5 U.S.C. 552a (j) and (k)), the Secretary of Energy is authorized to promulgate rules to exempt any system of records within the agency from certain subsections of the Act. Accordingly, two new systems of records are added to the list of systems exempted from certain subsections of the Act.

The purpose of this rule is to amend the DOE's Privacy Act regulation to enable the Office of Counterintelligence to carry out its administrative, analytical, and law enforcement duties and responsibilities.

A notice of proposed rulemaking and corresponding systems notices was published in the **Federal Register** on September 8, 1994 (59 FR 46522). No comments were received.

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, today's action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

B. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and 2(b), including eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear 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, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such adiminstrative proceedings; and defines key terms. The DOE certifies that today's rule meets the requirements of sections 2(a) and 2(b) of Executive Order 12778.

C. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have a significant economic impact on a substantial number of small entities. This rule will have no impact on interest rates, tax policies or liabilities, the cost of goods or services, or other direct economic factors. It will also not have any indirect economic consequences, such as changed construction rates. The 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 collection or recordkeeping requirements are imposed by this rule. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501).

E. Review Under Executive Order 12612

Executive Order 12612, entitled ''Federalism,'' 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 Federal Government and the States, or in the distribution of power and responsibilities among various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. This rule will not affect States, or the relationship between the Federal Government and the States, in any direct way.

F. National Environmental Policy Act

This rule amends the Department's existing Privacy Act regulation to add two systems of records to the list of systems exempted from certain provisions of the Act. The amendment will enable the Office of Counterintelligence to carry out its administrative, analytical, and law enforcement duties and responsibilities by establishing principles that will govern how certain records are maintained in the two affected systems of records. Implementation of this rule will not result in any environmental impacts. The Department has therefore determined that this rule is covered under the Categorical Exclusion found at paragraph A.5 of Appendix A to subpart D, 10 CFR part 1021, which applies to the amendment of existing rules that does not change the rule's environmental effects.

List of Subjects in 10 CFR Part 1008

Privacy.

Issued in Washington, DC on July 6, 1995.

Archer L. Durham,

Assistant Secretary for Human Resources and Administration.

For the reasons set forth in the preamble, part 1008 of title 10 of the Code of Federal Regulations is amended as set forth below.

PART 1008—RECORDS MAINTAINED ON INDIVIDUALS (PRIVACY ACT)

1. The authority citation for part 1008 continues to read as follows:

Authority: Department of Energy Organization Act, Pub. L. 95–91, Executive Order 12091, 42 FR 46267, Privacy Act of 1974, Pub. L. 93–579 (5 U.S.C. 552a).

2. Section 1008.12 is amended by adding paragraphs (a)(2)(ii); (b)(1)(ii) (I) and (J); (b)(2)(ii) (K) and (L); and (b)(3)(ii) (M) and (N) to read as follows:

§ 1008.12 Exemptions.

(a) * * *

(2) * * *

(ii) *Law Enforcement Investigative Records (DOE–84).* This system of records is being exempted pursuant to subsection (j)(2) of the Act to enable the Office of Counterintelligence to carry out its duties and responsibilities as they pertain to its law enforcement function. The system is exempted from subsections (c)(3) and (4), (d), (e) (1), (2), and (3), (e)(4) (G) and (H), (e)(8), (f), and (g) of the Act. The system is exempt from these provisions for the following reasons: Notifying an individual at the individual's request of the existence of records in an investigative file pertaining to such individual, or granting access to an investigative file could interfere with investigative and enforcement proceedings and with co-defendants' right to a fair trial; disclose the identity of confidential sources and reveal confidential information supplied by these sources; and disclose investigative techniques and procedures.

(b) * * *
(1) * * *
(ii) * * *

(I) Administrative and Analytical Records and Reports (DOE–81).
(J) Law Enforcement Investigative Records (DOE–84).

(2) * * *
(ii) * * *

(K) Administrative and Analytical Records and Reports (DOE–81).
(L) Law Enforcement Investigative Records (DOE–84).

(3) * * *
(ii) * * *

(M) Administrative and Analytical Records and Reports (DOE–81).
(N) Law Enforcement Investigative Records (DOE–84).

* * * * *

[FR Doc. 95–17056 Filed 7–11–95; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 95–54]

RIN 1515–AB46

Filing of Export Certificates

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to allow a vessel carrying a shipment of meat or meat-food products to be cleared before the filing of a copy of an export certificate if a statement is provided to Customs regarding the shipment and the export certificate. The copy of the export certificate must then be presented within 4 days of the vessel's clearance. The regulations are being amended so that they will conform to revised regulations of the Food Safety and Inspection Service of the U.S. Department of Agriculture.

EFFECTIVE DATE: August 11, 1995.

FOR FURTHER INFORMATION CONTACT: Barbara Whiting, Carrier Rulings Branch, (202) 482–6940.

SUPPLEMENTARY INFORMATION:

Background

In this document, Customs amends its regulations so that there will be consistency between regulations of the U.S. Department of Agriculture (USDA) and those of Customs regarding the time frame within which an exporter must file a certificate certifying the wholesomeness of meat or meat-food products being exported.

Under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), meat and meat products intended and offered for export and sale in a foreign country must be inspected. In addition, FMIA prohibits the clearance for departure of any vessel carrying meat and meat products for export to and sale in a foreign country until the owner or shipper has obtained from an inspector a certificate indicating that the products are sound and wholesome (unless the Secretary has waived certificate requirements for the country).

On May 16, 1994, Customs published a Notice of Proposed Rulemaking in the **Federal Register** (59 FR 25376) in which it proposed amending the Customs Regulations so that they would conform to the USDA Regulations which governed the duties of exporters of meat and meat products and which had been amended at an earlier date.

In 1986, the Food Safety and Inspection Service (FSIS) of the Department of Agriculture, which administers the FMIA, amended its regulations. Previously, the FSIS regulations required that exporters deliver a duplicate of the export certificate to the shipper for filing with Customs at the time the master's manifest or supplemental manifest is filed by the chief officer with Customs; that is, on the day of departure. Otherwise, the vessel carrying the meat or meat products would not be granted clearance. Because § 4.75 of the Customs Regulations allows shippers a delay of four business days in the filing of a Complete Cargo Declaration (manifest), the FSIS regulations were amended to allow a vessel carrying a shipment of meat or meat products to clear in those instances where the duplicate export certificate is not available at departure time. In lieu of the duplicate export certificate, the shipper, shipper's agent, or the vessel's agent must provide Customs with a statement under the shipper's or agent's letterhead signed by the shipper which briefly describes the shipment of the product, the number of boxes, number of pounds, the product name and the USDA export certificate number that covers the shipment. Exporters must file the duplicate export certificate within 4 days of the clearance of a vessel carrying a shipment of meat or meat products.

Analysis of Comments

In response to its request for comments on the Notice of Proposed Rulemaking, Customs received only one comment and that comment supported the proposed amendment. The comment also suggested that Customs undertake additional measures to coordinate interagency activities. Because this suggestion exceeds the scope of the original proposal, Customs need not address it here. However, should Customs determine any additional actions should be taken in the future, a new Notice of Proposed Rulemaking will be published.

Determination

After further consideration of the proposal and in light of the only comment received supporting the proposal, Customs has determined that it should amend that section of its regulations governing the clearance of vessels carrying meat and meat products. Section 4.72(a) of the Customs Regulations (19 CFR 4.72(a)) is being amended so that rather than withhold clearance until copies of the USDA issued export certificates have been filed with the district director, Customs can now grant clearance to vessels when a statement is submitted to Customs describing the shipment and the export certificates. Shippers will still have to comply with the 4-day time limit of § 4.75 for submitting copies of the USDA export certificates.

Executive Order 12866 and Regulatory Flexibility Act

This amendment is not a ''significant regulatory action'' within the meaning of E.O. 12866. Based on the supplementary information set forth above and pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), it is certified that the amendment will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Drafting Information: The principal author of this document was Peter T. Lynch, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 4

Customs duties and inspection, Exports, Meat and meat products, Meat inspection, Vessels.

Amendment to the Regulations

For the reasons set forth above, part 4, Customs Regulations (19 CFR part 4), is amended as set forth below.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for part 4 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624; 46 U.S.C. App. 3, 91.

* * * * *

2. Paragraph (a) of § 4.72 is amended by adding, at the end thereof, two new sentences to read as follows:

§ 4.72 Inspection of meat, meat-food products, and inedible fats.

(a) * * * If such certificate has been obtained but is unavailable at the scheduled time of a vessel's departure, the vessel may be cleared on the basis of the receipt of a statement, under the shipper's or shipper's agent's letterhead, certifying the number of boxes, the number of pounds, the product name and the U.S. Department of Agriculture export certificate number that covers the shipment of the product. If such statement has been used as the basis for obtaining vessel clearance, the duplicate of the certificate must be filed with Customs within the time period prescribed by § 4.75.

* * * * *

George J. Weise,

Commissioner of Customs.

Approved: June 26, 1995.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 95–17062 Filed 7–11–95; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

New Animal Drugs; Change of Sponsor Name

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor name of approved applications from A. L. Laboratories, Inc., to A. L. Pharma, Inc.

EFFECTIVE DATE: July 12, 1995.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1646.

SUPPLEMENTARY INFORMATION: A. L. Laboratories, Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, has informed FDA of a change of sponsor name to A. L. Pharma, Inc. Accordingly, FDA is amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) to reflect the change of sponsor name.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e).

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing in the first column the sponsor name ''A. L. Laboratories, Inc.'', and by adding in its place ''A. L. Pharma, Inc.'', and in the table in paragraph (c)(2) in the entry for ''046573'' by removing in the second column the sponsor name ''A. L. Laboratories, Inc.'', and adding in its place ''A. L. Pharma, Inc.''.

Dated: July 3, 1995.

Robert C. Livingston,

Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 95–16963 Filed 7–11–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 42

[Public Notice 2229]

VISAS: Immigrant Religious Workers

AGENCY: Bureau of Consular Affairs, DOS.

ACTION: Final rule.

SUMMARY: On October 1, 1991, the Department published an interim rule [56 FR 49675], which among other things, implemented sec. 151 of the Immigration and Nationality Act of 1990 (IMMACT 90). The interim rule, effective October 1, 1991, amended the Department of State regulations to extend special immigrant status, as defined under INA 101(a)(27)(C), to religious workers who have 2 years of membership and experience in a religious occupation or vocation. The legislation, as originally enacted, required religious workers (other than ministers) to seek entry into the United States before October 1, 1994. The interim rule invited interested persons to submit comments concerning the amendments. No comments were received. Thus, the final rule implementing the provisions of sec. 151 was published unmodified on September 16, 1993 [58 FR 48447].

On October 25, 1994, sec. 214 of the Immigration and Nationality Technical Corrections Act of 1994 amended INA 101(a)(27)(C)(ii) to extend the deadline to enter the United States to ''before October 1, 1997'', i.e., aliens entering under this category must seek to enter the United States no later than September 30, 1997. Thus, this final rule amends the previously published regulation and implements this provision.

EFFECTIVE DATE: July 12, 1995.

FOR FURTHER INFORMATION CONTACT: Pam Chavez, Legislation and Regulations Division, Visa Services, (202) 663–1206.

SUPPLEMENTARY INFORMATION:

Immigration Act of 1990

Sec. 151 of the Immigration Act of 1990 (IMMACT 90), Public Law 101–649, amended INA 101(a)(27)(C) by adding a new category of special immigrants who will work in a religious occupation or vocation for a religious organization in a professional or other capacity. Unlike the provision for special immigrant ministers of religion, which does not contain a sunset provision, the provisions for religious workers (as defined under INA 101(a)(27)(C)(ii) (II) and (III)), as originally enacted, required religious workers to seek to enter the United States before October 1, 1994.

Immigration and Nationality Technical Corrections Act of 1994

On October 25, 1994, sec. 214 of the Immigration and Nationality Technical Corrections Act of 1994 (Pub. L. 193–416) amended INA 101(a)(27)(C)(ii) to extend the sunset date to October 1, 1997. This final rule implements sec. 214 of Pub. L. 103–416, amending part 42, title 22 of the Code of Federal Regulations, by revising 42.32(d)(1)(ii) to extend the visa validity date to no

later than September 30, 1997. This rule also makes a minor technical change to the 8 CFR reference.

Final Rule

This rule is not expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This rule imposes no reporting or recordkeeping action from the public requiring the approval of the Office of Management and Budget under the Paperwork Reduction Act requirements. This rule has been reviewed as required by E.O. 12778 and certified to be in compliance therewith. This rule is exempted from E.O. 12866 but has been coordinated with INS and reviewed to ensure consistency therewith. The corresponding INS regulation was published in the **Federal Register** on June 6, 1995 [60 FR 29751].

List of Subjects in 22 CFR Part 42

Aliens, Immigration, Passports and visas.

In view of the foregoing 22 CFR Chapter I is amended as follows:

PART 42—[AMENDED]

1. The authority citation for Part 42 is revised to read:

Authority: 8 U.S.C. 1104.

2. Section 42.32(d)(1) is amended by revising paragraph (d)(1)(ii) to read as follows:

§ 42.32 Employment based preference immigrants.

* * * * *

(d) *Fourth preference—Special immigrants*—(1) *Religious workers.*
* * *

(ii) *Timeliness of application.* An immigrant visa issued under INA 203(b)(4) to an alien described in INA 101(a)(27(C), other than a minister of religion, who qualifies as a ''religious worker'' as defined in 8 CFR 204.5, shall bear the usual validity except that in no case shall it be valid later than September 30, 1997.

Dated: July 5, 1995.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 95–16934 Filed 7–11–95; 8:45 am]

BILLING CODE 4710–06–U–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 341

[DoD Directive 5105.2]

Delegation of Authority to the Deputy Secretary of Defense

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This document is published to remove obsolete information concerning delegation of authority (32 CFR part 341) from the Code of Federal Regulations. The part has served the purpose for which it was intended and is no longer required.

EFFECTIVE DATE: June 22, 1995.

FOR FURTHER INFORMATION CONTACT: L.M. Bynum, 1155 Defense Pentagon, Washington, DC 20301–1155.

SUPPLEMENTARY INFORMATION: The most current version of DoD Directive 5105.2, June 22, 1995, will be available, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

List of Subjects in 32 CFR Part 341

Organization and function.

Accordingly, by the authority of 10 U.S.C. 113, the Department of Defense hereby removes 32 CFR part 341.

Dated: July 6, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–16966 Filed 7–11–95; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Parts 5 and 7

RIN 1024–AC15

Glacier National Park; Fishing Regulations, Motorboat Regulations and Commercial Passenger-Carrying Motor Vehicle Regulations

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service is publishing final rules for Glacier National Park revising its current regulations regarding sport fishing, motorboats and commercial passenger-carrying motor vehicles.

The National Park Service (NPS) is replacing the current Glacier National Park fishing regulations with a regulation that gives the Park Superintendent more discretion in managing the Park's fisheries. This final rule will continue to allow fishing in most streams, rivers and lakes in Glacier National Park. The Superintendent, however, will have the authority to close areas to fishing or establish conditions for fishing consistent with the park's fisheries program objectives, without going through the formal rulemaking process. As a consequence, the park will be more responsive to the changing needs of its fisheries program.

Effects of this rule are expected to be minimal and should not alter, to any degree, the number of angler days presently occurring.

The NPS is modifying the motorboat regulations in Glacier National Park. This final rule change will prohibit motorboat use on Kintla Lake, located within the North Fork area of the park. The 1974 Glacier Environmental Statement/Wilderness Recommendation included Kintla Lake as recommended wilderness and indicated that if Congress designated this area as wilderness, motorboating—a traditional activity on Kintla Lake—would be eliminated. Glacier's 1992 North Fork Management Plan's preferred alternative includes the prohibition of motorboats on Kintla Lake. With this change in place, the park staff will be able to more effectively protect wilderness values and accomplish the management goals and objectives outlined in the North Fork Management Plan. Effects of this rule are expected to be minimal in terms of the number of park visitors affected. A small group of motorboat users will be displaced from Kintla Lake. However, a more desirable wilderness experience will be provided for users of non-motorized craft to enjoy solitude and quiet without the disruption of motor noise.

The NPS is modifying the commercial passenger-carrying motor vehicle regulations for Glacier National Park. This final rule change will clarify the exceptions to the prohibition within Glacier National Park and will expand the areas of the park where non-permitted commercial passenger-carrying motor vehicles are allowed. The effects of this rule on tour operators will be to clarify and add consistency to current restrictions. The modification of the existing regulation will recognize and conform the regulations to the current practices of the Park. Effects of this rule on the visitor are expected to be minimal.

EFFECTIVE DATE: August 11, 1995.

FOR FURTHER INFORMATION CONTACT: Fred Vanhorn, (406) 888–5441.

SUPPLEMENTARY INFORMATION:

The proposed rule for these regulations was published in the **Federal Register** on Mar. 31, 1994, at 59 FR 15142.

Background

Fishing Regulations

The present Glacier National Park fishing regulations are codified in 36 CFR 7.3 (a), (b) and (c). They permit fishing in selected waters of the park with a variety of regulations covering specific lakes and streams.

Technical fishery assistance has been provided to Glacier National Park by the U.S. Fish and Wildlife Service and its predecessors for 45 years. The present objectives have evolved since 1976 and are consistent with the park's primary purpose, which is to ''preserve natural environments and native plant and animal life, and to provide for the enjoyment of the same in ways that maintain natural conditions''. Thus, the specific objectives of the park's fishery program are:

1. To manage the fishery as an integral part of the park's ecosystem.

2. To restore and preserve native species and aquatic habitats.

3. To provide recreational fishing for the enjoyment of the park visitors when consistent with the two previous objectives.

Attainment of these objectives requires that angler harvests not alter native species natural replenishment rates or age structure, or significantly reduce numbers, biomass, or sizes from those occurring in un-fished populations. This management objective necessitates both a philosophical and literal distinction between recreational angling and removing fish for consumption. Protective policies of the NPS that have prevented significant degradation of that aquatic habitat have also restricted the use of maintenance stocking in park waters. Given these constraints, special angling regulations have become the primary means to accomplish park fishery objectives.

Regulations used to protect fish and maintain angling quality have included manipulating season dates, bait and terminal gear restrictions and the use of creel limits, including catch and release. Additionally, various waters have been closed to anglers in order to protect threatened and endangered species, nesting birds and for visitor protection.

Because of the introduction of non-native fish in the past, the invasion of non-native fish from outside the park at present, the recognition of the westslope cutthroat and bull trout as species of special concern by the State of Montana, and fishing pressure in selected waters within the park, park management must be able to respond rapidly to changes that occur in a dynamic ecosystem resulting from human and natural conditions.

The new park fishing regulations will allow the Superintendent the ability to make routine changes in the regulations locally and in a timely manner, using discretionary authority provided by NPS general regulations found at 36 CFR 1.5. This procedure will afford greater protection to the park's aquatic resources, be more responsive to public needs and allow the park managers greater flexibility in responding to specific situations.

Public notice of restrictions established by the Superintendent will be provided through signs, maps, brochures, newspaper notices and other appropriate methods as required by 36 CFR 1.7. Detailed information pertaining to the nature and extent of fishing restrictions will be readily available to anglers in the park.

The park's fishing regulations will be reviewed annually and made a part of the Superintendent's compendium.

Motorboat Regulations

The present Glacier National Park motorboat regulations are codified in 36 CFR 7.3(f). They limit motorboats and motor vessels to ten (10) horsepower or less on Kintla, Bowman and Two Medicine Lakes. This restriction does not apply to sightseeing vessels operated by an authorized concessioner on Two Medicine Lake. They also prohibit all motorboats and motor vessels on Swiftcurrent Lake, except for authorized concessioner sightseeing vessels.

The issue of motorboat use in wilderness is addressed in chapter 6:8 of the NPS Management Policies. It is stated that ''the Wilderness Act authorized continuation of motorboat and aircraft use under certain circumstances where those activities were established prior to wilderness designation. The National Park Service will limit authorization for the continued use of any motorized equipment in wilderness to situations where such use has been specifically authorized by Congress and determined by Congress or the Park Service to be compatible with the purpose, character, and resource values of the particular wilderness area involved''.

The 1974 Glacier Environmental Statement/Wilderness Recommendation included Kintla and Bowman Lakes in recommended wilderness and indicated that if Congress designated these areas as wilderness, motorboating—a traditional activity on Kintla Lake—would be eliminated. The original recommendation was modified in 1984 to permit motorboats of up to ten (10) horsepower on both lakes. Congress has not yet acted on the NPS wilderness recommendation and boats with motors up to 10 horsepower have continued to be allowed on Kintla Lake over the past 15 years. The need for motorboating on Kintla Lake and the potential impacts of continuing or prohibiting this use was assessed in the 1992 North Fork Management Plan.

The 1992 Plan calls for the elimination of motorboats on Kintla Lake. Kintla Lake would thus become the only road-accessible lake in the park where motorized watercraft are not permitted, and it would provide opportunities for users of non-motorized watercraft to enjoy solitude and quiet without the disruption of motor noise.

An NPS patrol boat would be kept in the Kintla Lake boathouse for emergency use only. Routine patrols would be made by non-motorized watercraft.

The following goals and objectives, developed by the NPS to guide use and management of the North Fork, relate directly to this rule change. They are based on public use surveys and general perceptions of the area and are included in the North Fork Management Plan:

Goal:

* ''To maintain the dynamic natural ecosystem.''

Objectives:

* ''To continue to manage the portion of the North Fork area that has been recommended for wilderness according to NPS wilderness management policies.''

* ''To maintain the quality and natural flow of park waters.''

* ''To minimize man-made noise.''

Goal:

* ''To maintain the area's value as a wilderness threshold.''

Objectives:

* ''To maintain a primitive atmosphere associated with an earlier point in time and to provide facilities, services, and programs in keeping with that atmosphere.''

* ''To retain a sense of solitude, require a high degree of visitor self-reliance and ensure freedom from constraint.''

Goal:

* ''To provide quality, diversity, and safety in the visitor experience.''

Objectives:

* ''To provide a visitor experience that is different from those in more developed and accessible parts of the park.''

The new motorboat regulations will allow the Superintendent to manage the

Kintla Lake area in accordance with the 1992 North Fork Management Plan (approved May 20, 1992). Public notice of the motorboat prohibition on Kintla Lake will be provided through signs, maps, brochures, and media news releases.

Commercial Passenger-Carrying Motor Vehicle Regulations

The present Glacier National Park commercial passenger-carrying motor vehicle regulations are codified in 36 CFR 5.4(a) (Commercial passenger-carrying motor vehicles). It prohibits commercial transportation of passengers by motor vehicles except as authorized under a contract or permit from the Secretary or his authorized representative in Glacier National Park, except that portion of the park road from the Sherburne entrance to the Many Glacier area. Commercial passenger-carrying motor vehicles are not currently addressed in 36 CFR 7.3 (Special Regulations, Glacier National Park).

Under the existing Concessions Contract (CC1430–1–0002) with Glacier Park, Inc. (GPI), GPI had the preferential right, until December 31, 1985, to provide all transportation service in Glacier, with the exception of transportation on the road between Sherburne entrance and the Many Glacier area. No other commercial transportation services were allowed into the park without first entering into a trip lease agreement with GPI, thereby reimbursing GPI for the right to enter the park under the auspices of GPI's Concessions Contract. As of January 1, 1986, this preferential right was modified to reflect only a right of first refusal to provide transportation services for prearranged tour groups, unscheduled scenic tours over that portion of the Going-to-the-Sun Road between Lake McDonald Lodge and Rising Sun, and for daily scheduled public transportation service within Glacier National Park. This, in effect, allowed unscheduled scenic tours from outside the park to enter the park from the west as far as Lake McDonald Lodge, from the east as far as Rising Sun and to the Two Medicine area, as well as to the Many Glacier area.

Current CFR language requires a separate contract or permit for each tour company entering Glacier National Park. Several hundred of these tours travel to Glacier each season. These tours are unscheduled, sporadic transportation services that, in most cases, only involve transportation to and from a park facility. Requiring separate concessions contracts or permits would place an unnecessary burden on the NPS as well as the tour operators.

The NPS has amended Section 5.4(a) to allow the exceptions as listed in Section 7.3(f) (revised) to show when and where these restrictions do not apply.

The final regulations clarify the areas where commercial passenger-carrying motor vehicle operations are allowed and assist the Superintendent in equitably and effectively managing the permitting process.

Public notice of the commercial passenger-carrying motor vehicle regulations will be provided through public notices and media news releases.

Comments Received

The public had extensive opportunity to comment on this rule during the proposed rulemaking process and during the development of the Management Plan Environmental Assessment for the North Fork Study Area. Comments received were taken into consideration in the formulation of this final rule. During the public comment period of the proposed rule, only one letter was received from the public requesting additional information, which the park provided.

Drafting Information

The primary authors of the final fishing regulation are Dr. Leo Marnell, Aquatic Biologist, and William Michels, Natural Resource Specialist, Glacier National Park.

The primary author of the final commercial vehicle regulation is Fred Vanhorn, Protection Specialist, Glacier National Park.

The primary author of the final motorboat regulation is Roger L. Semler, Wilderness Manager, Glacier National Park.

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 USC 3501 *et seq.*

Compliance With Other Laws

This rule was not subject to Office of Management and Budget review under Executive Order 12866. The Department of the Interior has determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 USC 601 *et seq.*). The economic effects of this rulemaking are local in nature and negligible in scope.

The NPS has determined that this final rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce incompatible uses which compromise the nature and character of the area or causing physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, the regulation is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA; 42 USC 4321, *et seq.*), and by Departmental guidelines in 516 DM 6 (49 FR 21438). As such, neither an Environmental Assessment (EA) nor an Environmental Impact Statement (EIS) has not been prepared.

List of Subjects in 36 CFR Parts 5 and 7

National parks; Reporting and recordkeeping requirements.

In consideration of the foregoing, 36 CFR chapter I, parts 5 and 7 are amended as follows:

PART 5—COMMERCIAL AND PRIVATE OPERATIONS

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

Authority: 16 U.S.C. 1, 3, 9a, 17j–2, 462.

2. Section 5.4(a) is amended by revising in the first sentence the parenthetical phrase ''(prohibition does not apply to that portion of the park road from the Sherburne entrance to the Many Glacier area)'' to read as follows:

§ 5.4 Commercial passenger-carrying motor vehicles.

(a) * * * (prohibition does not apply to nonscheduled tours on portions of the park road as defined in § 7.3 of this chapter) * * *

* * * * *

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

3. The authority citation for part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 80–137 (1981) and D.C. Code 40–721 (1981).

4. Section 7.3 is amended by revising paragraphs (a), removing paragraphs (b) and (c), redesignating paragraph (d) as new paragraph (b), redesignating paragraph (e) as new paragraph (c), redesignating paragraph (f) as new paragraph (d) and revising it, redesignating paragraph (g) as new

paragraph (e) and adding the heading ''Canadian dollars'', and adding new paragraph (f) to read as follows:

§ 7.3 Glacier National Park.

(a) *Fishing.* (1) Fishing regulations, based on management objectives described in the park's Resource Management Plan, are established annually by the Superintendent.

(2) The Superintendent may impose closures and establish conditions or restrictions, in accordance with the criteria and procedures of §§ 1.5 and 1.7 of this chapter, or any activity pertaining to fishing, including but not limited to, species of fish that may be taken, seasons and hours during which fishing may take place, methods of taking, size, location, and possession limits.

(3) Fishing in violation of a condition or restriction established by the Superintendent is prohibited.

* * * * *

(d) *Motorboats.* (1) Motorboats and motor vessels are limited to ten (10) horsepower or less on Bowman and Two Medicine Lakes. This restriction does not apply to sightseeing vessels operated by an authorized concessioner on Two Medicine Lake.

(2) All motorboats and motor vessels except the authorized, concessioner-operated, sightseeing vessels are prohibited on Swiftcurrent Lake.

(3) The operation of all motorboats and motor vessels are prohibited on Kintla Lake.

* * * * *

(f) *Commercial passenger-carrying motor vehicles.* The prohibition against the commercial transportation of passengers by motor vehicles to Glacier National Park, contained in § 5.4 of this chapter, shall be subject to the following exceptions:

(1) Commercial transport of passengers by motor vehicles on those portions of the park roads from Sherburne entrance to the Many Glacier area; from Two Medicine entrance to Two Medicine Lake; from West Glacier entrance to the Camas Entrance; U.S. Highway 2 from Walton to Java; and the Going-to-the-Sun Road from West Glacier entrance to Lake McDonald Lodge and from St. Mary entrance to Rising Sun will be permitted.

(2) Commercial passenger-carrying motor vehicles operated in the above areas, on a general, infrequent, and nonscheduled tour in which the visit to the park is incidental to such tour, and carrying only round-trip passengers traveling from the point of origin of the tour, will be accorded admission to the park. Such tours shall not provide, in effect, a regular and duplicating service conflicting with, or in competition with, the tours provided for the public pursuant to contract authorization from the Secretary as determined by the Superintendent.

Dated: June 16, 1995.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 95–16965 Filed 7–11–95; 8:45 am]

BILLING CODE 4310–70–P

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36 CFR Part 68

RIN 1024–AC24

The Secretary of the Interior's Standards for the Treatment of Historic Properties

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service (NPS) published proposed revisions to 36 CFR part 68, The Secretary of the Interior's Standards for Historic Preservation Projects, on January 18, 1995 (60 FR 3599). The standards apply to all proposed grant-in-aid projects assisted through the National Historic Preservation Fund, focusing primarily on development projects involving buildings. The public was invited to comment for 60 days, with a closing date of March 20, 1995. *No comments were received.* A more thorough discussion of the revisions can be found in the proposed rule (60 FR 3599).

EFFECTIVE DATE: August 11, 1995.

FOR FURTHER INFORMATION CONTACT: Kay Weeks, 202–343–9593.

SUPPLEMENTARY INFORMATION:

Background

The Secretary of the Interior's Standards for Historic Preservation Projects were codified December 7, 1978, at 36 CFR part 1207 (43 FR 57250), and redesignated at 36 CFR part 68 on July 1, 1981 (46 FR 34329). These Standards are applied to all proposed grant-in-aid projects assisted through the National Historic Preservation Fund (HPF). They focus primarily on acquisition and development projects for buildings listed in the National Register of Historic Places.

The NPS is revising 36 CFR part 68, The Secretary of the Interior's Standards for Historic Preservation Projects, and replacing it with a broader set of standards to include all cultural property types. The revisions will change the title of 36 CFR part 68 to ''The Secretary of the Interior's Standards for the Treatment of Historic Properties''. Revisions to the existing Standards began in 1990 in conjunction with the National Conference of State Historic Preservation Officers and meetings with the National Trust for Historic Preservation and a number of other outside organizations. Standards have been evolving over time, with the majority of the concepts proposed here having been practiced successfully in field application. These practices are now being proposed as revisions to codified standards and are, in several ways, broader in approach and, most important, easier to use.

First, the revised standards may be applied to all historic resource types, including buildings, sites, landscapes, structures, objects and districts.

Second, they will eliminate the general and specific standards format, which tended to create a lengthy rule that was also confusing. In the existing rule, eight general standards apply to every project, eventhough the goals of work differ dramatically. In addition, specific standards apply to specific types of projects, thus acknowledging the differences in work approaches, but resulting in a total of 77 standards. The revised standards remedy organizational problems that had existed in the earlier standards and create a clearer document for the user. For example, the definitions of the different treatments are expanded to assist selection of the most appropriate one; § 68.4(a), relating to acquisition, has been deleted because it is not a treatment; and protection and stabilization are consolidated under a single preservation treatment rather than being cited separately. As a result, the total number of treatments will be reduced from seven to four.

Third, the total number of standards will be reduced from 77 to 34, and the distinctions between the four treatments have been clarified in the standards themselves. *Preservation* focuses on the maintenance and repair of existing historic materials and retention of a property's form as it has evolved over time. *Rehabilitation* acknowledges the need to alter or add to a historic property to meet continuing or changing uses, while retaining the property's historic character. *Restoration* is undertaken to depict a property at a particular period of time in its history, while removing evidence of other periods. *Reconstruction* recreates vanished or non-surviving portions of a property, generally for interpretive purposes.

In summary, the simplification and sharpened focus of these revised sets of treatment standards will assist users in making sound historic preservation decisions. It should be noted that a

slightly modified version of the Standards for Rehabilitation was codified in 36 CFR part 67, and focuses on ''certified historic structures'' as defined by the IRS Code of 1986. Those regulations are used in the Preservation Tax Incentives Program. 36 CFR part 67 should continue to be used when property owners are seeking certification for Federal tax benefits.

Drafting Information

The primary authors of the final rule are Kay D. Weeks, Technical Writer-Editor, Preservation Assistance Division, and H. Ward Jandl, Deputy Chief, Preservation Assistance Division.

Paperwork Reduction Act

This rulemaking does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

This rule was not subject to review under Executive Order 12866. The Department of the Interior has determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The NPS has determined that this rule will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce incompatible uses that may compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this final rule is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental guidelines in 516 DM 6 (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects in 36 CFR Part 68

Historic Preservation

In consideration of the foregoing, 36 CFR part 68 is revised to read as follows:

PART 68—THE SECRETARY OF THE INTERIOR'S STANDARDS FOR THE TREATMENT OF HISTORIC PROPERTIES

Sec.
68.1 Intent.
68.2 Definitions.
68.3 Standards.

Authority: The National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 *et seq.*); sec. 2124 of the Tax Reform Act of 1976, 90 Stat. 1918; EO 11593, 3 CFR part 75 (1971); sec. 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262).

§ 68.1 Intent.

The intent of this part is to set forth standards for the treatment of historic properties containing standards for preservation, rehabilitation, restoration and reconstruction. These standards apply to all proposed grant-in-aid development projects assisted through the National Historic Preservation Fund. 36 CFR part 67 focuses on ''certified historic structures'' as defined by the IRS Code of 1986. Those regulations are used in the Preservation Tax Incentives Program. 36 CFR part 67 should continue to be used when property owners are seeking certification for Federal tax benefits.

§ 68.2 Definitions.

The standards for the treatment of historic properties will be used by the National Park Service and State historic preservation officers and their staff members in planning, undertaking and supervising grant-assisted projects for preservation, rehabilitation, restoration and reconstruction. For the purposes of this part:

(a) *Preservation* means the act or process of applying measures necessary to sustain the existing form, integrity and materials of an historic property. Work, including preliminary measures to protect and stabilize the property, generally focuses upon the ongoing maintenance and repair of historic materials and features rather than extensive replacement and new construction. New exterior additions are not within the scope of this treatment; however, the limited and sensitive upgrading of mechanical, electrical and plumbing systems and other code-required work to make properties functional is appropriate within a preservation project.

(b) *Rehabilitation* means the act or process of making possible an efficient compatible use for a property through repair, alterations and additions while preserving those portions or features that convey its historical, cultural or architectural values.

(c) *Restoration* means the act or process of accurately depicting the form, features and character of a property as it appeared at a particular period of time by means of the removal of features from other periods in its history and reconstruction of missing features from the restoration period. The limited and sensitive upgrading of mechanical, electrical and plumbing systems and other code-required work to make properties functional is appropriate within a restoration project.

(d) *Reconstruction* means the act or process of depicting, by means of new construction, the form, features and detailing of a non-surviving site, landscape, building, structure or object for the purpose of replicating its appearance at a specific period of time and in its historic location.

§ 68.3 Standards.

One set of standards—preservation, rehabilitation, restoration or reconstruction—will apply to a property undergoing treatment, depending upon the property's significance, existing physical condition, the extent of documentation available and interpretive goals, when applicable. The standards will be applied taking into consideration the economic and technical feasibility of each project.

(a) *Preservation.* (1) A property will be used as it was historically, or be given a new use that maximizes the retention of distinctive materials, features, spaces and spatial relationships. Where a treatment and use have not been identified, a property will be protected and, if necessary, stabilized until additional work may be undertaken.

(2) The historic character of a property will be retained and preserved. The replacement of intact or repairable historic materials or alteration of features, spaces and spatial relationships that characterize a property will be avoided.

(3) Each property will be recognized as a physical record of its time, place and use. Work needed to stabilize, consolidate and conserve existing historic materials and features will be physically and visually compatible, identifiable upon close inspection and properly documented for future research.

(4) Changes to a property that have acquired historic significance in their own right will be retained and preserved.

(5) Distinctive materials, features, finishes and construction techniques or examples of craftsmanship that characterize a property will be preserved.

(6) The existing condition of historic features will be evaluated to determine the appropriate level of intervention needed. Where the severity of deterioration requires repair or limited replacement of a distinctive feature, the new material will match the old in composition, design, color and texture.

(7) Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.

(8) Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.

(b) *Rehabilitation.* (1) A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces and spatial relationships.

(2) The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces and spatial relationships that characterize a property will be avoided.

(3) Each property will be recognized as a physical record of its time, place and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.

(4) Changes to a property that have acquired historic significance in their own right will be retained and preserved.

(5) Distinctive materials, features, finishes and construction techniques or examples of craftsmanship that characterize a property will be preserved.

(6) Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.

(7) Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.

(8) Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.

(9) New additions, exterior alterations or related new construction will not destroy historic materials, features and spatial relationships that characterize the property. The new work will be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.

(10) New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

(c) *Restoration.* (1) A property will be used as it was historically or be given a new use that interprets the property and its restoration period.

(2) Materials and features from the restoration period will be retained and preserved. The removal of materials or alteration of features, spaces and spatial relationships that characterize the period will not be undertaken.

(3) Each property will be recognized as a physical record of its time, place and use. Work needed to stabilize, consolidate and conserve materials and features from the restoration period will be physically and visually compatible, identifiable upon close inspection and properly documented for future research.

(4) Materials, features, spaces and finishes that characterize other historical periods will be documented prior to their alteration or removal.

(5) Distinctive materials, features, finishes and construction techniques or examples of craftsmanship that characterize the restoration period will be preserved.

(6) Deteriorated features from the restoration period will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture and, where possible, materials.

(7) Replacement of missing features from the restoration period will be substantiated by documentary and physical evidence. A false sense of history will not be created by adding conjectural features, features from other properties, or by combining features that never existed together historically.

(8) Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.

(9) Archeological resources affected by a project will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.

(10) Designs that were never executed historically will not be constructed.

(d) *Reconstruction.* (1) Reconstruction will be used to depict vanished or non-surviving portions of a property when documentary and physical evidence is available to permit accurate reconstruction with minimal conjecture and such reconstruction is essential to the public understanding of the property.

(2) Reconstruction of a landscape, building, structure or object in its historic location will be preceded by a thorough archeological investigation to identify and evaluate those features and artifacts that are essential to an accurate reconstruction. If such resources must be disturbed, mitigation measures will be undertaken.

(3) Reconstruction will include measures to preserve any remaining historic materials, features, and spatial relationships.

(4) Reconstruction will be based on the accurate duplication of historic features and elements substantiated by documentary or physical evidence rather than on conjectural designs or the availability of different features from other historic properties. A reconstructed property will re-create the appearance of the non-surviving historic property in materials, design, color and texture.

(5) A reconstruction will be clearly identified as a contemporary re-creation.

(6) Designs that were never executed historically will not be constructed.

Dated: June 9, 1995.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 95–16953 Filed 7–11–95; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300383A; FRL–4958–6]

RIN 2070–AB78

Poly(phenylhexylurea), Cross-Linked; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of poly(phenylhexylurea), cross-linked, when used as an inert ingredient (encapsulating agent) in pesticide formulations applied to growing crops only under 40 CFR 180.1001(d) to replace the existing exemption from the requirement of a tolerance for residues of cross-linked polyurea-type encapsulating polymer under 40 CFR

180.1082. The Monsanto Co. requested this regulation pursuant to the Federal Food, Drug and Cosmetic Act.

EFFECTIVE DATE: This regulation becomes effective July 12, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [OPP-300383A], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted 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 copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [OPP-300383A]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this 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: Mary Waller, Registration Support Branch, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, North Tower, 6th Floor, Arlington, VA 22202, (703)-308-8811; e-mail: waller.mary@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 3, 1995 (60 FR 21784), EPA issued a proposed rule that gave notice that the Monsanto Co., Suite 1100, 700 14th St., NW., Washington, DC 20005, had submitted pesticide petition (PP) 4E04408 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug and Cosmetic Act (FFDCA) (21 U.S.C. 346a(e)), propose to amend 40 CFR part 180 by replacing the existing exemption from the requirement of a tolerance for residues of cross-linked polyurea-type encapsulating polymer listed under 40 CFR 180.1082 with an exemption from the requirement of a tolerance for residues of poly(phenylurea), cross-linked, when used as an inert ingredient (encapsulating agent) in pesticide formulations applied to growing crops only under 40 CFR 180.1001(d).

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not to imply nontoxicity; the ingredient may or may not be chemically active.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted with the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance exemption will protect the public health. Therefore, the tolerance exemption is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register,** file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [OPP-300383A] (including any objections and hearing requests 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.

Written objections and hearing requests, identified by the document control number [OPP-300383A], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk 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 any objections and hearing requests 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 objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a ''significant regulatory action'' as an action that is likely to result in 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 the Executive Order, EPA has determined that this rule is not ''significant'' and is therefore not subject to OMB review.

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 23, 1995.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is 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 180.1001(d) is amended in the table therein by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
* * * * * *		
Poly(phenylhexylurea), cross-linked; minimum average molecular weight 36,000.	.....	Encapsulating agent
* * * * * * *		

* * * * *

§ 180.1082 [Removed]

3. By removing § 180.1082 *Cross-linked polyurea-type encapsulating polymer (Alachlor); exemption from the requirement of a tolerance.*

[FR Doc. 95–16752 Filed 7–11–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 94–129; FCC 95–225]

Unauthorized Changes of Consumers' Long Distance Carriers—''Slamming''

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On June 13, 1995, the Commission adopted a Report and Order (R&O) in CC Docket No. 94–129 (released November 10, 1994; FCC 95–225) adopting rules to prescribe the form and content of letters of agency for changing long distance carriers. The new rules are intended to protect consumers from unauthorized changes of their long distance carriers through the use of deceptive and misleading letters of agency (LOAs). An LOA is a document, signed by the customer, which states that a particular carrier has been selected as that customer's ''primary interexchange carrier'' (''PIC''). The Commission takes this action in response to the thousands of complaints received regarding unauthorized changes of consumers' PICs, a practice commonly known as ''slamming.'' The Commission also takes this action in response to the tens of thousands of additional complaints received annually by local exchange carriers (LECs) and state regulatory bodies. These rules and policies prohibit certain deceptive or confusing marketing practices of some interexchange carriers (IXCs) and are intended to significantly reduce consumer confusion over the use and function of the LOA. In crafting these rules, the Commission has balanced the industry's need for flexibility in marketing services to consumers and the need to protect consumers from deceptive marketing practices.

EFFECTIVE DATE: September 11, 1995.

FOR FURTHER INFORMATION CONTACT: Wilbert E. Nixon, Jr., Enforcement Division, Common Carrier Bureau, (202) 418–0960.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order CC Docket No. 94–129 [FCC 95–225], adopted June 13, 1995 and released June 14, 1995. The full text of the Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, NW., Washington, DC 20554. The full text of this Report and Order may also be purchased from the Commission's duplicating contractor, International Transcription Services, 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Paperwork Reduction

Public reporting burden for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this

collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Record Management Branch, Paperwork Reduction Project, and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

Summary of Report and Order

1. Specifically, the Commission adopts rules that prohibit the potentially deceptive or confusing practice of combining the LOA with promotional materials in the same document. These rules require that the LOA be a separate or severable document whose sole purpose is to authorize a change in a consumer's primary long distance carrier. Among other things, the Commission prescribes the minimum contents of the LOA and require that the LOA be written in clear and unambiguous language. Furthermore, the Commission prohibits all ''negative option'' LOAs and requires that LOAs contain complete translations if they employ more than one language. Finally, the Commission excepts from the ''separate or severable'' rule a check that serves as an LOA, so long as the check contains certain information clearly indicating that endorsement of the check authorizes a PIC change and otherwise complies with the Commission's LOA requirements.

Background

2. Despite the adoption of consumer safeguards set forth in earlier orders, the Commission continued to receive complaints from consumers who allege that their PIC selections have been changed without their permission. Many of these complaints describe apparently deceptive marketing practices in which consumers are induced to sign a form document that does not clearly advise the consumers that they are authorizing a change in their PIC. Consumers, for example, have complained that the ''LOA'' forms were ''disguised'' as contest entry forms, prize claim forms, or solicitations for charitable contributions. The Commission has also received complaints against IXCs because of ''negative option LOA'' forms. These forms typically offer prizes to consumers if they return the forms and may ''require'' consumers to check a box at the end of the form if they do *not* want to change their long distance service. The characteristic common to all of these marketing practices is that the inducement is combined with the LOA and the inducement language is prominently displayed on the inducement/LOA form while the PIC change language is not, thus leading to consumer confusion. Consumers asserted that when they entered the contests, claimed the prizes, or responded to the charity solicitations, they did not intend to switch their long distance carriers.

3. Consequently, the Commission, on its own motion, initiated this rule making proceeding. The Commission proposed rules to separate the LOA from all promotional inducements and make the LOA, which has been previously defined by the Commission, a separate document on a separate page, the sole purpose of which is to authorize a PIC change. The Commission also sought public comment on a number of related issues, including: (1) Whether LOAs should contain only the name of the rate-setting carrier; (2) whether consumers should be liable for the long distance telephone charges billed by unauthorized carriers; (3) whether the Commission should adopt rules requiring that bilingual LOAs contain complete translations in both languages; and (4) whether the Commission should extend its PIC change verification procedures to consumer-initiated 800 calls.

Discussion

4. After the AT&T divestiture, the Commission sought to encourage a competitive long distance telephone market. To that end, the Commission gave significant weight to the argument that the only way for non-dominant carriers to compete effectively with the dominant carrier was for all carriers to be allowed to market their services with significant flexibility. As competition in the long distance telephone market has emerged, the Commission's experience in balancing consumer protection concerns and IXC marketing flexibility has evolved. The Commission's initial decision not to require written LOAs prior to a PIC change indicated to the industry its willingness to allow IXCs to police their own marketing activities. Although it still believes self-policing to be an integral consumer protection mechanism, the Commission cannot ignore the very large number of slamming complaints that consumers continue to submit to their local phone companies, to their state regulatory bodies, and to this Commission.

5. For any competitive market to work efficiently, consumers must have information about their possible market choices and the opportunity to make their own choices about the products and services they buy. Slamming takes away those choices from consumers. Slamming also distorts the long distance competitive market because it rewards those companies who engage in deceptive and misleading marketing practices by unfairly increasing their customer base at the expense of those companies that market in a fair and informative manner. In light of the foregoing, the Commission finds it necessary to prescribe rules that it believes will serve as an informative and useful consumer protection mechanism and an important rule of fair competition for the long distance telephone industry, while recognizing the industry's need for flexibility in marketing services to consumers.

A. The Minimum Requirements for LOAs

6. The Commission received nearly unanimous support for its proposed rule prescribing the general form and minimum content for an LOA. As proposed in § 64.1150(e), the Commission will require that the LOA contain: (1) The subscriber's billing name and address and each telephone number to be covered by the PIC change order; (2) a line stating the subscriber's decision to change the PIC from the current interexchange carrier to the prospective interexchange carrier; (3) a statement that the subscriber designates the interchange carrier to act as the subscriber's agent for the PIC change; and (4) a statement that the subscriber understands that any PIC selection chosen may involve a charge to the subscriber for changing the subscriber's PIC. As stated in the Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, Notice of Proposed Rule Making, 59 FR 63750 (December 9, 1994), 9 FCC Rcd 6885 (1994) (*NPRM*), these provisions organize and restate the LOA requirements of *Investigation of Access and Divestiture Related Tariffs*, 50 FR 25982 (June 24, 1985), 101 FCC 2d 911 (1985) (*Allocation Order*) and *Policies and Rules Concerning Changing Long Distance Carriers*, 57 FR 4740 (February 7, 1992), 7 FCC Rcd 1038 (1992) (*PIC Verification Order*) into one standard rule. This simplified restatement of current Commission requirements regarding LOAs was met with general acceptance by the commenters and thus was adopted as proposed. The Commission refrains from prescribing specific LOA language at this time. The Commission agrees with some of the commenters that differing state requirements and differences in the target market for individual promotional campaigns indicates that IXCs may be better able to tailor the specific language in a way that clearly informs the consumer of the impending choice. The Commission believes that IXCs can

police themselves in this matter given clear guidance, and it believes that these rules give that guidance. Also, the Commission agrees with Sprint Communications Co. (Sprint) that this new rule and the existing telemarketing rules (§ 64.1100) should be consistent. The Commission therefore amends § 64.1100(a) to read as follows: ''The IXC has obtained the customer's written authorization in a form that meets the requirements of § 64.1150, below.''

7. Nearly every entity choosing to comment on the matter supported the Commission's proposed prohibition of ''negative option'' LOAs. This type of LOA requires a consumer to take some action to *avoid* a PIC change. Because the Commission finds that such LOAs impose an unreasonable burden on consumers who do not wish to change their PICs, the Commission adopts the proposed prohibition. Further, the Commission agrees with the comments of Allnet that the proposed section might be construed as somewhat vague. The Commission therefore adopts some of Allnet's suggested language and modifies the provision to read: ''Letters of agency shall not suggest or require that a subscriber take some action in order to retain the subscriber's current interexchange carrier.''

8. Although many commenters oppose any Commission-prescribed LOA text, font, or type size, nearly all commenters agreed that ''[a]t a minimum, the letter of agency must be printed with a type of sufficient size and readable type to be clearly legible and must contain clear and unambiguous language.'' Although it adopts these general guidelines, the Commission refrains from prescribing a specific font or type size. Long distance telephone companies' marketing campaigns take on many different forms. Their services may be advertised in myriad ways, and in myriad type sizes, depending on the advertising medium and target audience. Therefore, the Commission will allow IXCs the flexibility to design the LOA in a manner that is complimentary to their associated promotional material. However, the Commission will require LOAs to be printed with type of sufficient size and readable type to be clearly legible to the consumer. This means that LOAs must generally be comparable in font and size to their associated promotional material.

B. The LOA as a Separate or Severable Document

9. The Commission's proposal to separate the LOA physically from all promotional materials has drawn both comments favoring it and comments questioning it. Specifically, the Commission proposed that ''[t]he letter of agency shall be a separate document whose sole purpose is to authorize an interchange carrier to initiate a primary interexchange carrier change. The letter of agency must be signed and dated by the subscriber to the telephone line(s) requesting the primary interexchange carrier change * * *. The letter of agency shall not be combined with inducements of any kind on the same document.'' The opponents of the Commission's proposal such as MCI Telecommunications Corporation (MCI) argue that this proposed rule ''may'' be found unconstitutional and that it ''goes farther than is necessary'' to protect consumers from slamming. Proponents of the Commission's proposed rule argue that separating the LOA from inducements is necessary to ensure that consumers will be clearly informed as to the actions they are being asked to make. In fact, some commenters contend the Commission does not go far enough to protect consumers. In response to these comments, the Commission first addresses whether the First Amendment to the Constitution would permit us to require the LOA to be a separate document. Then, the Commission addresses whether it is in the public interest for us to adopt this requirement.

1. First Amendment Considerations

10. Notwithstanding MCI's First Amendment arguments, the rules the Commission has adopted in this proceeding meet the tests set out by the Supreme Court for permissible government regulation of commercial speech under the First Amendment. First of all, the rules adopted in this proceeding do not prohibit any speech, commercial or otherwise. They merely require that the carriers' method of delivery of that speech not confuse or mislead the consumer. The record in this proceeding is replete with comments supporting the Commission's conclusion that the present practices of many carriers have confused and misled thousands of consumers into thinking they were participating in some type of activity other than switching their long distance carrier, when, in reality, they were doing exactly that. The regulations that the Commission is adopting are designed to minimize this confusion by requiring that the language of the LOA be clear and unconfusing, contain specific information that will assure that the signer of the LOA can understand exactly what he or she is signing, and separate the LOA from any promotional materials so that the consumer is more likely to be able to differentiate commercial incentives offered by the carriers from the actual commitment to changing his or her primary interexchange carrier.

11. The Supreme Court has held that the government may ban forms of communication more likely to deceive the public than to inform it. *Central Hudson Gas & Electric Corp.* v. *Public Service Comm'n of N.Y.*, 447 U.S. 557, 561 (1980). The Commission has tried to narrowly design its regulations to eliminate deception and yet still permit the free flow of information.

12. The Supreme Court also has held that it is permissible to use some restrictions on the time, place, and manner of commercial speech provided that they are justified without reference to the content of the regulated speech, that they serve a significant government interest, and that in so doing they leave open ample alternative channels for the communication of the information. *Virginia Board of Pharmacy* v. *Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 771 (1976). The rules the Commission adopts here are restrictions in the manner of delivery and meet all of the requirements set out by the Supreme Court. Specifically, the Commission is restricting only the manner in which the material is presented: it must be clear and not confusing, it must include enough information to permit the customer to know what he or she is doing by signing the document and who his or her long distance carrier will be, and it must be separate or severable from other commercial incentives. As for a significant governmental interest, the very process of designating a primary long distance carrier has been established by this Commission as part of the process of providing options to consumers in choosing their interexchange services. The Commission created the LOA as a method for assuring that the consumer's choice was honored and to protect the consumer from unauthorized changes. The sheer volume of complaints that the Commission has received demonstrates that there are still some flaws in the system it has designed and that there is need for refinements to provide protection to the consumers from the present practices that have led to so many unauthorized conversions. Second, the Commission is not prescribing specific language either in the LOA or in any promotional materials; rather the Commission is specifying the minimum information that an LOA must include and have placed no restrictions on any promotional materials.

13. Finally, as indicated above, the Commission has chosen the method of

regulation that least impinges on the carriers' free choices of how to promote their services. The Commission *is not* proposing to restrict IXCs' use of their promotional materials, but merely is specifying that they be separate or severable from the actual document that authorizes a PIC change. Carriers are free to use whatever promotional materials they choose, and whatever avenues for distribution of those promotional materials that they choose. All the Commission is requiring is that they comply with its minimal requirement that the actual document authorizing a PIC change be separate or severable from the promotional materials so that it is clear to the consumer that signing that document will do just that. The Commission's goal is to minimize deceptive promotional practices and still permit the consumer to be informed about her or his choices.

2. Public Interest Considerations

14. Based on its investigation of consumer complaints concerning LOAs, the Commission found that abuses have occurred and continue to occur at an increasing rate. Much of the abuse, misrepresentation, and consumer confusion occurs when an inducement and an LOA are combined in the same document in a deceptive or misleading manner. These complaints generally describe apparently deceptive marketing practices in which consumers are induced to sign a form document that does not clearly advise the consumers that they are authorizing a change in their PIC. As the Commission has described above, consumers have complained that the ''LOA'' forms were ''disguised'' as content entry forms, prize claim forms, or solicitations for charitable contributions. The characteristic common to all of these marketing practices is that the inducement is combined with the LOA and the inducement language is prominently displayed on the inducement/LOA form while the PIC change language is not, thus leading to consumer confusion.

15. The Commission believes that consumers and industry alike should be clearly informed as to what will be expected to authorize a change of a consumer's long distance telephone service. The Commission's experience indicates that for fair competition to continue, consumers must have clear and unambiguous information about the actions and the choices they are being asked to make. Although it thinks that a consumer may reasonably choose to change long distance telephone services because of a carrier's inducements, the Commission is troubled by the number of consumers nationwide who are not given the opportunity to make that informed choice because they are deceived by an LOA that is disguised as a contest entry, prize claim form, or charitable solicitation. The Commission believes that the only way to ensure that the consumer can always make a truly informed choice from now on is to require that the LOA be a separate or severable document. The LOA must therefore be a separate document or must be severable—for example, attached by perforations that, when torn out, contains only authorizing language. Under this requirement, no IXC will be able to mix its promotional materials with the LOA in a deceptive or confusing manner.

16. Although this rule may require some IXCs to change certain details in their use of such promotional tools, the Commission does not believe that its rule will seriously affect the basic effect and function of the IXCs' marketing campaigns. With regard to charitable solicitations, or contest and sweepstakes entries, IXCs can simply use their promotional materials to encourage consumers to sign the LOA. For example, it is conceivable that an LOA might be in the form of a postage-paid postcard attached along the ''inner spine'' of a magazine facing the IXCs' advertisement touting its service and inducements. It is also conceivable that an IXC might use a postage-paid postcard LOA that is initially attached to an airline ticket jacket by a perforated edge. The promotional materials and inducements would be relegated to the ''jacket'' portion of the airline ticket jacket and the LOA, a separate and distinct form, could be torn from the ''jacket'' portion and mailed separately. Finally, those IXCs using ''one-page'' promotional materials could employ a variation of this approach. They could use a single sheet with the IXC's promotional inducements on the top portion of the sheet and a separable postcard LOA on the bottom, initially attached to the sheet by perforations, but ultimately detached from the sheet and mailed. If the Commission's rules are followed and the LOA is properly captioned, consumers should be clearly informed as to the actions they are being asked to take. In light of this discussion, the Commission believes that the benefits gained by better informed consumers outweigh the possibilities of slightly deceased marketing flexibility that some IXCs might experience.

17. MCI mistakenly construes the Commission's proposal as unreasonably restricting the use of their promotional materials. MCI argues that ''[w]ithout defining impermissible 'inducements,' it is impossible to distinguish between legitimate commercial incentives, as distinct from deceptive practices that ought to be prohibited. If the Commission is seeking to foreclose all promotional materials or advertisements used with LOAs, its proposal is too sweeping.'' Contrary to MCI's assertions, the Commission is in no way prohibiting the use of marketing campaigns that include contest or sweepstakes entries, charitable solicitations, or checks. The Commission is merely taking the limited, necessary step of separating the Commission-prescribed authorizing document from the commercial inducements. The Commission takes this action because thousands of consumers have complained to us and tens of thousands more have complained to their LECs and state regulatory bodies that when they enter the contests, claim the prizes, or respond to the charity solicitations employed by some IXCs, they did not intend to switch their long distance carriers.

18. The Commission does, however, believe a limited exception should be made for PIC change checks. Although some IXCs have used checks to mislead and deceive consumers to change their PICs, the Commission recognizes that other IXCs use checks in their marketing campaigns in an appropriate and non-misleading manner, which have resulted in minimal consumer compliant. AT&T and MCI assert that their ''PIC change'' checks are clear and unambiguous and clearly inform the consumer that signing such a check will result in a PIC change. Both companies claim that their marketing material accompanying the check also informs the consumer that signing the check will result in a PIC change. Both companies also cite the absence of consumer complaints against their respective check marketing strategy as evidence that this form of marketing should not be prohibited by the Commission's ''separate document'' LOA proposal.

19. The Commission is persuaded by the arguments of AT&T and MCI, notwithstanding its negative experience with some IXCs that deceptively use checks to market their services. In an effort to narrowly tailor its requirements, the Commission finds that the checks that some carriers, such as AT&T and MCI use as LOAs can be excepted from its ''separate or severable document'' requirement. Generally, such checks contain only the required LOA language and the necessary information to make them negotiable instruments (bank account number, payee's name, amount, etc.). When an

''inducement'' check does not contain additional promotional information, the Commission thinks that it is unlikely that consumers will be unable to discern that the primary purpose of the check is to authorize a PIC change. Typically, a ''PIC change'' check from these IXCs contains a banner title that reads ''Endorse Check to Switch to * * *'' or ''Endorsement of this Check Switches Your Long Distance Service to * * *.'' Indeed, a survey of the consumer complaints that the Commission has received reveals that these checks are seldom the source of actual unauthorized conversions. To ensure that such checks do not mislead or confuse consumers, the Commission requires that a valid LOA/inducement check contain only the required LOA language and the necessary information to make it a negotiable instrument, and shall not contain any promotional language or material. The Commission requires carriers to continue to place the required LOA language near the signature line on the back of the check. In addition, the Commission requires that carriers print, in easily readable, bold-face type on the front of the check, a notice that the consumer is authorizing a PIC change by signing the check. The Commission thinks that this additional safeguard, along with all other requirements applicable to LOAs, will ensure that consumers are not confused or misled when carriers use inducement checks as a marketing tool.

20. The Commission wants to emphasize that this provision should reduce complaints against most IXCs because consumers should be on clear notice that they are changing their long distance telephone service. Further, consumers and this Commission should, under this requirement, be better able to identify intentionally misleading practices. IXCs should easily be able to fashion LOAs that will be unlikely to engender complaints and thereby come under Commission scrutiny. The Commission sees serious problems with less specific LOA requirements that, under the guise of permitting more marketing ''flexibility,'' would effectively require us to scrutinize many, perhaps most, LOAs in response to consumer complaints, as is now the case. Such a result would, the Commission thinks, be much more intrusive than its new rule, which should remove most LOAs from the realm of dispute. Therefore, the Commission adopts the rule to require the LOA to consist of a separate or severable document—that is, a document containing the minimum language required to authorize a PIC change as described in § 64.1150(e), printed with a type of sufficient size and readable type to be clearly legible with no inducements. The Commission believes that this requirement will prevent certain current deceptive or confusing marketing practices, while recognizing the need of the industry for flexibility to market services to consumers.

C. Other Unauthorized Conversion Issues

1. The Carrier Named on the LOA

21. In the *NPRM*, the Commission sought comment on whether LOAs should contain only the name of the carrier that directly provides the interexchange service to the consumer. The Commission recognizes that there may be more than one carrier technically involved in the provision of long distance service to a consumer. For example, there may be an underlying carrier whose facilities provide the long distance capacity and a resale carrier that actually sets the rates charged to the end user consumer. In some cases, there also may be a carrier that acts as a billing and collection or marketing agent.

22. Most commenters agreed that only the name of the IXC setting the consumer's rates should appear on the LOA. Some resellers opposing this requirement claim that some consumers will not give them their business because the consumers want their telephone service handled by a large carrier. These commenters argue that allowing the small IXC reseller to use the name of the larger underlying carrier is not confusing to consumers and is necessary to bolster consumer confidence. Based on numerous consumer complaints, the Commission concludes that it is in fact confusing to consumers for an LOA to contain the name of an IXC that is not providing service directly to the consumer. Because the Commission's rules only affect the LOA and not promotional materials, small IXCs may choose to use those materials to promote their affiliations with larger carriers in order to gain greater consumer acceptance. The LOA may not be used for such a purpose, however. Therefore, the Commission will only permit the name of the rate-setting IXC on the LOA.

23. In a related matter, several LECs have informed the Commission, that in some cases where the reseller sets the rates, consumers may be confused because the name of the underlying, facilities-based IXC may appear on the consumer's bill. BellSouth Telecommunications, Inc. (BellSouth) states that ''currently the provider of interexchange service named on a customer's telephone bill rendered by BellSouth is determined by the carrier identification code (CIC). CICs are issued by Bellcore to facility-based IXCs. Thus, BellSouth has no present capability for bill identification of companies which market to end users but do not own transmission facilities and do not have a CIC. Such capability could be achieved through the creation of a coding system to assign and maintain pseudo-CICs for non-facility-based IXCs.'' Although BellSouth states that it might be able to institute such a system within a year, BellSouth asserts that a national system of code administration and maintenance is preferred.

24. The Commission recognizes that consumers may be confused if after they agree to switch their long distance service, the name of some other IXC appears on their bill. The Commission expects all IXCs that do not have a CIC to explain to their new customers that another IXC's name may appear on the customer's bill. The IXC may also describe any relationship it has with the IXC named on the bill. Further, the Commission urges LECs such as BellSouth to develop a coding system to assign and maintain pseudo-CICs for non-facility-based IXCs. The Commission defers a full examination of this issue to another proceeding.

25. Finally, certain commenters have informed the Commission that the jurisdictions they operate in either allow for two primary interexchange carriers (''2 PICs'') or will likely allow ''2 PICs'' in the near future. Typically, these jurisdictions allow for a separate inter-state IXC and an intra-state IXC. Consumers may choose an IXC to provide them with either inter-state service, intra-state service, or both. The Commission's proposed § 64.1150(e)(4) does not contemplate such a scenario and therefore it will modify the rule provision to accommodate 2-PIC jurisdictions as follows:

> (The LOA must state) that the subscriber understands that only one interexchange carrier may be designated as the subscriber's interstate primary interexchange carrier for any one telephone number. To the extent that a jurisdiction allows the selection of additional primary interexchange carriers (e.g., for intrastate or international calling), the letter of agency must contain separate statements regarding those choices. Any carrier designated as a primary interexchange carrier must be the carrier directly setting the rates for the subscriber. One interexchange carrier can be both a subscriber's interstate primary interexchange carrier and a subscriber's intrastate primary interexchange carrier * * *.

The Commission notes that the rule provision will, in effect, continue as originally proposed in those jurisdictions that do not recognize 2–PIC, which at the adoption of these rules represents the vast majority of the jurisdictions in the United States. This rule provision should, however, be flexible enough to accommodate any new 2–PIC jurisdictions in the future.

2. Business vs. Residential Presubscription

26. The Commission sought comment on whether business and residential customers should be treated differently with respect to its LOA requirements. Unlike the situation with many residential customers, LOA forms sent to businesses may not be received and processed by the person authorized to order long distance service for the business. In such a situation, even an LOA that is signed may result in an unauthorized change because the person who signed the LOA had no authority to do so. Most commenters contend that business and residential customers should be treated the same, ''as long as the requirements are reasonable for both types of customer.'' One of these commenters contends that

> If an LOA is clear and legible, it should not be subject to different rules based on the type of service provided. Carriers may have legitimate business reasons to combine marketing campaigns for different kinds of services, and may not even be able to distinguish between business and residence lines (e.g., where a business operates from the home).

Further, some suggest that a line be included on both the residential and the business LOA that indicates that the person signing the LOA is the person authorized to order service.

27. The Commission is persuaded that there should be no distinction between business and residential customers with respect to its new LOA rules. Further, the Commission does not believe it necessary at this time to require a line on the LOA indicating who is qualified to authorize a PIC change. This may be an addition that a prudent IXC may include on an LOA, because it remains the responsibility of the IXC to determine the responsible party in such a contractual arrangement. The validity of an LOA will continue to depend on it having been signed by a person authorized to make the presubscription decision.

3. Consumer Liability Issues

28. In the *NPRM,* the Commission asked whether any adjustments to long distance telephone charges should be made for consumers who are the victims of unauthorized PIC changes. Specifically, the Commission asked whether consumers should be liable for the long distance telephone charges billed to them by the unauthorized IXC and if so, to what extent. The Commission sought comment on whether consumers should be liable for: (a) The total billed amount from the unauthorized IXC; (b) the amount the consumer would have paid if the PIC had never been changed; or (c) nothing at all.

29. The majority of commenters support option (b), the ''making whole'' approach. These commenters contend that consumers should be liable to the unauthorized carrier for the amount they would have paid if the PIC had never been changed. Consumer groups, some state regulatory bodies, and some local telephone companies argue that the only way to stop slamming is to deny the ''slammer'' revenue and the only way to do that is to absolve consumers of all billed toll charges from unauthorized IXCs. In addition, the Illinois Congressional Delegation has expressed its concern ''that many long-distance customers that have experienced this unauthorized switch in their service are forced to pay for services they did not order or knowingly approve.'' It has asked the Commission to ''examine the possibility of proposing a rule that will allow victims of 'slamming' to forfeit responsibility for charges billed by the long-distance company which switched their service without proper authorization.'' Opponents of forgiving all charges argue that such a policy would lead to consumer fraud in that it ''would provide the unscrupulous with an incentive to claim wrongful conversion in order to avoid payment of legitimate long distance charges.'' They claim that such a policy ''would also impose undue penalties on carriers that had converted a consumer to their service in good faith only to find that the spouse or a relative from whom they had received authority for the PIC change was not actually empowered to grant that authority.''

30. Despite the compelling arguments of those favoring total absolution of all toll charges from unauthorized IXCs, the Commission is not convinced that it should, as a policy matter, adopt that option at this time. The ''slammed'' consumer does receive a service, even though the service is being provided by an unauthorized entity. The consumer expects to pay the original rate to the original IXC for the service. Except for the time and inconvenience spent in obtaining the original PIC, consumers are not injured if their liability is limited to paying the toll charges they would have paid to the original IXC. The Commission recognizes, however, that this may not be the best deterrent against slamming. Some IXCs engaging in slamming may not be deterred unless all revenue gained through slamming is denied them. The Commission will investigate future slamming cases with the question of consumer liability in mind. At this time, the Commission believes that the equities tend to favor the ''make whole'' remedy and therefore support the policy of allowing unauthorized IXCs to collect from the consumer the amount of toll charges the consumer would have paid if the PIC had never been changed. The Commission expects all unauthorized IXCs to cooperate with consumers in the proper settlement of these charges. Failing this, through the complaint process, the Commission will prohibit unauthorized IXCs from collecting more than the original IXC's rates. However, the Commission recognizes that if ''slamming'' continues unabated—perhaps through abuses in areas other than the use of the LOA—it may have to revisit this question at a later date.

31. The Commission also asked the public to comment on the effect that unauthorized PIC changes have on optional calling plans and the consumers enrolled in them. In cases of unauthorized PIC changes, the consumer may not be aware of the change for at least one billing cycle. Often, these consumers continue to pay a flat, minimum monthly charge to their previous carrier for a discount calling plan despite the fact that they are no longer presubscribed to that carrier. Most commenters agree that consumers should not be liable for optional calling plans if they are no longer connected to their original carrier, but several differ on exactly how the consumer should recoup their loss. Most commenters contend that the consumer should simply be absolved of all calling plan liability from the moment the consumer is slammed. Several commenters contend that the original carrier should bill the offending carrier for the lost revenue. Some commenters suggest that however it decides to handle consumer liability issues, the Commission should not expect LECs to resolve consumer/IXC disputes.

32. The Commission agrees with the majority of commenters that the equities strongly favor absolving slammed consumers from liability for optional calling plan payments. It is reasonable that consumers should not have to pay for services they cannot enjoy in the manner they had contemplated. For example, consumers that only receive

discounts on their residential telephone service as a benefit in return for optional calling plan premiums should not have to continue to pay those premiums if their residential telephone service is slammed. However, there may be cases where consumers receive benefits in addition to their presubscribed telephone service discounts, such as the use of a domestic or international ''calling card,'' not associated with a presubscribed telephone number. In such cases, consumers should be liable for some calling plan payment even if the presubscribed service has been changed, as long as those consumers are clearly informed upon initiation of the optional calling plan. Consequently, the Commission will not allow IXCs to collect optional calling plan premiums for slammed consumers, unless the IXC has stated clearly in its tariff that its presubscribed customers are liable for calling plan premiums in compensation for benefits in addition to the customer's presubscribed service, even if the presubscribed service is changed. The IXC will be required to give prior notice to its customers regarding its additional benefits and its compensation expectations through its tariff and its customer service material.

4. Fully Translated LOAs

33. The non-English speaking population represents a growing market in this country that IXCs are targeting for their domestic and international business. Some of these consumers have alleged that the non-English versions of the LOA do not contain all of the text of the English versions of the LOA. As a result, material portions of the LOA are in only one language, typically English, which the non-English speaking consumers may not fully understand. The Commission sought public comment on whether it should adopt rules to govern bilingual or non-English language LOAs. Specifically, the Commission asked whether it should require *all* parts of an LOA translated if *any* parts were translated. The overwhelming majority of commenters stated that the Commission should adopt such a rule. The Commission agrees that such a requirement is necessary to ensure that all consumers can make informed choices. Therefore, the Commission requires all IXCs that choose to translate any part of the LOA to translate all parts of the LOA and consequently, it adopts § 64.1150(f).

5. LOA Title

34. Consumer groups, state regulatory bodies, and resellers contend that a consumer may be less confused and more informed if the LOA is titled in a more understandable style. For example, comments suggest titling the LOA document: ''An Order to Change My Long Distance Telephone Service Provider,'' ''Application to Change My Long Distance Company,'' or ''Order Form to Change My Long Distance Telephone Service.'' Although it will not prescribe a particular title for the LOA, the Commission agrees with these commenters and strongly suggest that all IXCs use a clear, easily understandable title.

6. Consumer-Initiated Calls

35. Finally, the Commission asked the public how consumers have been affected by the IXC marketing practice of ''encouraging'' consumers to authorize a PIC change when they call an IXC's business number for other reasons. Typically, the consumers, in response to an advertisement, are just requesting general information about the IXC and do not intend to initiate a PIC change. The Commission is persuaded by some commenters, resellers, local telephone companies, and consumer groups who advocate extending the Commission's PIC verification procedures to consumer-initiated calls. Some commenters, however, argue that because the IXC does not initiate the call, the PIC order is not generated by telemarketing and, thus, the order verification protections in § 64.1100 of the Commission's rules should not apply. Those commenters fail to explain adequately why a consumer who initially placed a call to an IXC's business number, presumably searching for information, should benefit less from rules designed to curb deceptive practices than the consumer receiving a call from a telemarketer. The Commission is not convinced there is enough of a difference between the two situations as to justify such vastly different treatment. The Commission agrees with Consumer Action that consumers ''responding to a 30-second television ad * * * calling to get answers to questions * * * are as subject to unauthorized conversion as a consumer who was called at home.'' The Commission also agrees that upon adoption of its rules, some ''IXCs may switch from mailing inducement-laden LOAs to mailing marketing pieces in which a consumer is urged to call a business number in order to receive a promised inducement'' where ''[a]n unauthorized conversion could easily take place on such a call.'' Therefore, the Commission will extend PIC verification procedures to consumer-initiated calls to IXC business numbers.

7. Preemption of State Law

36. Although the Commission did not seek comment on the matter, some of the resellers urged the Commission to preempt inconsistent state law with regard to ''slamming.'' These commenters generally argue that ''[t]he Commission's LOA requirements should be applied nationwide and the individual states should not be allowed to impose their own LOA requirements in addition to those of the Commission.'' None of these commenters, however, cites specific state regulations that warrant federal preemption. At most, ACTA asserts that ''two state public utility commissions, Florida and South Carolina, * * * currently have on-going proceedings concerning the rules for consumer selection of interexchange carriers.'' Until and unless the Commission receives specific allegations of specific state statutes that warrant federal preemption, it cannot consider or act on these commenters' requests for federal preemption. The Commission notes that the record shows that state action regarding ''slamming'' appears to be consistent with its own. Therefore, the Commission declines at this time to preempt any state law regarding the unauthorized conversion of consumer's long distance service. The Commission will consider specific preemption questions on a case-by-case basis.

Regulatory Flexibility Act Final Analysis

37. *Need for Rules and Objective.* The Commission has adopted rules designed to protect consumers from unauthorized switching of their long distance carriers and to ensure that consumers are fully in control of their long distance service choices.

38. *Issues Raised by the Public in Response to the Initial Regulatory Flexibility Analysis.* No comments were received specifically in response to the Initial Regulatory Flexibility Analysis.

39. *Alternatives that would lessen impact.* The Commission has considered alternatives suggested in the record and have found that they would not be comparably effective. Small entities may feel some economic impact in additional printing costs because of these new letter of agency requirements. Because the rules will not take effect for sixty (60) days, the Commission believes all IXCs, large and small, will have sufficient advance time to revise and print new LOAs.

Conclusion

40. In this Report and Order, the Commission has adopted rules clearly

delineating what must be included in an LOA document and, equally important, what may not be included in an LOA document. These rules are intended to limit the contents of an LOA document so that its sole purpose and effect are to authorize a PIC change. The proposed restrictions should eliminate consumer confusion about the intent and function of the LOA. Further, the Commission's policy decisions should further clarify its position regarding other ''slamming'' issues. The Commission wishes to make clear that although its evolutionary approach to the ''slamming'' problem has generally been one of regulatory restraint, it will not tolerate continued abuses against consumers and may revisit this question if warranted.

41. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose new and modified third party reporting requirements on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

Ordering Clauses

42. Accordingly, it is ordered, pursuant to sections 1, 4(i), 4(j), 201–205, 218, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, 218, 303(r), that 47 CFR part 64 is amended as set forth below.

43. It is further ordered, that the Chief of the Common Carrier Bureau is delegated authority to act upon matters pertaining to implementation of the policies, rules, and requirements set forth herein.

44. It is further ordered, that this Report and Order will be effective sixty (60) days after publication of a summary thereof in **Federal Register.**

List of Subjects in 47 CFR Part 64

Communications common carriers, Telephone.

Federal Communications Commission,

William F. Caton,

Acting Secretary.

Adopted Rules

Part 64 of the Commission's rules and regulations, Chapter I of Title 47 of the Code of Federal Regulations, is amended as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

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

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 226, 228, unless otherwise noted.

2. Section 64.1100 is amended by revising paragraph (a) to read as follows:

§ 64.1100 Verification of orders for long distance service generated by telemarketing.

* * * * *

(a) The IXC has obtained the customer's written authorization in a form that meets the requirements of Section 64.1150.

* * * * *

3. Section 64.1150 is added to Subpart K to read as follows:

§ 64.1150 Letter of agency form and content.

(a) An interchange carrier shall obtain any necessary written authorization from a subscriber for a primary interexchange carrier change by using a letter of agency as specified in this section. Any letter of agency that does not conform with this section is invalid.

(b) The letter of agency shall be a separate document (an easily separable document containing only the authorizing language described in paragraph (e) of this section whose sole purpose is to authorize an interexchange carrier to initiate a primary interexchange carrier change. The letter of agency must be signed and dated by the subscriber to the telephone line(s) requesting the primary interexchange carrier change.

(c) The letter of agency shall not be combined with inducements of any kind on the same document.

(d) Notwithstanding paragraphs (b) and (c) of this section, the letter of agency may be combined with checks that contain only the required letter of agency language prescribed in paragraph (e) of this section and the necessary information to make the check a negotiable instrument. The letter of agency check shall not contain any promotional language or material. The letter of agency check shall contain, in easily readable, bold-face type on the front of the check, a notice that the consumer is authorizing a primary interexchange carrier change by signing the check. The letter of agency language also shall be placed near the signature line on the back of the check.

(e) At a minimum, the letter of agency must be printed with a type of sufficient size and readable type to be clearly legible and must contain clear and unambiguous language that confirms:

(1) The subscriber's billing name and address and each telephone number to be covered by the primary interexchange carrier change order;

(2) The decision to change the primary interexchange carrier from the current interexchange carrier to the prospective interexchange carrier;

(3) That the subscriber designates the interexchange carrier to act as the subscriber's agent for the primary interexchange carrier change;

(4) That the subscriber understands that only one interexchange carrier may be designated as the subscriber's interstate primary interexchange carrier for any one telephone number. To the extent that a jurisdiction allows the selection of additional primary interexchange carriers (e.g., for intrastate or international calling), the letter of agency must contain separate statements regarding those choices. Any carrier designated as a primary interexchange carrier must be the carrier directly setting the rates for the subscriber. One interexchange carrier can be both a subscriber's interstate primary interexchange carrier and a subscriber's intrastate primary interexchange carrier; and

(5) that the subscriber understands that any primary interexchange carrier selection the subscriber chooses may involve a charge to the subscriber for changing the subscriber's primary interexchange carrier.

(f) Letters of agency shall not suggest or require that a subscriber take some action in order to retain the subscriber's current interexchange carrier.

(g) If any portion of a letter of agency is translated into another language, then all portions of the letter of agency must be translated into that language.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix

Comments Filed

ACC Corporation
Allnet Communication Services, Inc.
America's Carriers Telecommunications Association
AT&T Corp.
Communications Telesystems International
Competitive Telecommunications Association
Consumer Action
Florida Public Service Commission
Frontier Communications International Inc.
General Communication, Inc.
GTE Service Corporation
Hertz Technologies, Inc.
Hi-Rim Communications, Inc.
Home Owners Long Distance, Inc.
L.D. Services, Inc.
LDDS Communications, Inc.
Lexicom, Inc.
MCI Telecommunications Corporation
MIDCOM Communications Inc.
Missouri Public Service Commission, et al.
National Association of Attorneys General, et al.
New York Department of Public Service

NYNEX Telephone Companies
One Call Communications, Inc.
Operator Service Company
Pacific Bell and Nevada Bell
People of the State of California, et al.
Public Utility Commission of Texas
Southwestern Bell Telephone Company
Sprint Communications Co.
State of Michigan, Attorney General
State of Wisconsin, Attorney General
State of New York, Attorney General
Telecommunications Company of the Americas, Inc.
Telecommunications Resellers Association
Touch 1, Inc. and Touch 1 Communications, Inc.
William Malone

Reply Comments Filed

ACC Corporation
Alabama Public Service Commission
Allnet Communication Services, Inc.
Ameritech Operating Companies
AT&T Corp.
Bell Atlantic Telephone Companies
BellSouth Telecommunications, Inc.
Commonwealth Long Distance
Communications Telesystems International
Competitive Telecommunications Association
Custom Telecommunications Network of Arizona, Inc.
General Communication, Inc.
GTE Service Corporation
Hi-Rim Communications, Inc.
L.D. Services, Inc.
LDDS Communications, Inc.
Local Area Telecommunications, Inc.
MCI Telecommunications Corporation
National Association of Regulatory Utility Commissioners
Oncor Communications, Inc.
One Call Communications, Inc.
Operator Service Company
Pennsylvania Public Utility Commission
Pacific Bell and Nevada Bell
Southwestern Bell Telephone Company
Sprint Communications Co.
Telecommunications Resellers Association

[FR Doc. 95–16641 Filed 7–11–95; 8:45 am]
BILLING CODE 6712–01–M

47 CFR Part 76

[MM Dockets Nos. 92–266 and 93–215; FCC 95–196]

Cable Act of 1992—Small Systems

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Based on comments filed in response to the Further Notice of Proposed Rulemaking, 59 FR 51934 (October 13, 1994) and in order to implement the provisions of the Cable Television Consumer Protection and Competition Act of 1992, this Sixth Report and Order and Eleventh Order on Reconsideration amends the Commission's rules regarding rates for small cable systems in order to ease the burdens of rate regulation on small systems.

EFFECTIVE DATE: The requirements and regulations established in this decision shall become effective upon approval by OMB of the new information collection requirements adopted herein, but no sooner than August 11, 1995. The Commission will issue a notice indicating the effective date.

FOR FURTHER INFORMATION CONTACT: Tom Power or Meryl S. Icove, Cable Services Bureau, (202) 416–0800. Form 1230 information: Alex Byron, Cable Services Bureau, (202) 416–0800.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Sixth Report and Order and Eleventh Order on Reconsideration in MM Docket Nos. 92–266 and 93–215, FCC 95–196, adopted May 5, 1995, and released June 5, 1995. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M St., NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, (ITS), at 2100 M St., NW., Washington, DC 20037, (202) 857–3800.

I. Introduction

In this Sixth Report and Order and Eleventh Order on Reconsideration we amend our definitions of small cable entities to encompass a broader range of cable systems that will be eligible for special rate and administrative treatment. In addition to amending our definitions, we make available to this expanded category a new regulatory scheme that will be available immediately for use by certain small cable companies. This new form of regulation should provide both rate relief and reduced administrative burdens.

II. Summary

1. The Commission issued the Further Notice of Proposed Rulemaking, 59 FR 51934 (October 13, 1994), seeking to establish a more complete record for purposes of promulgating final rate rules applicable to small operators, independent small systems, and small systems owned by small MSOs by soliciting comment on possible alternative definitions that we could use for purposes of determining eligibility for special rate or administrative treatment. We sought comment on whether we should retain current definitions or use different definitions for purposes of establishing special rate or administrative treatment for small systems and small operators. We specifically sought comment on these issues in light of section 3(a) of the Small Business Act, and on whether we should employ the current SBA definition of a small cable company in our cable rules.

2. In amending our definitions and introducing a new, simplified form of small system rate relief in this Order, the Commission continues its ongoing efforts to offer small cable companies administrative relief from rate regulation in furtherance of congressional intent. In each of the orders that we have adopted in this rate proceeding, small cable companies have been afforded flexibility in how they can comply with rate regulations while reducing burdens on themselves and providing good service to subscribers. Through our actions today, the Commission expands the category of systems eligible for such opportunities to include approximately 66% of all cable systems in the nation serving approximately 12.1% of all cable subscribers.

3. Specifically, we amend our definitions so that systems serving 15,000 or fewer subscribers that are owned by small cable companies of 400,000 or fewer subscribers are eligible to elect small system cost-of-service relief, as well as certain other relief previously made available to small systems and operators. The new cost-of-service approach will involve a very simple, five element calculation based upon a system's costs. The calculation will produce a per channel rate for regulated services that will be presumed reasonable if it is no higher than $1.24 per channel. If the formula generates a higher rate, the operator still will be permitted to charge that rate if not challenged by the franchising authority or, upon being challenged, if the operator meets its burden of proving that the rate is reasonable. This new regulation will accord these small substantial flexibility in establishing the types of costs to be included and in allocating those costs among services. Our analysis of cost data, when combined with our understanding of the many unique challenges facing small cable companies, leads us to conclude that a simplified approach will best serve a segment of the cable industry that needs assistance in coping with rate regulation in order to serve subscribers better and to grow its business. In addition, this approach should facilitate regulation of cable rates by small local franchising authorities who wish to have a procedure for doing so that is simpler than existing forms of regulation.

III. Discussion

A. The New Category of Systems and Operators Eligible for Relief

4. We acknowledge that a large number of smaller cable operators face difficult challenges in attempting simultaneously to provide good service to subscribers, to charge reasonable rates, to upgrade networks, and to prepare for potential competition. Since passage of the 1992 Cable Act, the Commission has worked continuously with the small cable industry to learn more about their legitimate business needs and how our rate regulations might better enable them to provide good service to subscribers while charging reasonable rates. Based on the record in this proceeding and our analysis of the rate justifications that have been submitted since our revised rate rules became effective in May 1994, we conclude that our definitions of small operators and small MSOs need to be changed to encompass the broader range of operators in need of rate relief. Therefore, we will expand upon the definition of a small system to include any system that serves 15,000 or fewer subscribers. Furthermore, we significantly expand upon the definition of a small operator, redefining it and renaming it as a ''small cable company'' serving a total of 400,000 or fewer subscribers over all of its systems. Finally, we will eliminate the existing definitions of a small operator and small MSO. We will extend to the expanded category of small systems owned by small cable companies certain rate and administrative relief as discussed below, and also the small system rate relief provisions adopted in the accompanying *Eleventh Order on Reconsideration.*

5. In the 1992 Cable Act and its legislative history, Congress made clear its belief that small systems would be in need of administrative and rate relief as a consequence of the re-regulation of the cable industry.[1] We are convinced, however, that systems of up to 15,000 subscribers are likewise in need of relief and that we have the authority to extend relief to them. As more fully explained below, the comments in this proceeding and our review of benchmark and cost-of-service rate justifications leads us to conclude that these larger systems generally face many of the same challenges that systems 1,000 or fewer subscribers do in providing cable service. In view of this finding, we believe the relaxation of certain rate rules that we hereby order is consistent with the 1992 Cable Act. We note in particular the Statement of Policy contained in the statute in which Congress expressed its intent, inter alia, to:

(1) Promote the availability to the public of a diversity of views and information through cable television * * *;

(2) Rely on the marketplace, to the maximum extent feasible, to achieve that availability;

(3) Ensure that cable operators continue to expand, where economically justified, their capacity and the programs offered over their cable systems * * *.

Relaxing regulatory burdens should free up resources that affected operators currently devote to complying with existing regulations and should enhance those operators' ability to attract capital, thus enabling them to achieve the goals of Congress cited above. Moreover, in prescribing rules governing basic service rates, the Communications Act requires us to ''seek to reduce the administrative burdens on subscribers, cable operators, franchising authorities, and the Commission * * *.'' We believe this mandate authorizes us to expand the category of small systems and provide them with rate and administrative relief. Section 303(r) of the Communications Act further supports our decision to take Congress's goals into account in extending relief to systems with up to 15,000 subscribers. The action we take today should also ease burdens for local franchising authorities and the Commission, in furtherance of congressional intent. In particular, as we simplify matters for smaller cable companies, we do the same for smaller local franchising authorities, who we understand to be just as concerned as smaller cable operators with the potential burdens and costs of regulation.

6. The staff evaluated the 15,000 subscriber standard on the basis of shared economic, physical, and financial characteristics for systems above and below this size, in order to determine the significance of that breakpoint. To evaluate this standard, the staff used data from Warren Publishing Inc.'s cable services database, which was obtained by the Commission in the fall of 1994. This database contains detailed information on most of the country's 11,200 cable systems and 1,500 cable companies. Staff determined that systems with fewer than 15,000 subscribers differ from systems with more than 15,000 subscribers with respect to the following characteristics:

(a) The average monthly regulated revenue per channel per subscriber is $0.86 for systems with fewer than 15,000 subscribers and $0.44 for systems with more than 15,000 subscribers;

(b) The average number of subscribers per mile is 35.3 for systems with fewer than 15,000 subscribers and 68.7 for systems with more than 15,000 subscribers;

(c) The average annual premium revenue per subscriber is $41.00 for systems with fewer than 15,000 subscribers and $73.13 for systems with more than 15,000 subscribers.

This confirms that the use of the 15,000 subscriber standard does result in two groups of systems that have significant distinctions between them.

7. As we have observed previously, our relief for smaller cable entities is aimed at those that do not have access to the financial resources, purchasing discounts, and other efficiencies of larger companies. Therefore, relief will be available only to small systems, as now defined, that are owned by small cable companies serving 400,000 or fewer subscribers over all of its systems. In defining a small cable company as one serving no more than 400,000 subscribers, we accepted the recommendations of commenters who urged that we define a small cable company as one that earns $100 million or less in annual regulated revenues. As explained below, establishing the company size in terms of subscribers, rather than dollars, will advance regulatory simplicity; in the cable context, $100 million in annual regulated revenues equates to approximately 400,000 subscribers.

8. With respect to the $100 million standard, we note in particular the recommendation of this measure of company size by SBA's Office of Advocacy. As it and other commenters point out, in the common carrier field entities having annual regulated revenues of more than $100 million are subject to much greater regulatory burdens than those earning less than that amount. For example, for various regulatory purposes the Common Carrier Bureau has created the Tier 1 category of local exchange carriers (''LECs''), consisting solely of LECs with at least $100 million in annual regulated revenues. In expanding LEC interconnection requirements, we limited the impact of our rules to Tier 1 LECs, citing the limited resources of smaller LECs, among other factors. Numerous common carrier reporting

[1] To the extent we refer herein to systems of up to 15,000 subscribers as ''small systems,'' we do so for purposes of convenience. We are not using that term to refer to the class of systems described in section 623(i) of the Communications Act.

requirements apply solely to carriers having annual revenues in excess of $100 million. Likewise, the level of detail required under the Uniform System of Accounts applicable to telecommunications companies depends upon whether the regulated entity is a Class A or Class B company, the former having annual regulated revenues of $100 million or more and the latter having annual regulated revenues below that amount.

9. As SBA's Office of Advocacy states, the logic underlying these common carrier rules also can be applied in the cable context. Cable companies exceeding the $100 million standard are better able to absorb the costs and burdens of regulation due to their expanded administrative and technical resources. Further, we have noted in the telephone context that relaxation of regulatory burdens is justified for smaller entities even when those entities have significant market power. Accordingly, we believe that $100 million in annual regulated revenues is a reasonable standard at which to decrease regulatory burdens.

10. A cable company with an overall subscriber figure of 400,000 we have chosen is roughly equivalent to a cable company with $100 million in annual revenues. To establish this equivalency, the Commission used a regression methodology to estimate the statistical relationship between companies' regulated revenue and their subscribership. (Regression analysis is a statistical technique used to estimate the value of a random variable (the dependent variable), given that the value of an associated variable (the independent variable) is known. The regression equation is the algebraic formula by which the estimated value of dependent variable (in this case, the number of subscribers associated with annual regulated revenue) is determined. Generally, the functional relationship between the independent variable and the dependent variable is expressed as:

$$y=f(x)+e \quad (1)$$

where 'y,' the value of the dependent variable (number of subscribers), is determined by 'x,' the independent variable (annual revenue at MSO level). Random variable 'e' is added to the algebraic formula to account for variables other than 'x' that may influence the dependent variable. In the above functional relationship, since 'e' is random, 'y' is also random. It is possible to have different types of functional relationships between dependent and independent variables, e.g., linear or non-linear relationship. We assume that the dependent variable is linearly related to independent variable. Hence we can rewrite f(x) in equation (1) as:

$$f(x)=a+bx \quad (2)$$

Based on the value of f(x) established in equation (1), equation (2) can be rewritten as:

$$y=a+bx+e \quad (3)$$

Equation (3) represents a linear regression equation. In this equation, both 'a' and 'b' are ''unknown coefficients'' and are estimated by fitting a straight line using the 'least-squares criterion'. By the least-squares criterion the best-fitting regression line is that for which the sum of the squared deviation between the actual and estimated values of the dependent variables for the sample is minimum. Our estimation of the relationship between subscribers and regulated revenues yielded:

$$y=120.597+(.004137097)*x$$

where y=company subscribership and x=company regulated revenues.) The data for this methodology were taken from the Warren Publishing Inc. cable services database mentioned above. According to this methodology, $100 million in annual regulated revenue is equivalent to 413,830 subscribers. We have rounded the exact figure to 400,000 subscribers for the administrative convenience of operators, franchising authorities, and the Commission. SCBA also equates $100 million in annual revenues with approximately 400,000 subscribers, based on its data showing average per subscriber revenues of about $20 per month. In defining a small cable company, we conclude that it would be better to continue to rely on the total number of subscribers, rather than to rely on a revenue figure. A definition based on subscribers is simpler to apply and will avoid the need to allocate revenues between regulated and unregulated services. Furthermore, evidence suggests that operating challenges faced by small cable companies are closely tied to the number of subscribers served rather than the revenues they generate. In addition, a subscriber-based standard should provide cable companies with the maximum flexibility to add new services and new programming, thereby increasing revenues without losing the benefits of rate relief.

11. At the same time, however, the Commission recognizes that a company's revenues will affect its ability to comply with significant regulatory responsibilities. As noted, in the common carrier field we have repeatedly used the standard of $100 million in annual revenues to allocate regulatory burdens. We believe that the impact of regulation on common carriers is similar to that imposed on cable companies. Small cable companies also must generate a minimum level of revenue in order to attract financing to upgrade their networks, to provide new programming to subscribers, and to introduce new services that are now being developed. Therefore, by targeting rate relief at small cable companies with 400,000 or fewer subscribers, we believe we will be assisting those companies earning $100 million or less in annual gross revenues to obtain financing needed to grow.

12. We expect that 66% of all cable systems will meet the expanded definitions of a small system owned by a small cable company. These systems serve only about 12.1% of the nation's subscribers. Consequently, regulatory relief provided to these eligible systems will affect a majority of systems in the industry but a relatively small number of subscribers, thus limiting the overall impact of any rate changes that these new definitions permit. Nonetheless, we believe that the new definitions will not result in unreasonable rates for subscribers. Indeed, the new definitions constitute a needed refinement to the existing definitions and thereby create a better fit between the relief we have created for smaller entities and the class of systems that qualify for that relief.

13. We have chosen to eliminate the existing definitions of a small operator and a small MSO because data made available to the Commission since adoption of the *Second Order on Reconsideration*, 59 FR 17943 April 15, 1994 leads us to conclude that these categories were not broad enough to include all those operators and systems in need of rate and administrative relief. For example, SCBA asserts that only 16 companies meet the definition of a small MSO. Moreover, the small cable industry and local franchising authorities generally state that they find the small operator and small MSO definitions confusing and difficult to understand and to implement. Therefore, the system, operator, and MSO size standards that currently define small operators and small MSOs will no longer be relevant, except for resolving certain pending disputes as discussed more particularly below.

14. In urging the expansion of the class of systems eligible for small system relief, several commenters recommend that we revise the method by which system size is calculated. A small system is currently defined based on the number of subscribers served from its principal headend. A number of

commenters argue that the Commission should amend the definition of a small system so that it is defined based upon the number of subscribers served in a franchise area. Under this approach, a cable company that served two franchise areas would be treated for rate regulation purposes as if it operated two separate systems, even if both franchise areas were in fact served by one set of integrated transmission paths running from a single headend. The arguments in favor of this change have been raised before in this proceeding and were rejected by the Commission as unpersuasive. We continue to believe that determining small system size based on a system's principal headend, best harmonizes our small system rate rules with most of our existing regulations on cable system size. For example, the existing exemptions for systems with 1,000 or fewer subscribers in the network non-duplication, public inspection, and technical regulations are based on a system's headend rather than franchise area. To use a franchise area definition would result in some segments of a single integrated cable operation being subject to a different regulatory structure than other segments of the same operation. Therefore, we again reject commenters' suggestions and in expanding current definitions to include systems with 15,000 or fewer subscribers we shall base eligibility on the number of subscribers served from a system's principal headend.

15. We recognize that establishing a numerical test can exclude some systems which may also be in need of rate relief. Therefore, we will entertain petitions for special relief from systems who fail to meet the new definitions but are able to demonstrate that they share relevant characteristics with qualifying systems and therefore should be entitled to the same regulatory treatment. Absent such an avenue, the regulatory treatment of two smaller, nearly identical systems could vary significantly merely because, for example, one is just under, and the other just over, 15,000 subscribers, or because the size of their respective owners varies by a few hundred subscribers. In considering such petitions, relevant factors will include the degree by which the system fails to satisfy either or both definition, whether the systems recently has been the subject of an acquisition or other transaction that substantially reduced its size or that of its operator, and evidence of increased costs (e.g., lack of programming or equipment discounts) faced by the operator. If the system fails to qualify for the small system definition because it is affiliated with a cable company that serves over 400,000 subscribers, we will consider the degree to which that affiliation exceeds our affiliation standards,[2] and whether other attributes of the system warrant that it be treated as a small system notwithstanding the percentage ownership of the affiliate. Likewise, a qualifying system that seeks to obtain programming from a neighboring system by way of a fiber optic link, but that is concerned that interconnection of the two systems will jeopardize its status as a stand-alone small system, may file a petition for special relief to ask the Commission to find that it is eligible for small system relief. This is not an exhaustive list of the factors we will consider in reviewing petitions for special relief; operators may support their petitions with whatever information and arguments they deem relevant.

B. Application of Existing Rate and Administrative Relief

16. We have summarized above the steps we have taken previously to ease burdens on smaller systems and operators. We now address the eligibility of systems that have 15,000 or fewer subscribers and are owned by small cable companies to take advantage of these measures. We also initiate the gradual termination of transition relief for all but low-price systems.

17. To qualify for any existing form of relief, systems and companies must meet the new size standards as of either the effective date of this order or on the date thereafter when they file whatever documentation is necessary to elect the relief they seek, at their election. In completing and filing that documentation, the system may use the most recent subscriber data available to it. A system that is eligible for small system relief on either of the dates described above shall remain eligible for so long as the system has 15,000 or fewer subscribers, regardless of a change in the status of the company that owns the system. Thus, a qualifying system will remain eligible for relief even if the company owning the system subsequently exceeds the 400,000 subscriber cap. Likewise, a system that qualifies shall remain eligible for relief even if it is subsequently acquired by a company that serves a total of more than 400,000 subscribers. The ability to remain eligible for small system relief even after being acquired by a larger operator should increase the value of the system in the eyes of operators and, more importantly, lenders and investors. The enhanced value of the system thus will strengthen its viability and actually increase its ability to remain independent if it so chooses.

18. In most instances, eligibility for small system relief will terminate after the system exceeds 15,000 subscribers. As discussed in the subsections that follow, the manner in which relief will be terminated when the system reaches this subscriber threshold will vary depending upon the type of relief at issue.

1. Transition Relief for Small Operators

19. In the *Second Order on Reconsideration*, 59 FR 18064, April 15, 1994, we stated that transition relief would be available pending the adoption of final rate rules. We adopt final rate rules in the accompanying *Eleventh Order on Reconsideration*. Therefore, we provide herein for the termination of transition relief. (This termination of transition relief shall affect only systems who qualify for that relief on the basis of size. Low-price systems shall remain eligible for transition relief as provided under the existing rules.) Systems currently operating under transition relief may continue to do so until two years from the effective date of this order. We establish this period to allow transition systems adequate time to plan for the conversion to some other form of regulation, rather than requiring an immediate conversion. Such a sudden shift would be disruptive not only to operators, but also to subscribers and franchising authorities who are now accustomed to their operators' regulatory status. Until the termination of transition relief, transition systems shall continue to adjust their transition rates in accordance with existing rules. However, systems need not wait the full two years to convert from transition relief. Thus, for example, a transition system may convert at any time by filing the documentation necessary to establish rates in accordance with our benchmark or cost-of-service rules.

20. Unless the operator terminates its transition status sooner as described above, such relief shall terminate two years from the effective date of this item. By that date, a current transition system must have restructured its rates and satisfied all notice and filing

[2] A small system will be considered affiliated with a cable company serving more than 400,000 subscribers if such a company holds more than a 20 percent equity interest (active or passive) in the system or exercise *du jure* control (such as though a general partnership or majority voting shareholder interest). Where a larger company is so affiliated with the small system, we believe the system will have access to the resources it needs to grow as well as larger systems, and hence should not be in need of the relief we will accord to small systems that have no such access.

requirements pursuant to either our benchmark or cost-of-service rules, the latter of which include the small system cost-of-service regulations adopted in the accompanying *Eleventh Order on Reconsideration*. However, these requirements will not apply if the transition system is subject to an alternative rate agreement in accordance with the *Eighth Order on Reconsideration*, 60 FR 14373, March 17, 1995 as of the date transition relief ends.

21. Transition relief shall remain available only to small systems that already are operating pursuant to that form of relief. In particular, satisfaction of the new system and company size definitions shall not qualify a system for transition relief. Moreover, no small system that first becomes subject to regulation hereafter shall be entitled to transition relief, including systems that satisfy our existing definition of a small operator. Nothing herein shall affect the applicability of transition relief to low-price systems.

2. Cost-of-Service

22. Systems of 15,000 or fewer subscribers owned by small cable companies may now use FCC Form 1225 to justify higher rates through a cost-of-service showing. This ''short form'' reduces the number of reporting categories and involves fewer calculations. Qualifying systems that have not previously established rates in accordance with Form 1225 may do so on a prospective basis only. Upon exceeding 15,000 subscribers, any system that has established rates based on Form 1225 may continue to charge its then permitted rate and may adjust rates in accordance with all rules applicable to systems that have more than 15,000 subscribers. We believe it unduly burdensome and disruptive to require operators to engage in the standard benchmark or cost-of-service showing immediately upon passing the 15,000 subscriber threshold. This is particularly true in the case of cost-of-service systems since their permitted rates reflect their cost of debt, amortization schedules, and other items that will be established before the system reaches that threshold and will remain constant thereafter. Depriving Form 1225 filers of adjustments for inflation, external cost increases, and channel additions would be inconsistent with the form of relief elected by the operator. Of course, to make a cost-of-service showing after exceeding the 15,000 subscriber threshold, a system will have to use Form 1220.

3. 90-Day ''Grace Period''

23. Systems serving 15,000 or fewer subscribers owned by small cable companies currently may avail themselves of the 90-day ''grace period'' after regulation begins in which to complete and file rate justifications, notify subscribers, and implement restructured rates. Thus, eligible systems are not required to establish rates and service offerings that comply with our rules for 90 days after the initial date of regulation, and they may take up to 60 days from the date of initial regulation to file necessary rate justification forms with their local franchising authority, or the Commission where appropriate. Qualifying systems must continue to give 30 days notice to subscribers prior to implementing rate and service changes. Additionally, eligible systems may make their initial basic tier rates, established in accordance with the Commission's revised rate regulations, effective on 30 days' notice without prior approval from their local franchising authority. If, upon subsequent examination of a rate justification, a local franchising authority or the Commission finds that the system has implemented rates in excess of the maximum permitted rate, refunds may be ordered in accordance with our regulations. If a system exceeds the 15,000-subscriber threshold during a grace period that already is running, or if the first day of regulation is no more than 90 days after the system exceeds 15,000 subscribers, the system shall still be entitled to the full 90-day and 60-day periods described above, beginning with the initial date of regulation.

4. Streamlined Rate Reductions

24. We will expand the category of systems eligible for streamlined rate reductions to include those serving 15,000 or fewer subscribers owned by a small cable company. Thus, eligible systems may choose to reduce each billed item of regulated cable service as of March 31, 1994 by 14% as adjusted for subsequent changes in inflation, external costs, and channel additions and deletions. This will enable more systems to reduce administrative burdens because eligible systems choosing streamlined rate reductions are not required to complete FCC Forms 1200 and 1205, unbundle equipment and installation charges from programming service charges, or set equipment and installation charges at actual cost. Qualifying systems may establish rates in accordance with this relief upon satisfaction of all notice and filing requirements. After reaching 15,000 subscribers, these systems will be able to make all rate adjustments permitted of any system with more than 15,000 subscribers, including increases for inflation and external costs. Systems that have elected streamlined rate relief have set their initial permitted rates to reflect the full reduction rate, as adjusted for inflation. Therefore, these systems should be permitted to adjust rates hereafter to reflect subsequent increases in inflation and external costs even after exceeding 15,000 subscribers.

5. Going Forward Rules

25. Systems of any size that are owned by small cable companies and that incur additional monthly per subscriber headend costs of one full cent or more for the addition of a channel may recover the flat mark-up fee for the new channel, plus the actual cost of the headend equipment necessary to add new channels, not to exceed $5,000 per channel, plus the channel's licensing fee, if any, for adding not more than seven new channels to CPS tiers over the next three years, if the monthly per subscriber cost of the additional headend equipment necessary to receive an additional channel is one cent or more. (We note that many of these systems already may have qualified for this small system going-forward relief even though they have in excess of 1,000 subscribers pursuant to the *Seventh Order on Reconsideration*, 60 FR 4863 (January 25, 1995), which makes the relief available to a system with more than 1,000 subscribers if the system is independent or owned by a MSO meeting the prior definition of a small MSO and if the monthly per subscriber cost of the additional headend equipment necessary to receive an additional channel is one cent or more.) The cost of the headend equipment must be amortized over the useful life of the equipment and small systems will be allowed an 11.25% return on the undepreciated investment. Qualifying systems may elect this relief only with respect to channels added after the effective date of this order. Of course, these systems also may offer New Product Tiers which they are permitted to price as they elect, subject to certain conditions. We note that under the existing rule, small systems owned by small MSOs, as those terms were originally defined, could take advantage of this headend upgrade incentive, even if they could not show that the additional monthly per subscriber headend cost of adding a channel was at least one cent. Under the new rule, a system must meet the ''one cent rule'' in order to qualify for this form of relief.

In theory, our revision of the rule could take away this form of relief from systems of under 1,000 subscribers who cannot satisfy the one cent rule. In practice, however, this should not be the case, because the additional cost of headend equipment, when spread over no more than 1,000 subscribers and depreciated reasonably, will always produce a per subscriber monthly cost of at least one cent. If we are incorrect in this conclusion, however, we will entertain petitions for special relief from systems that currently qualify for this form of relief but who would not qualify under the new rule.

6. Alternative Rate Regulation Agreements

26. Systems of 15,000 or fewer subscribers owned by small cable companies will be given the opportunity to work certified local franchising authorities to create alternative rate regulation agreements in accordance with the *Eighth Order on Reconsideration*, 60 FR 14373 (March 17, 1995). In expanding eligibility, we believe the benefits of alternative rate regulation agreements, i.e., reasonable rates and reduced regulatory burdens, will flow to a greater number of subscribers, cable systems, and local franchising authorities. An agreement made while the system has 15,000 or fewer subscribers shall be enforceable for the term provided in the agreement. Thus, the agreement shall not be terminable simply because the system subsequently exceeds 15,000 subscribers, unless the agreement itself provides for termination at that time.

7. Other Existing Relief

27. Subject to approval of the franchising authority, any system meeting the new small system definition shall be permitted to certify that its rates are reasonable, regardless of the size of the operator. In addition, an operator of any size that owns more than one system with 15,000 or fewer subscribers may establish its unbundled charges for regulated equipment based on the average equipment costs of all such small systems, or only some of them, rather than a system-by-system basis.

C. The Small Business Act

28. The Commission does not believe the SBA size standards, to which federal agencies may be required to adhere under section 3 of the Small Business Act, are applicable to the Commission's definitions of small systems and small cable companies under the 1992 Cable Act. Section 3(a) of the Small Business Act provides that SBA size standards apply for the purposes of all legislation, unless the legislation specifically authorizes different size standards. The 1992 Cable Act in fact suggests one system size definition that the Commission may use as one with 1,000 or fewer subscribers. The Commission has implemented the statutory provision regarding small system relief in a more flexible manner than is explicitly mandated by the Cable Act and is now extending relief to additional systems. But this does not alter the fact that the Commission is implementing a statute with an explicit small business size standard. Therefore, section 3(a) of the Small Business Act is inapplicable. Section 3(a) is also inapplicable because the SBA defines a small-business concern as one ''which is not dominant in its field of operation.'' Cable systems subject to rate regulation are by definition dominant in their field of operation because they do not face effective competition.

29. Moreover, even if the SBA rules defining a small cable system as one with $11 million or less in gross annual revenues were applicable, the definitions we are adopting today are designed to provide relief to such companies. This *Order* extends relief to cable companies with 400,000 or fewer subscribers, a standard we equate with $100 million in annual regulated revenues as advocated by SBA's Office of Advocacy. Thus, we believe that our standards are more protective of small businesses than is the $11 million dollar standard promulgated by the SBA. In any event, we are directing the Commission's Secretary to provide a copy of this order to the SBA.

IV. Eleventh Order on Reconsideration

30. Having redefined the class of systems entitled to relief on the basis of system size, we here adopt expanded relief for such systems. Again, the system may establish its initial eligibility with respect to the system and company size limitations as of the effective date of this order or as of the date the system files the documentation necessary to seek the relief.

31. In adopting transition relief, we stated that when cost studies were completed, we might make permanent, eliminate, or modify such relief for qualifying systems and operators. We also stated that when we develop average equipment cost schedules, we could terminate or modify our provisions for streamlined rate reductions. Finally, we gave notice that in our final cost proceeding, we may modify our requirements for cost showings by small systems.

32. The comments received in response to the *Further Notice of Proposed Rulemaking*, 58 FR 29736, May 21, 1993, suggest that many smaller cable operators and companies have an immediate need for further relief from certain aspects of rate regulation currently applicable to them. Moreover, we believe that the data we already have accumulated is sufficient to design additional relief for those systems most in need. In such circumstances, we see no reason to impose on smaller systems the burdens and delay that a formal cost study would entail. Therefore, based on the comments received in this proceeding, and in light of other pending petitions for reconsideration, we reconsider on our own motion the *Second Reconsideration Order*, 58 FR 46718, September 2, 1993, as it relates to rate regulation of smaller systems, and hereby make certain relief available to systems that have 15,000 or fewer subscribers and that are owned by a small cable company, as we have now defined that term.

33. As explained more fully below, eligible systems will be able to establish their permitted rates on the basis of an extremely simple formula that requires the operator to supply only five items of data: Total operating expenses, net rate base, rate of return, channel count and subscribers. These five items will be used in an easy formula that will generate a per-channel rate that will be presumed reasonable if it is no more than $1.24 per channel. To disapprove such a rate, the franchising authority will have the burden of showing that the cable operator did not reasonably interpret and allocate its cost and expense data in coming up with the operating expense, net rate base, and rate of return figures claimed by the operator in calculating its permitted rate. If the formula-generated rate exceeds $1.24, the burden will be on the operator to establish the reasonableness of its calculations, if the franchising authority elects to question the requested rate. The new optional mechanism will replace most other forms, used to compute rates, including FCC Form 1205. Equipment rates will be set to comply with 47 U.S.C. 623(b)(3). This new mechanism can be used by any qualifying company, regardless of what rate regulation methodology has been used to justify existing rates or an increase in rates.

34. We adopt these measures partly in response to comments received pursuant to the *Further Notice of Proposed Rulemaking* which we have summarized in the preceding *Sixth Report and Order*. We will not repeat that summary here, except to note again that the comments indicate that smaller cable companies are unduly burdened

by the current scheme of rate regulation in two ways. First, the comments suggest that our rate rules do not adequately take into account the higher costs of doing business, and particularly the higher costs of capital, faced by smaller companies. Second, many operators claim that our rules place an inordinate hardship upon them in terms of the labor and other resources that must be devoted to ensuring compliance. Such comments suggest that some operators may be facing the dilemma of desiring to impose rates that our cost-of-service rules may well permit, but at the same time being averse to risking the resources that a cost-of-service showing entails since they cannot be guaranteed that the showing will be successful. In crafting the relief we adopt today, we have attempted to alleviate both the substantive and the procedural burdens of which smaller cable companies complain.

35. We are particularly sensitive to the motion that smaller systems face disproportionately higher costs. In adopting rate rules, the Commission is required to consider operator-specific cost data. Thus, any scheme we adopt must take into account the cost data of the individual operator and give the operator the opportunity to recover its actual, reasonable costs. To some extent, however, the inclusion of operator-specific data in our scheme of rate regulation conflicts with the goal of simplifying the regulatory process. Establishing permitted rates on the basis of precise and detailed data entails more work for the operator that must compile that information from its own records and reproduce it in accordance with whatever forms and formulas we devise. For example, we have estimated that it takes 60 hours to complete the simplified cost-of-service form, FCC Form 1225, which requires operators to provide substantial data regarding the costs incurred in operating the system. Such regulation also imposes a burden on regulatory authorities that must review the data. We note that in many cases small local franchising authorities have scarce resources to review complicated cost-of-service filings. Yet to the extent we lessen the regulatory burden on operators and franchising authorities by reducing the amount of data that must be assembled and reviewed to calculate permitted rates, we are also concerned that we have confidence that the operator's rates are reasonable.

36. Having reviewed the criteria identified by Congress as being relevant to the establishment of rate regulations, we have created a formula for generating permitted rates that entails as small a burden as possible while still producing a rate that reflects with reasonable accuracy the operating costs and capital investments of the operator. The formula can be expressed as follows:

$$\text{Per channel per subscriber rate}^{*} = \frac{\text{Annual operating expenses}^{*} + (\text{Net rate base}^{*} \times \text{rate of return})}{\text{Number of regulated channels} \times \text{Number of subscribers}}$$

* For regulated services only

This formula is designed to establish the annual per-channel per-subscriber revenue requirements of the regulated system. The formula permits a regulated cable company to set a per-channel per-subscriber rate that will both cover operating expenses and provide a reasonable return on investments. Such a recovery is necessary to guarantee the operator the opportunity to attract new capital, promote innovation, and cover all essential costs of operating a cable system. The new method can be used to justify existing rates, or establish new rates, regardless of what rate regulation has been used in the past. Operators may rely on previously existing information, such as tax forms or company financial statements, rather than recreating financial calculations.

37. To ensure that the per-channel revenue requirement is reasonable, all operating costs must be covered. Therefore, wages, salaries, programming, advertising, electricity, maintenance, depreciation, amortization and all other relevant costs are included in the total operating expenses. This is not an exhaustive list, however, and operators may recover other reasonable and legitimate costs of provide service. As under our standard benchmark and cost-of-service regulations, when calculating operating expenses the operator must take into account only those expenses related to providing regulated channels. Congress specifically provided that regulation of rates for the basic service tier (''BST'') should take into account general operating costs only to the extent those costs are allocable to basic service. With respect to regulation of both BST and CPST rates, inclusion of costs related to unregulated services would distort the revenue requirement for the regulated channels and equipment, since there are no restrictions on the discretion of cable operators in establishing rates for unregulated services. More specifically, inclusion of costs related to the provision of unregulated services could result in those services being subsidized by revenues from regulated channels. Clearly, Congress did not intend such a result. However, to further our goal of minimizing regulatory burdens, we are granting small cable systems owned by small cable companies substantial flexibility to fairly allocate costs between BST, CPST, equipment and unregulated services. We further stress that, when the requested rate does not exceed $1.24 per channel, the burden will be on the franchising authority to show that the operator was unreasonable in making allocations such as these.

38. The net rate base is included in the formula to reflect net investment. The net rate base consists of the depreciated value of property. It provides the proper basis for calculating a fair rate of return on investment. For the reasons stated in the preceding paragraph, only assets associated with providing regulated services may be included in the calculation of the net rate base. However, the operator shall have substantial flexibility in calculating its net rate base. The presumptions and restrictions applicable to standard cost-of-service proceedings shall not apply. Thus, for example, we will not presume it unreasonable to include in the rate base start-up losses that exceed the first two years of operating expenses. Having isolated a category of systems for whom our standard rules need to be relaxed due to the particular characteristics of those systems, we seek to ensure that those systems will be permitted to establish rates in accordance with such characteristics, rather than in accordance with characteristics of cable systems generally.

39. Likewise, we will not presumptively exclude intangibles such as acquisition costs from the net rate base. In the Cost Order, 59 FR 17975 (April 15, 1994) we presumptively

excluded acquisition costs for reasons that, again, were more applicable to cable systems as a whole than to the subset of systems at issue in this proceeding. For example, whereas we found that acquisition costs were attributable in part to the growing number of programs and channels available only by subscribing to cable service, the limited channel line-ups of smaller systems means that a greater portion of their offerings consist of broadcast channels that many consumers can view for free without subscribing to cable. Thus, the acquisition costs of a smaller system are less likely to include a supra-competitive valuation of services over which the system has exclusive control. Likewise, in the Cost Order, 59 FR 17975 (April 15, 1995), we concluded that excess acquisition costs reflected, in part, the value of unregulated services, such as premium and pay-per-view programming, that should not be included in regulated rates. Smaller systems with more limited channel line-ups are less likely to have such programming available. As we noted above, the average premium revenue per subscriber is more than $32.00 less for systems with fewer than 15,000 subscribers than for systems with more than 15,000 subscribers. Thus, acquisition costs for small systems will reflect more accurately the value of the regulated services, a value which the operator should be able to recover.

40. At a minimum, the permitted rate of return shall equal the operator's actual cost of debt as set forth in any loan agreements with third parties. However, the operator may make reasonable adjustments to this rate to reflect other relevant factors such as, but not limited to, its cost of equity and its capital structure. The operator will have substantial discretion in determining the precise manner in which its rate of return is calculated. Thus, the operator will not be limited to the single methodology for establishing cost of equity that we identified in the *Cost Order*. We selected that methodology because it included a large group of publicly traded companies that we found to be representative of the universe of nonregulated firms. While such a sampling is an appropriate source of surrogates for regulated cable service generally, we believe that small systems owned by small cable companies should be able to pursue any methodology that is appropriate based on their individual characteristics. Likewise, operators will not be limited to the range of debt-to-equity ratios applicable in a standard cost-of-service showing, but instead may establish a system-specific or assumed ratio. (Those systems that currently have a negative equity percentage could not achieve a reasonable rate of return using its actual debt/equity ratio. Therefore, these companies may use a reasonable assumed ratio.)

41. Finally, eligible systems shall not face the heavy burden imposed on operators seeking rates of return higher than 11.25% in standard cost-of-service proceedings. On the basis of the comments in this proceeding, we now recognize that, of all cable companies, smaller systems and operators are the ones for whom this rate is most likely to be inadequate to compensate them for the risks they encounter in providing service. Therefore, for operators seeking to establish rates no higher than $1.24 per channel, the rate of return claimed by the operator will be subject to the same strong presumption of reasonableness that will apply to all other aspects of the operator's calculation of its permitted rate.

42. Because it takes into account all operating expenses and the net rate base, the formula will generate a rate that covers the cost of providing all regulated services and all equipment necessary to receive those services. Thus, eligible systems will not be required to make a separate showing with respect to equipment. Operators may establish equipment rates in the manner they choose, so long as this results in equipment rates that comply with the 1992 Cable Act.

43. To implement this scheme of rate regulation, we have created FCC Form 1230, a one-page form on which the system inserts its expense, rate base, rate of return, channel count and subscriber count figures and then calculates its permitted rate. The system can set rates at any level up to the rate generated by FCC Form 1230. Before increasing rates, the system must comply with the 30-day notice requirement applicable whenever a system takes a rate increase. In giving notice to the certified local franchising authority of its first rate increase taken pursuant to this procedure, the operator shall include the completed FCC Form 1230 showing the maximum permitted rate, although the system need not raise rates to the maximum permitted level. As noted above, when filing the form the system shall not be required to file documentation or calculations underlying the expense and rate base figures included on the form. Upon filing of the form, however, our existing rules, permitting a certified local franchising authority to review the proposed rates, to request additional information, and to toll the effective date of the proposed rates, will then apply, subject to certain conditions set forth below. Because Form 1230 is a modified cost-of-service showing, the franchising authority may toll the rate for up to 150 days.

44. In view of our intent to minimize burdens upon operators, local franchising authorities, and the Commission, we urge franchising authorities to carefully limit their requests for information, should they deem it necessary to request further information upon the filing of Form 1230. We recognize that certified franchise authorities have a responsibility to protect consumers from the exercise of market power by cable operators and may have a legitimate need to request information to verify operators' rate requests. We believe that, particularly since operators have been given wide discretion in choosing methods of calculating operating costs, rate base, and rate of return, franchise authorities should have access to the information necessary for judging the validity of methods used for calculating these costs. With respect to requested rates not exceeding $1.24 per channel, a reasonable request for information, if deemed necessary at all, should seek only existing, relevant documents or other data compilations and should not require the operator to create documents, although the operator should replicate responsive documents that are missing or destroyed. Where the requested rate exceeds $1.24 per channel, a broader request for supporting documentation, and greater scrutiny of that documentation, will be permitted.

45. In order to guard against burdensome and unnecessary data requests from franchising authorities, cable operators will be permitted to seek relief from the Commission. If a request for information by the franchising authority exceeds a reasonable scope as described above, or if the franchising authority tolls a rate request,[3] the operator may file an interlocutory appeal requesting the Commission to quash the request. The appeal of a

[3] As noted above, small systems owned by small cable companies may make their initial basic tier rates, established in accordance with the Commission's rate regulations, effective on 30 days' notice without prior approval from their local franchising authority, subject to refund liability if the rates are found later to be unreasonable. Therefore, with respect to small systems owned by small cable companies, the tolling provision of our rules applies when a system seeks to increase rates above a level previously established pursuant to one of our regulatory schemes, but does not apply when a system establishes rates after first becoming subject to regulation.

request for information or a rate suspension may be by an informal letter to the chief of the Cable Services Bureau rather than by way of a formal pleading. The appeal will be handled pursuant to the following expedited procedure. The franchising authority is required to respond to an interlocutory appeal in seven days; the cable operator's optional reply date is four days thereafter. The operator will not be required to respond to a franchising authority's request for information while an appeal is pending at the Commission. The Commission will resolve those appeals expeditiously.

46. The operator may appeal a request for information or a tolling order even if its requested rate exceeds $1.24 per channel. However, where the requested rate is no more than $1.24 per channel, our review of the appeal will be guided by the presumption of reasonableness that will attach to rates not exceeding that amount and by our conception of what constitutes a reasonable request for information, as described above. A decision by the Commission to sustain an operator's interlocutory appeal will be accompanied by an order directing the franchising authority to issue the appropriate order based upon the documentation previously supplied by the operator. When appropriate, we will make informal attempts at mediation of such disputes.

47. We have adopted the rate of $1.24 per channel for the purposes set forth above based on the 35 FCC Form 1220 cost-of-service filings that have been submitted by systems with 15,000 or fewer subscribers owned by what we have defined here as small cable companies. We expect to adjust this figure in the future to account for changes in the relevant economic data, such as inflation. Using the rate-setting formula that we hereby adopt, staff found that the subscriber-weighted average cost per channel for eligible systems that had filed FCC Form 1220 amounted to $.93. Because this is an average figure, we know that, according to the data provided on the forms, a fair number of these Form 1220 filers would be entitled to rates exceeding $.93 per channel, presumably because of higher costs or recent capital improvements that justified a higher than average rate. Using the $.93 figure for purposes of establishing presumptions of reasonableness would have imposed an unfair burden on many systems for whom a higher rate is well justified. Therefore, one standard deviation was added to the $.93 per channel rate, producing a per channel rate of $1.24.[4] We therefore believe that a strong presumption of reasonableness should attach to a rate at or below this level when established by an eligible operator. As noted above, to disapprove a rate that does not exceed $1.24 per channel, the burden will be upon the franchising authority to show that the cable operator did not reasonably interpret and allocate its cost and expense data in coming up with the operating expense, net rate base, and rate of return figures claimed by the operator in calculating its permitted rate.

48. Once the operator has established rates at a level permitted by Form 1230, it may increase rates thereafter at its discretion until it reaches the maximum level permitted by the form, subject only to the 30 days' notice requirement. Even though the operator is charging less than the maximum rate permitted by Form 1230, the operator may adjust that maximum rate. For example, an operator may adjust its maximum permitted rate to take account of inflation and increases in external costs. Likewise, when adding channels an operator may use the going-forward methodology to adjust its maximum permitted rate. While making these adjustments to the maximum permitted rate, the operator simultaneously may, but need not, increase the actual rate charged. Thus, adjustments to the actual rate charged may be made independent of adjustments to the maximum rate permitted. As long as the actual rate does not exceed the maximum permitted rate, the operator may adjust its actual rate as and when it desires, subject to the notice requirement. In addition, at any time an operator may adjust its maximum permitted rate simply by filing a new Form 1230.

49. Once the operator has established rates at the maximum level permitted by Form 1230, the operator will be able to increase its actual rate by adjusting its maximum permitted rate in accordance with our normal rules to reflect increases in inflation and external costs. When adding channels, an operator may establish its new rate by filing a new Form 1230 or by complying with the going forward rules.[5] In determining the number of channels for which a small system owned by a small cable company may claim the alternative going-forward treatment that we adopted in the Sixth Reconsideration Order, 59 FR 62614 (December 6, 1994) only those channels added after the system files its first Form 1230 shall be counted. Therefore, if an operator added channels under the alternative going-forward rules before filing its initial Form 1230, the previously added channels will not be counted against the maximum of seven channels that an operator may add for purposes of those rules. However, the filing of a second or subsequent Form 1230 shall not increase the number of channel additions qualifying for the alternative going-forward treatment.

50. The cable system and any other participant in the rate making proceeding at the franchising authority level may appeal to the Commission for review of the final decision of the franchising authority under our normal appellate procedure. If the rate decision is appealed by the operator, we first will review any challenged request for information that was not the subject of an interlocutory appeal by the operator. If, under the standards outlined above, we find no proper grounds for the request for information, we will have the ability to permit the operator to charge the requested rate without proceeding further. Thus, where the requested rate does not exceed $1.24, if a franchising authority denies the request on the basis of information that goes beyond the reasonable scope described above, we will reverse the rate decision. If the scope of information requested by the franchising authority is not at issue up on appeal of the final rate decision, the franchising authority will have the burden of proving the reasonableness of its decision to deny any requested rate that does not exceed $1.24, and the operator will have the burden of establishing the reasonableness of the requested rate if it exceeds that amount. Thus, we will look more closely at rates exceeding $1.24 per channel and, as noted above, will be less restrictive with respect to the permissible scope of information which the franchising authority may request and rely upon in determining the reasonableness of the rate. If we uphold a franchising authority decision to request further information, we will

[4] Standard deviation is a commonly used measure of variability. It measures the amount of variance from the average in a sample. The amount of variance is usually expressed in terms of one or more standard deviations from the average. One standard deviation, when applied to the average, generally will capture about two-thirds of the sample, e.g., in this case, two-thirds of eligible cable systems. Two standard deviations generally will capture about 95% of the sample. In this case we selected one standard deviation as the appropriate measure. Thus, about one-third of eligible systems who file for this form of relief should have rates above the $1.24 threshold and will have the burden of justifying their rates.

[5] The operator must elect between the two forms of relief. Therefore, upon adding a channel, an operator may file a new Form 1230 reflecting that channel addition, *or* elect going-forward treatment with respect to the new channel, but it cannot do both.

permit an operator to present its arguments as to why its rate is reasonable.

51. Complaints regarding CPST rates will be resolved by the Commission, as required by the 1992 Cable Act. In reviewing CPST rates pursuant to a complaint, we will apply the same standard that is to be applied by a certified franchising authority when an operator files its Form 1230.

52. A system's initial and continued eligibility for this new form of relief shall be determined in the same manner as any other relief now available to them. Thus, if a system qualifies for relief under this approach as of the effective date of this order or as of the date it files Form 1230, it shall remain eligible for so long as it serves 15,000 or fewer subscribers, regardless of whether it, or the cable operator that owns the system, is subsequently acquired by a company that exceeds the 400,000 subscriber limit, or if its current operator subsequently exceeds 400,000 subscribers due to the normal growth of its systems. When a system that has established rates in accordance with Form 1230 exceeds 15,000 subscribers, the system may maintain its then existing rates. However, any further adjustments shall not reflect increases in external costs, inflation or channel additions until the system has re-established initial permitted rates in accordance with our benchmark or cost-of-service rules. Such a system may file a petition for special relief seeking continued treatment as a small system.

53. Finally, we must address the applicability of this new form of relief to pending matters. We have little reason to question those commenters who contend that our existing rules have significantly burdened small systems. Accordingly, we will direct franchising authorities to permit systems to use the small system cost-of-service approach to justify rates in any proceeding that is pending as of the date this item is released, using data that was accurate as of the time the rates were charged. To apply the small cable system cost-of-service relief to a pending case, the system must show that it met the new definitions of a small system owned by a small cable company as of the date this item is released and as of the period during which the disputed rates were in effect. Our adoption of this new form of relief shall not affect the validity of a final rate decision made by a franchising authority before the release date of this item. If such a decision is appealed to the Commission, we will review the decision in accordance with the rules that were in effect at the time the rates were charged and the decision was made. We believe that the interests of administrative finality warrant this treatment of cases already decided by a final decision of the franchising authority.

54. In any proceeding before the Commission involving a CPST complaint in which a final decision had not been issued as of the release date of this item, a small system owned by a small cable company may elect the form of rate regulation set forth in this section to justify rates charged prior to the adoption of this rule and to establish new rates. This approach will apply regardless of the current phase of the proceedings. Thus, a small system owned by a small cable company may file its Form 1230 to oppose a CPST rate complaint, to support a timely petition for reconsideration of a previous Bureau or Commission decision regarding a CPST complaint, or to support a petition for Commission review of a Bureau decision regarding a CPST complaint. As with cases pending before franchising authorities, to apply the small cable system cost-of-service relief to a case currently pending before the Commission, the system must show that it met the new definitions of a small system owned by a small cable company as of the date this item is released and as of the period during which the disputed rates were in effect.

V. Regulatory Flexibility Analysis

55. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–12, the Commission's final analysis with respect to the Sixth Report and Order and Eleventh Order on Reconsideration is as follows:

56. Need and purpose of this action: The Commission, in compliance with section 3(i) of the Cable Television Consumer Protection and Competition Act of 1992 pertaining to rate regulation, adopts rules and procedures intended to ensure cable subscribers of reasonable rates for cable services with minimum regulatory and administrative burden on cable entities.

57. Summary of issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis: There were no comments submitted in response to the Initial Regulatory Flexibility Analysis contained in the *Further Notice of Proposed Rulemaking.* The Chief Counsel for Advocacy of the United States Small Business Administration filed comments in the original rulemaking order. The Commission addressed these comments in the *Rate Order.* The Chief Counsel for Advocacy of the United States Small Business Administration also filed comments in response to the *Further Notice of Proposed Rulemaking.* Those comments are addressed herein.

58. Significant alternatives considered and rejected. Petitioners representing cable interests and franchising authorities submitted several alternatives aimed at minimizing administrative burdens. The Commission responded to these comments in this order which will significantly reduce the burdens on small cable systems and small cable companies.

VI. Paperwork Reduction Act

59. The requirements adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose new or modified information collection requirements on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

VII. Ordering Clauses

60. Accordingly, it is ordered that, pursuant to sections 4(i), 4(j), 303(r), 612, and 623 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), 532, and 543 the rules, requirements and policies discussed in this *Sixth Report and Order and Eleventh Order on Reconsideration* are adopted and § 76.934 of the Commission's rules, 47 CFR 76.934, is amended as set forth below.

61. *It is further ordered* that the Secretary shall send a copy of this Order to the Chief Counsel for Advocacy of the United States Small Business Administration.

62. *It is further ordered* that, the requirements and regulations established in this decision shall become effective upon approval by the Office of Management and Budget of the new information collection requirements adopted herein, but no sooner than thirty (30) days after publication in the **Federal Register**.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Amendatory Text

PART 76—CABLE TELEVISION SERVICE

Part 76 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 76 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1083, 1084, 1085, 1101; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309; secs. 612, 614–15, 623, 632 as amended, 106 Stat. 1460, 47 U.S.C. 532; sec. 623, as amended, 106 Stat. 1460; 47 U.S.C. 532, 533, 535, 543, 552.

2. Section 76.901 is amended by revising paragraphs (c) and adding paragraph (e) to read as follows:

§ 76.901 Definitions.

* * * * *

(c) *Small System.* A small system is a cable television system that serves 15,000 or fewer subscribers. The service area of a small system shall be determined by the number of subscribers that are served by the system's principal headend, including any other headends or microwave receive sites that are technically integrated to the principal headend.

* * * * *

(e) *Small cable company.* A small cable company is a cable television operator that serves a total of 400,000 or fewer subscribers over one or more cable systems.

3. Section 76.922 is amended by revising paragraphs (b)(4), (b)(4)(i), (b)(4)(ii), (b)(5)(i)(A), (b)(5)(i)(B), (b)(5)(i)(C) and (e)(7) to read as follows:

§ 76.922 Rates for the basic service tier and cable programming services tiers.

* * * * *

(b) * * *

(4) *Transition rates.*—(i) *Termination of transition relief for systems other than low price systems.* Systems other than low-price systems that already have established a transition rate as of the effective date of this rule may maintain their current rates, as adjusted under the price cap requirements of § 76.922(d), until two years from the effective date of this rule. These systems must begin charging reasonable rates in accordance with applicable rules, other than transition relief, no later than that date.

(ii) *Low-price systems.* Low price systems shall be eligible to establish a transition rate for a tier, pending a further order of the Commission.

(A) A low-price system is a system:

(*1*) Whose March 31, 1994 rate is below its March 31, 1994 benchmark rate, or

(*2*) Whose March 31, 1994 rate is above its March 31, 1994 benchmark rate, but whose March 31, 1994 full reduction rate is below its March 31, 1994 benchmark rate, as defined in § 76.922(b)(2), above.

(B) The transition rate on May 15, 1994 for a system whose March 31, 1994 rate is below its March 31, 1994 benchmark rate is the system's March 31, 1994 rate. The March 31, 1994 rate is in both cases adjusted:

(*1*) To establish permitted rates for equipment as required by § 76.923 if such rates have not already been established; and

(*2*) For changes in external costs incurred between the earlier of initial date of regulation of any tier or February 28, 1994, and March 31, 1994, to the extent changes in such costs are not already reflected in the system's March 31, 1994 rate. The transition rate on May 15, 1994 for a system whose March 31, 1994 adjusted rate is above its March 31, 1994 benchmark rate, but whose March 31, 1994 full reduction rate is below its March 31, 1994 benchmark rate, is the March 31, 1994 benchmark rate, adjusted to establish permitted rates for equipment as required by § 76.923 if such rates have not already been established.

* * * * * *

(5) * * *

(i) * * *

(A) Small systems that are owned by small cable companies and that have not already restructured their rates to comply with the Commission's rules may establish rates for regulated program services and equipment by making a streamlined rate reduction. Small systems owned by small cable companies shall not be eligible for streamlined rate reductions if they are owned or controlled by, or are under common control or affiliated with, a cable operator that exceeds these subscriber limits. For purposes of this rule, a small system will be considered ''affiliated with'' such an operator if the operator has a 20 percent or greater equity interest in the small system.

(B) The streamlined rate for a tier on May 15, 1994 shall be the system's March 31, 1994 rate for the tier, reduced by 14 percent. A small system that elects to establish its rate for a tier by implementing this streamlined rate reduction must also reduce, at the same time, each billed item of regulated cable service, including equipment, by 14 percent. Regulated rates established using the streamlined rate reduction process shall remain in effect until:

(*1*) Adoption of a further order by the Commission establishing a schedule of average equipment costs;

(*2*) The system increases its rates using the calculations and time periods set forth in FCC Form 1211; or

(*3*) The system elects to establish permitted rates under another available option set forth in paragraph (b)(1) of this section.

(C) *Implementation and notification.* An eligible small system that elects to use the streamlined rate reduction process must implement the required rate reductions and provide written notice of such reductions to subscribers, the local franchising authority and the Commission according to the following schedule:

(*1*) Within 60 days from the date it receives the initial notice of regulation from the franchising authority or the Commission, the small system must provide written notice to subscribers and the franchising authority, or to the Commission if the Commission is regulating the basic tier, that it is electing to set its regulated rates by the streamlined rate reduction process. The system must then implement the streamlined rate reductions within 30 days after the written notification has been provided to subscribers and the local franchise authority or Commission.

(*2*) If a cable programming services complaint is filed against the system, the system must provide the required written notice, described in paragraph (b)(5)(iii)(C)(*1*) of this section, to subscribers, the local franchising authority or the Commission within 60 days after the complaint is filed. The system must then implement the streamlined rate reductions within 30 days after the written notification has been provided.

(*3*) A small system is required to give written notice of, and to implement, the rates that are produced by the streamlined rate reduction process only once. If a system has already provided notice of, and implemented, the streamlined rate reductions when a given tier becomes subject to regulation, it must report to the relevant regulator (either the franchising authority or the Commission) in writing within 30 days of becoming subject to regulation that it has already provided the required notice and implemented the required rate reductions.

* * * * *

(e) * * *

(*7*) *Headend upgrades.* When adding channels to CPSTs and single-tier systems, cable systems that are owned by a small cable company and incur additional monthly per subscriber headend costs of one full cent or more for an additional channel may choose among the methodologies set forth in paragraphs (e)(2) and (e)(3) of this section. In addition, such systems may increase rates to recover the actual cost of the headend equipment required to

add up to seven such channels to CPSTs and single-tier systems, not to exceed $5,000 per additional channel. Rate increases pursuant to this paragraph may occur between January 1, 1995, and December 31, 1997, as a result of additional channels offered on those tiers after May 14, 1994. Headend costs shall be depreciated over the useful life of the equipment. The rate of return on this investment shall not exceed 11.25 percent. In order to recover costs for headend equipment pursuant to this paragraph, systems must certify to the Commission their eligibility to use this paragraph, and the level of costs they have actually incurred for adding the headend equipment and the depreciation schedule for the equipment.

* * * * *

3. Section 76.924 is amended by revising paragraph (d) to read as follows:

§ 76.924 Cost accounting and cost allocation requirements.

* * * * *

(d) *Summary accounts.* (1) Cable operators filing for cost-of-service regulation, other than small systems owned by small cable companies, shall report all investments, expenses, and revenue and income adjustments accounted for at the franchise, system, regional and/or company level(s) to the summary accounts listed below.

Ratebase

Net Working Capital
Headend
Trunk and Distribution Facilities
Drops
Customer Premises Equipment
Construction/Maintenance Facilities and Equipment
Programming Production Facilities and Equipment
Business Offices Facilities and Equipment
Other Tangible Assets
Accumulated Depreciation
Plant Under Construction
Organization and Franchise Costs
Subscriber Lists
Capitalized Start-up Losses
Goodwill
Other Intangibles
Accumulated Amortization
Deferred Taxes

Operating Expenses

Cable Plant Employee Payroll
Cable Plant Power Expense
Pole Rental, Duct, Other Rental for Cable Plant
Cable Plant Depreciation Expense
Cable Plant Expenses—Other
Plant Support Employee Payroll Expense
Plant Support Depreciation Expense
Plant Support Expense—Other
Programming Activities Employee Payroll
Programming Acquisition Expense
Programming Activities Depreciation Expense
Programming Expense—Other
Customer Services Expense
Advertising Activities Expense
Management Fees
General and Administrative Expenses
Selling General and Administrative Depreciation Expenses
Selling General and Administrative Expenses—Other
Amortization Expense—Franchise and Organizational Costs
Amortization Expense—Customer Lists
Amortization Expense—Capitalized Start-up Loss
Amortization Expense—Goodwill
Amortization Expense—Other Intangibles
Operating Taxes
Other Expenses (Excluding Franchise Fees)
Franchise Fees
Interest on Funded Debt
Interest on Capital Leases
Other Interest Expenses

Revenue and Income Adjustments

Advertising Revenues
Other Cable Revenue Offsets
Gains and Losses on Sale of Assets
Extraordinary Items
Other Adjustments

(2) Except as provided in § 76.934(h), small systems owned by small cable companies that file for cost-of-service regulation shall report all investments, expenses, and revenue and income adjustments accounted for at the franchise, system, regional and/or company level(s) to the following summary accounts:

Ratebase

Net Working Capital
Headend, Trunk and Distribution System and Support Facilities and Equipment
Drops
Customer Premises Equipment
Production and Office Facilities, Furniture and Equipment
Other Tangible Assets
Accumulated Depreciation
Plant Under Construction
Goodwill
Other Intangibles
Accumulated Amortization
Deferred Taxes

Operating Expenses

Cable Plant Maintenance, Support and Operations Expense
Programming Production and Acquisition Expense
Customer Services Expense
Advertising Activities Expense
Management Fees
Selling, General and Administrative Expenses
Depreciation Expense
Amortization Expense—Goodwill
Amortization Expense—Other Intangibles
Other Operating Expense (Excluding Franchise Fees)
Franchise Fees
Interest Expense

Revenue and Income Adjustments

Advertising Revenues
Other Cable Revenue Offsets
Gains and Losses on Sale of Assets
Extraordinary Items
Other Adjustments

* * * * *

4. Section 76.934 is revised to read as follows:

§ 76.934 Small systems and small cable companies.

(a) For purposes of rules governing the reasonableness of rates charged by small systems, the size of a system or company shall be determined by reference to its size as of the date the system files with its franchising authority or the Commission the documentation necessary to qualify for the relief sought or, at the option of the company, by reference to system or company size as of the effective date of this paragraph. Where relief is dependent upon the size of both the system and the company, the operator must measure the size of both the system and the company as of the same date. A small system shall be considered affiliated with a cable company if the company holds a 20 percent or greater equity interest in the system or exercises de jure control over the system.

(b) A franchising authority that has been certified, pursuant to § 76.910, to regulate rates for basic service and associated equipment may permit a small system as defined in § 76.901 to certify that the small system's rates for basic service and associated equipment comply with § 76.922, the Commission's substantive rate regulations.

(c) Initial regulation of small systems:

(1) If certified by the Commission, a local franchising authority may provide an initial notice of regulation to a small system, as defined by § 76.901(c), on May 15, 1994. Any initial notice of regulation issued by a certified local franchising authority prior to May 15, 1994 shall be considered as having been issued on May 15, 1994.

(2) The Commission will accept complaints concerning the rates for cable programming service tiers provided by small systems on or after May 15, 1994. Any complaints filed with the Commission about the rates for a cable programming service tier provided by a small system prior to May 15, 1994 shall be considered as having been filed on May 15, 1994.

(3) A small system that receives an initial notice of regulation from its local franchising authority, or a complaint filed with the Commission for its cable programming service tier, must respond within the time periods prescribed in §§ 76.930 and 76.956.

(d) Statutory period for filing initial complaint: A complaint concerning a

rate for cable programming service or associated equipment provided by a small system that was in effect on May 15, 1994 must be filed within 180 days from May 15, 1994.

(e) Petitions for extension of time: Small systems may obtain an extension of time to establish compliance with rate regulations provided they can demonstrate that timely compliance would result in severe economic hardship. Requests for extension of time should be addressed to the local franchising authority concerning basic service and equipment rates and to the Commission concerning rates for a cable programming service tier and associated equipment. The filing of a request for an extension of time to comply with the rate regulations will not toll the effective date of rate regulation for small systems or alter refund liability for rates that exceed permitted levels after May 15, 1994.

(f) Small systems owned by small cable companies: Small systems owned by small cable companies shall have 90 days from their initial date of regulation on a tier to bring their rates for that tier into compliance with the requirements of §§ 76.922 and 76.923. Such systems shall have sixty days from the initial date of regulation to file FCC Forms 1200, 1205, 1210, 1211, 1215, 1220, 1225, and 1230 and any similar forms as appropriate. Rates established during the 90-day period shall not be subject to prior approval by franchising authorities or the Commission, but shall be subject to refund pursuant to §§ 76.942 and 76.961.

(g) Alternative rate regulation agreements:

(1) Local franchising authorities, certified pursuant to § 76.910, and small systems owned by small cable companies may enter into alternative rate regulation agreements affecting the basic service tier and the cable programming service tier.

(i) Small systems must file with the Commission a copy of the operative alternative rate regulation agreement within 30 days after its effective date.

(ii) [Reserved]

(2) Alternative rate regulation agreements affecting the basic service tier shall take into account the following:

(i) The rates for cable systems that are subject to effective competition;

(ii) The direct costs of obtaining, transmitting, and otherwise providing signals carried on the basic service tier, including signals and services carried on the basic service tier, pursuant to §§ 76.56 and 76.64 of this subpart, and changes in such costs;

(iii) Only such portion of the joint and common costs of obtaining, transmitting, and otherwise providing such signals as is determined to be reasonably and properly allocable to the basic service tier, and changes in such costs;

(iv) The revenues received by a cable operator from advertising from programming that is carried as part of the basic service tier or from other consideration obtained in connection with the basic service tier;

(v) The reasonably and properly allocable portion of any amount assessed as a franchise fee, tax, or charge of any kind imposed by any State or local authority on the transactions between cable operators and cable subscribers or any other fee, tax, or assessment of general applicability imposed by a governmental entity applied against cable operators or cable subscribers;

(vi) Any amount required to satisfy franchise requirements to support public, educational, or governmental channels or the use of such channels or any other services required under the franchise; and

(vii) A reasonable profit. The rate agreed to in such an alternative rate regulation agreement shall be deemed to be a reasonable rate.

(3) Alternative rate regulation agreements affecting the cable programming service tier shall take into account, among other factors, the following:

(i) The rates for similarly situated cable systems offering comparable cable programming services, taking into account similarities in facilities, regulatory and governmental costs, the number of subscribers, and other relevant factors;

(ii) The rates for cable systems, if any, that are subject to effective competition;

(iii) The history of the rates for cable programming services of the system, including the relationship of such rates to changes in general consumer prices;

(iv) The rates, as a whole, for all the cable programming, cable equipment, and cable services provided by the system, other than programming provided on a per channel or per program basis;

(v) Capital and operating costs of the cable system, including the quality and costs of the customer service provided by the cable system; and

(vi) The revenues received by a cable operator from advertising from programming that is carried as part of the service for which a rate is being established, and changes in such revenues, or from other considerations obtained in connection with the cable programming services concerned. The rate agreed to in such an alternative rate regulation agreement shall be deemed to be a reasonable rate.

(4) Certified local franchising authorities shall provide a reasonable opportunity for consideration of the views of interested parties prior to finally entering into an alternative rate regulation agreement.

(5) A basic service rate decision by a certified local franchising authority made pursuant to an alternative rate regulation agreement may be appealed by an interested party to the Commission pursuant to § 76.944 as if the decision were made according to §§ 76.922 and 76.923.

(h) Small system cost-of-service showings:

(1) At any time, a small system owned by a small cable company may establish new rates, or justify existing rates, for regulated program services in accordance with the small cable company cost-of-service methodology described below.

(2) The maximum annual per subscriber rate permitted initially by the small cable company cost-of-service methodology shall be calculated by adding

(i) The system's annual operating expenses to

(ii) The product of its net rate base and its rate of return, and then dividing that sum by (iii) the product of

(A) The total number of channels carried on the system's basic and cable programming service tiers and

(B) The number of subscribers. The annual rate so calculated must then be divided by 12 to arrive at a monthly rate.

(3) The system shall calculate its maximum permitted rate as described in paragraph (b) of this section by completing Form 1230. The system shall file Form 1230 as follows:

(i) Where the franchising authority has been certified by the Commission to regulate the system's basic service tier rates, the system shall file Form 1230 with the franchising authority.

(ii) Where the Commission is regulating the system's basic service tier rates, the system shall file Form 1230 with the Commission.

(iii) Where a complaint about the system's cable programming service rates is filed with the Commission, the system shall file Form 1230 with the Commission.

(4) In completing Form 1230:

(i) The annual operating expenses reported by the system shall equal the system's operating expenses allocable to its basic and cable programming service tiers for the most recent 12 month

period for which the system has the relevant data readily available, adjusted for known and measurable changes occurring between the end of the 12 month period and the effective date of the rate. Expenses shall include all regular expenses normally incurred by a cable operator in the provision of regulated cable service, but shall not include any lobbying expense, charitable contributions, penalties and fines paid one account of statutes or rules, or membership fees in social service, recreational or athletic clubs or associations.

(ii) The net rate base of a system is the value of all of the system's assets, less depreciation.

(iii) The rate of return claimed by the system shall reflect the operator's actual cost of debt, its cost of equity, or an assumed cost of equity, and its capital structure, or an assumed capital structure.

(iv) The number of subscribers reported by the system shall be calculated according to the most recent reliable data maintained by the system.

(v) The number of channels reported by the system shall be the number of channels it has on its basic and cable programming service tiers on the day it files Form 1230.

(vi) In establishing its operating expenses, net rate base, and reasonable rate of return, a system may rely on previously existing information such as tax forms or company financial statements, rather than create or recreate financial calculations. To the extent existing information is incomplete or otherwise insufficient to make exact calculations, the system may establish its operating expenses, net rate base, and reasonable rate of return on the basis of reasonable, good faith estimates.

(5) After the system files Form 1230, review by the franchising authority, or the Commission when appropriate, shall be governed by § 76.933, subject to the following conditions.

(i) If the maximum rate established on Form 1230 does not exceed $1.24 per channel, the rate shall be rebuttably presumed reasonable. To disallow such a rate, the franchising authority shall bear the burden of showing that the operator did not reasonably interpret and allocate its cost and expense data in deriving its annual operating expenses, its net rate base, and a reasonable rate of return.

(ii) In the course of reviewing Form 1230, a franchising authority shall be permitted to obtain from the cable operator the information necessary for judging the validity of methods used for calculating its operating costs, rate base, and rate of return. If the maximum rate established in Form 1230 does not exceed $1.24 per channel, any request for information by the franchising authority shall be limited to existing relevant documents or other data compilations and should not require the operator to create documents, although the operator should replicate responsive documents that are missing or destroyed.

(iii) A system may file with the Cable Services Bureau an interlocutory appeal from any decision by the franchising authority requesting information from the system or tolling the effective date of a system's proposed rates. The appeal may be made by an informal letter to the Chief of the Cable Services Bureau, served on the franchising authority. The franchising authority must respond within seven days of its receipt of the appeal and shall serve the operator with its response. The operator shall have four days from its receipt of the response in which to file a reply, if desired. If the maximum rate established on Form 1230 does not exceed $1.24 per channel, the burden shall be on the franchising authority to show the reasonableness of its order. If the maximum rate established on Form 1230 exceeds $1.24 per channel, the burden shall be on the operator to show the unreasonableness of the order.

(iv) In reviewing Form 1230 and issuing a decision, the franchising authority shall determine the reasonableness of the maximum rate permitted by the form, not simply the rate which the operator intends to establish.

(v) A final decision of the franchising authority with respect to the requested rate shall be subject to appeal pursuant to § 76.944. The filing of an appeal shall stay the effectiveness of the final decision pending the disposition of the appeal by the Commission. An operator may bifurcate its appeal of a final rate decision by initially limiting the scope of the appeal to the reasonableness of any request for information made by the franchising authority. The operator may defer addressing the substantive rate-setting decision of the franchising authority until after the Commission has ruled on the reasonableness of the request for information. At its option, the operator may forego the bifurcated appeal and address both the request for documentation and the substantive rate-setting decision in a single appeal. When filing an appeal from a final rate-setting decision by the franchising authority, the operator may raise as an issue the scope of the request for information only if that request was not approved by the Commission on a previous interlocutory appeal by the operator.

(6) Complaints concerning the rates charged for a cable programming services tier by a system that has elected the small cable company cost-of-service methodology may be filed pursuant to § 76.957. Upon receipt of a complaint, the Commission shall review the system's rates in accordance with the standards set forth above with respect to basic tier rates.

(7) Unless otherwise ordered by the franchising authority or the Commission, the system may establish its per channel rate at any level that does not exceed the maximum rate permitted by Form 1230, provided that the system has given the required written notice to subscribers. If the system establishes its per channel rate at a level that is less than the maximum amount permitted by the form, it may increase rates at any time thereafter to the maximum amount upon providing the required written notice to subscribers.

(8) After determining the maximum rate permitted by Form 1230, the system may adjust that rate in accordance with this paragraph. Electing to adjust rates pursuant to one of the options set forth below shall not prohibit the system from electing a different option when adjusting rates thereafter. The system may adjust its maximum permitted rate without adjusting the actual rate it charges subscribers.

(i) The system may adjust its maximum permitted rate in accordance with the price cap requirements set forth in § 76.922(d).

(ii) The system may adjust its maximum permitted rate in accordance with the requirements set forth in § 76.922(e) for changes in the number of channels on regulated tiers. For any system that files Form 1230, no rate adjustments made prior to the effective date of this rule shall be charged against the system's Operator's Cap and License Reserve Fee described in § 76.922(e)(3).

(iii) The system may adjust its maximum permitted rate by filing a new Form 1230 that permits a higher rate.

(iv) The system may adjust its maximum permitted rate by complying with any of the options set forth in § 76.922(b)(1) for which it qualifies or under an alternative rate agreement as provided in paragraph (g) of this section.

(9) In any rate proceeding before a franchising authority in which a final decision had not been issued as of June 5, 1995, a small system owned by a small cable company may elect the form of rate regulation set forth in this section to justify the rates that are the subject of

the proceeding, if the system and affiliated company were a small system and small company respectively as of the effective date of this rule and as of the period during which the disputed rates were in effect. This rule shall not affect the validity of a final rate decision made by a franchising authority before June 5, 1995.

(10) In any proceeding before the Commission involving a cable programming services tier complaint in which a final decision had not been issued as of June 5, 1995, a small system owned by a small cable company may elect the form of rate regulation set forth in this section to justify rates charged prior to the adoption of this rule and to establish new rates. For purposes of this paragraph, a decision shall not be deemed final until the operator has exhausted or is time-barred from pursuing any avenue of appeal, review, or reconsideration.

§ 76.953 [Amended]

5. Section 76.953 is amended by removing paragraph (a) and redesignating paragraphs (b) and (c) as paragraphs (a) and (b) respectively.

[FR Doc. 95–16515 Filed 7–11–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

48 CFR Part 253

[DFARS Case 95–D711]

Defense Federal Acquisition Regulation Supplement; Contract Data Reporting

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: This final rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994, dated October 7, 1994, (''the Act''). The Director of Defense Procurement is amending the Defense Federal Acquisition Regulation Supplement concerning use of DD Form 350, Individual Contracting Action Report, and DD Form 1057, Monthly Contracting Summary of Actions $25,000 or Less, as a result of interim FAR rules effective as of July 3, 1995 (Simplified Acquisition, FACNET and Electronic Contracting FAR rules under FAR Cases 94–770 and 91–104).

DATES: Effective date: July 6, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa D. Rider, DFARS FASTA Implementation Secretariat, at (703) 614–1634. Please cite DFARS Case 95–D711.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act of 1994, Pub. L. 103–355, (''the Act'') provides authorities that streamline the acquisition process and minimize burdensome Government-unique requirements. Major changes that can be expected in the acquisition process as a result of the Act's implementation include changes in the areas of Commercial Item Acquisition, Simplified Acquisition Procedures, the Truth in Negotiations Act, and introduction of the Federal Acquisition Computer Network (FACNET).

DFARS Case 95–D711 makes minimal changes to the contract data reporting system. This will allow the various service and defense agency automated data reporting systems to be modified as quickly as possible.

Except for contracting actions pertaining to contingencies as specified in FAR 13.101, all contracting actions exceeding $25,000 shall continue to be reported on the DD Form 350. The Act requires detailed reporting of contracting actions exceeding $25,000 (including actions using simplified acquisition procedures, i.e. purchase orders and orders/calls under a blanket purchase agreement (BPA)) until October 1, 1999. All contingency contracting actions, as specified in FAR 13.101, will continue to be reported on the DD Form 1057.

The term ''small purchase procedures'' has been superseded under the Act. Therefore, in drafting regulatory revisions under FAR Case 94–770, the Simplified Acquisition team included wholesale elimination of this term in the FAR and DFARS coverage they prepared. The contract reporting changes required to complete implementation of this concept include renaming Code 9 in Block B13 of the DD Form 350 to read ''Purchase/ Modification Using Simplified Acquisition Procedures.'' A future DFARS rule will include changes to completely eradicate the term ''small purchase'' from both the DD Form 350 and the DD Form 1057. Until that rule is published, a memorandum from the Director of Defense Procurement will direct that the term ''small purchase procedures'' on the two forms be interpreted to mean ''simplified acquisition procedures.''

Orders, calls, and modifications awarded after the effective date of this final rule pertaining to any blanket purchase agreement will be reported as code 9 (simplified acquisition procedure) in Block B13 of the DD Form 350 instead of code 4 (order under a BOA). Purchase orders or modifications issued after the effective date of this final rule will also be reported as code 9. If code 9 is used in Block B13, then Block C8, Solicitation Procedures, should be blank. Orders under basic ordering agreements will continue to be reported as code 4.

The category of small business-small purchase set-aside is no longer valid. Actions under the simplified acquisition threshold reserved for small businesses will be reported as small business set-asides. However, the OSD data base will continue to accept DD Form 350 and DD Form 1057 data reported as small business-small purchase actions until the end of FY95, but this data will be converted to be included with small business set-aside data.

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of Public Law 98–577 and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected DFARS subpart will be considered in accordance with Section 610 of the Act.

C. The Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final rule does not impose any additional reporting or record keeping requirements that require Office of Management and Budget approval under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Part 253

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 253 is amended as follows:

1. The authority citation for 48 CFR Part 253 is revised to read as follows:

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

PART 253—FORMS

2. Section 253.204–70 is amended by revising paragraphs (b)(13)(iv), (b)(13)(ix), (c)(4)(viii), and (d)(5)(iv)(A)(*2*); by removing paragraph (d)(5)(iv)(A)(*7*); and by adding paragraph (c)(4)(iii)(A)(*6*) to read as follows:

253.204–70 DD Form 350, Individual Contracting Action Report.

* * * * *

(b) * * *

(13) * * *

(iv) *Code 4—Order Under a BOA.* Enter code 4 when the contracting action is an order or definitization of an order (not a modification of an order). Examples include orders under a basic ordering agreement, priced exhibit, or production list entered into by a DoD component (see code 3 for actions which are not orders or modifications of orders). Enter code 9 if the action is an order under a blanket purchase agreement.

* * * * *

(ix) *Code 9—Purchase/Modification Using Simplified Acquisition Procedures.* Enter code 9 if the contracting action, including actions in a designated industry group under the Small Business Competitiveness Demonstration Program (FAR 19.10), is an award or a modification of an award pursuant to FAR part 13.

* * * * *

(c) * * *

(4) * * *

(iii) * * *

(A) * * *

(6) Simplified acquisition procedures were used and competition was obtained.

* * * * *

(viii) *Block C8, Solicitation Procedures.*

(A) Leave Block C8 blank if—

(1) The original contract resulted from a solicitation issued before April 1, 1985 (i.e., before the effective date of the Competition in Contracting Act); or

(2) The action is pursuant to simplified acquisition procedures (Block B13 is coded 9).

(B) If the action is an order/modification under a Federal Supply Schedule (Block B13 is coded 6), use code B for single award schedules and code F for multiple award schedules.

(C) Otherwise, enter one of the 12 codes—

(1) Code A—Full and Open Competition—Sealed Bid. Enter code A if the action resulted from an award pursuant to FAR 6.102(a).

(2) Code B—Full and Open Competition—Competitive Proposal. Enter code B if the action resulted from an award pursuant to FAR 6.102(b).

(3) Code C—Full and Open Competition—Combination. Enter code C if the action resulted from an award using a combination of competitive procedures (e.g., two-step sealed bidding) pursuant to FAR 6.102(c).

(4) Code D—Architect-Engineer. Enter code D if the action resulted from selection of sources for architect-engineer contracts pursuant to FAR 6.102(d)(1).

(5) Code E—Basic Research. Enter code E if the action resulted from competitive selection of basic research proposals pursuant to FAR 6.102(d)(2).

(6) Code F—Multiple Award Schedule. Enter code F if the action is an award of a multiple award schedule pursuant to FAR 6.102(d)(3) or an order against such a schedule.

(7) Code G—Alternate Source—Reduced Cost. Enter code G if the action resulted from use of procedures to reduce overall cost pusuant to FAR 6.202(a)(1).

(8) Code H—Alternate Source—Mobilization. Enter code H if the action resulted from use of procedures for having a facility available for national defense or industrial mobilization pursuant to FAR 6.202(a)(2).

(9) Code J—Alternate Source—Eng/R&D Capability. Enter code J if the action resulted from use of procedures for establishing or maintaining an essential enginnering, research, or development capability pursuant to FAR 6.202(a)(3).

(10) Code K—Set Aside. Enter code K if the action resulted from any—

(i) Set-aside for small business concerns (see FAR 6.203) including small business innovative research (SBIR) actions and awards to public or private organizations for the handicapped participating in a set-aside for small business concerns (see FAR 19.501(h)).

(ii) Set-aside for small disadvantaged business concerns (see 206.203).

(iii) Total or partial set-asides (including portions of broad agency announcements (BAAs)) for historically black colleges and universities or minority institutions (see 206.203 and 235.016).

(iv) Competition among section 8(a) firms under FAR 19.805 (report noncompetitive 8(a) awards as code N).

(11) Code M—Otherwise Authorized by Statute. Enter code M if using contracting procedures that are expressly authorized by statute and not addressed in FAR 6.302–5 (see FAR 6.001(b)). Do not use code M for statutes addressed in FAR 6.302–5 (instead use code N in this Block and code 5A in Block C9).

(12) Code N—Other Than Full and Open Competition. Enter code N if the action resulted from use of other than full and open competition pursuant to FAR 6.3. This includes awards to qualified nonprofit agencies employing people who are blind or severely disabled (see FAR subpart 8.7) or noncompetitive awards to the Small Business Administration under Section 8(a) of the Small Business Act (see FAR 6.302–5(b)).

* * * * *

(d) * * *

(5) * * *

(iv) * * *

(A) * * *

* * * * *

(2) Code B—Total SB Set-Aside. Enter code B if the action was a total set-aside for small business (FAR 19.502–2), including actions reserved exclusively for small business concerns pursuant to FAR 13.105, or if the action resulted from the Small Business Innovative Research Program

* * * * *

3. Section 253.204–71 is amended by revising paragraph (e)(2)(i)(A)(*3*) to read as follows:

253.204–71 DD form 1057, Monthly Contracting Summary of Actions $25,000 or Less.

* * * * *

(e) * * *

(2) * * *

(i) * * *

(A) * * *

(3) Actions (including modifications) at or below the micropurchase threshold at FAR 13.101;

* * * * *

[FR Doc. 95–17048 Filed 7–11–95; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[I.D. 062095D]

Atlantic Swordfish Fishery; Drift Gillnet Closure

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

ACTION: Closure of the Atlantic swordfish drift gillnet fishery.

SUMMARY: NMFS closes the drift gillnet fishery for swordfish in the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea. NMFS has determined that the second semi-annual quota for swordfish that may be harvested by drift gillnet will be reached on or before July 14, 1995. This closure is necessary to prevent exceeding the quota of swordfish caught by drift gillnet vessels.

EFFECTIVE DATE: 2330 hours, local time, July 14, 1995, through 2400 hours, local time, December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Ronald G. Rinaldo, 301-713- 2347.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish fishery is managed under the authority of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq*). and the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq*.).

The implementing regulations at 50 CFR 630.24(b)(1)(i)(A) establish a quota of swordfish that may be harvested by drift gillnet during the period July 1 through December 31, each year. Under 50 CFR 630.25(a), NMFS is required to close the drift gillnet fishery for swordfish when its quota is reached, or is projected to be reached, by filing a document with the Office of the Federal Register at least 8 days before the closure is to become effective.

Based on the current level of swordfish catch by drift gillnets and historic data on catch per set for July, NMFS has determined that the drift gillnet quota for the July 1 through December 31 period will be reached on or before July 14, 1995. Hence, the drift gillnet fishery for Atlantic swordfish is closed effective 2330 hours, local time, July 14, 1995, through 2400 hours, local time, December 31, 1995.

During this closure of the drift gillnet fishery, on board a vessel using or having aboard a drift gillnet: a person may not fish for swordfish from the North Atlantic swordfish stock; and no more than two swordfish per trip may be possessed in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5° N. lat., or landed in an Atlantic, Gulf of Mexico, or Caribbean coastal state.

Classification

This action is required by 50 CFR 630.25(a) and is exempt from review under E.O. 12866.

Dated: July 6, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–17013 Filed 7–7–95; 8:56 am]

BILLING CODE 3510–22–F

50 CFR Part 672

[Docket No. 950206041–5041–01; I.D. 070595A]

Groundfish of the Gulf of Alaska; Pacific Ocean Perch in the Central Regulatory Area

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

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for Pacific ocean perch (POP) in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the POP total allowable catch (TAC) in the Central Regulatory Area.

EFFECTIVE DATE: Effective 12 noon, Alaska local time (A.l.t.), July 6, 1995, until 12 midnight, A.l.t., December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Michael Sloan, 907–581-2062.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(B) the POP TAC for the Central Regulatory Area was established by the final 1995 harvest specifications of groundfish (60 FR 8470, February 14, 1995) as 2,702 metric tons (mt).

The Director, Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the POP TAC in the Central Regulatory Area soon will be reached. Therefore, the Regional Director has established a directed fishing allowance of 2,302 mt, with consideration that 400 mt will be taken as incidental catch in directed fishing for other species in the Central Regulatory Area. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for POP in the Central Regulatory Area.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under § 672.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq*.

Dated: July 6, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–17011 Filed 7–7–95; 8:56 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 133
Wednesday, July 12, 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

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 94–065–1]

Importation of Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to revise the regulations for the importation of fruits and vegetables to update provisions for inspections and other activities at the port of first arrival. We propose to clarify the procedures by which we give notice to an importer that cleaning, disinfection, disposal, or some other action is required for a shipment of fruits and vegetables. We also propose to clarify the responsibility of the owner of imported fruits or vegetables for carrying out actions ordered by an inspector in accordance with the regulations. This proposed action would provide clearer standards for persons who must comply with the regulations, and would aid our enforcement of the regulations.

DATES: Consideration will be given only to comments received on or before September 11, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 94–065–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1228. Please state that your comments refer to Docket No. 94–065–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Ms. Jane Levy or Mr. Frank E. Cooper, Senior Operations Officers, Port Operations, PPQ, APHIS, Suite 4A03, 4700 River Road, Unit 139, Riverdale, MD 20737–1236; (301) 734–8645.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 319.56 through 319.56–8 (referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of injurious insects that are new to or not widely distributed within and throughout the United States.

Section 319.56–6 of the regulations addresses requirements for the inspection and disinfection of imported fruits and vegetables at the port of first arrival. This section provides, among other things, that all imported fruits and vegetables, as a condition of entry, shall be subject to inspection, disinfection, or both, at the port of first arrival, as may be required by a U.S. Department of Agriculture (USDA) inspector. The purpose of the inspection or disinfection is to detect and eliminate plant pests. This section also provides that any shipment of fruits and vegetables may be refused entry if the shipment is infested with fruit flies or other dangerous plant pests and an inspector determines that it cannot be cleaned by disinfection or treatment, or if the shipment contains leaves, twigs, or other portions of plants.

Section 319.56–6 also prohibits the movement of imported fruits and vegetables from the port of first arrival until the inspector gives notice to the collector of customs that the products have been inspected and found to be free from infestation and from plants or portions of plants used as packing or otherwise. This section also states that the importer is responsible for all charges for storage, cartage, and labor incident to inspection and disinfection, other than the services of the inspector.

We are proposing to revise § 319.56–6 to clarify the activities that occur at the port of first arrival for imported fruits and vegetables, and the roles and responsibilities of the USDA and the importer with regard to these activities. The current language of this section is unclear on some points, and we have experienced difficulties enforcing some of the requirements because the current language does not specify who is responsible for all of the activities and costs that may be required to clear a shipment for entry into the United States. We believe the changes we propose for this section would provide a clearer, more comprehensive standard for importers who must comply with our requirements, and would provide us with a better basis for enforcing the requirements of the regulations.

Current § 319.56–6(a) states that imported fruits or vegetables ''shall be subject, as a condition of entry, to such inspection or disinfection, or both, at the port of first arrival, as shall be required by the inspector * * *.'' This language does nothing to inform the importer as to when or why an inspector might order disinfection, or who is responsible for conducting it. To provide this information, we propose to add the statement that ''If the inspector finds a plant pest or evidence of a plant pest on or in any fruit or vegetable or its container, or finds that the fruit or vegetable may have been associated with other articles infested with plant pests, the owner or agent of the owner of the fruit or vegetable shall clean or treat the fruit or vegetable as required by an inspector * * *.''

We also propose to amend § 319.56–6(a) to make it clear that imported fruits and vegetables may be subject to reinspection, cleaning, and treatment at the option of an inspector at any time and place before all applicable requirements of this subpart have been accomplished. The current language only allows inspection and disinfection at the port of first arrival, and reinspection at destination.

Also, the current regulations say nothing about where the inspector will have the opportunity to inspect the imported fruits and vegetables, or how the importer will cooperate in providing the opportunity for inspection. Therefore, we propose to add a new paragraph that requires the owner or agent of the owner to assemble imported fruits and vegetables for inspection at the port of first arrival, or at any other place prescribed by an inspector, at a place and time and in a manner designated by an inspector.

The language in current § 319.56–6(c), which describes when imported fruits and vegetables may be removed from

the port of first arrival, is confusing and misleading. It reads ''No crate, box, hamper, or other container of fruits or vegetables, or fruits and vegetables in bulk, shall be removed from the port of first arrival unless and until a written notice is given to the collector of customs by the inspector of the United States Department of Agriculture that the products have been inspected and found to be free from infestation and from plants or portions of plants used as packing or otherwise.''

We propose to revise this language to make it consistent with the actual current operating procedures at ports. The proposed revision would state that no person could move any imported fruit or vegetable from the port until an inspector notifies the person that the fruit or vegetable either has been released, or requires reinspection, cleaning, or treatment at that port or at a place other than the port.

This revision would make it clear that the release for movement requirements apply to all imported fruits and vegetables, regardless of whether or how they are packaged. It would also clarify that our inspector, rather than the collector of customs, gives the notice that allows articles to move, to the person moving the articles. While we coordinate our release of materials with customs officials at ports, we do not need to impose a regulatory requirement to do so; the point of the notice requirement in this section is to inform the owners of articles when they can move them as far as USDA is concerned. This change would also remove the requirement that the notice be written. Inspectors at ports currently give notice in person, by telephone, in writing, or by electronic means such as e-mail or entry into an electronic database. We do not find it necessary to require the actual notice to be in written form.

This revision would also clarify the standard we apply in deciding to release a shipment for movement from the port of first arrival. The current language is misleading, because not all shipments we release have been ''inspected and found to be free from infestation.'' Some shipments are released after they are found to be infested and were successfully disinfected, and some shipments are released to be moved to some other location for a required treatment. The current language stating that the products must be free ''from plants or portions of plants'' is also confusing unless the reader refers back to the definition of ''plants or portions of plants'' in § 319.56–1. It is easier to understand that the inspector will release articles after determining that they comply with the regulatory requirements, as we propose in the new language.

The current language allows inspectors to order shipments to be cleaned, disinfected, treated, or refused entry and disposed of, but it does not specify who the inspector must notify when ordering such actions. The current regulations also do not make any person clearly responsible for completing the actions ordered by an inspector. We are proposing to add a new paragraph requiring that an inspector order such actions by filing an emergency action notification (PPQ Form 523) with the owner of the fruit or vegetable or an agent of the owner. We also propose to add language requiring that the person/company named in the PPQ Form 523 must, within the time specified in the PPQ Form 523, destroy the fruits, ship them to a point outside the United States, move them to an authorized site, and/or apply treatments or other safeguards to them as prescribed by an inspector to prevent the introduction of plant pests into the United States. This approach is consistent with current procedures at ports, and would clarify the responsibilities of involved parties and aid enforcement of the regulations.

Finally, current § 319.56–6(d) addresses the responsibility of the importer for charges ''incident to inspection and disinfection,'' but provides little detail on what activities might result in charges. We propose to add a new paragraph to state that the Animal and Plant Health Inspection Service (APHIS) will be responsible only for the costs of providing the services of an inspector during regularly assigned hours of duty and at the usual places of duty. The owner of imported fruits or vegetables is responsible for all additional costs of inspection, treatment, storage, movement, or destruction ordered by an inspector under the regulations, including any labor, chemicals, packing materials, or other supplies required. APHIS will not be responsible for any costs or charges, other than those identified in this section.

Correction of Citrus Canker Status of Mexico

In a final rule published in the **Federal Register** and effective on July 23, 1991 (Docket No. 91–022, 56 FR 33703–33704), we removed our ''Citrus Canker—Mexico'' regulations (7 CFR 319.27 through 319.27–11). This action resulted from our determination that the regulations were no longer needed because citrus canker no longer existed in Mexico. Removing the ''Citrus Canker—Mexico'' regulations removed restrictions on the importation from Mexico of citrus fruit and peel. However, we inadvertently neglected to remove a provision in 7 CFR 319.37–6(e) that restricted importation of citrus seed from Mexico due to citrus canker. To correct this oversight, we now propose to remove Mexico from the list of countries in 7 CFR 319.37–6(e).

Executive Order 12866 and Regulatory Flexibility Act

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

If adopted, this proposal would clarify procedures for the inspection and release of imported fruits and vegetables at the port of first arrival in the United States. The proposed revision of the regulations would update the regulatory language to conform to procedures currently in use at ports. These changes would provide a clearer standard for importers of fruits and vegetables who must comply with the regulations, and would enhance enforcement of the regulations. The proposed changes would not add any significant new costs for importers of fruits and vegetables or other persons. Importers are already responsible for all costs of treatment, movement, storage, or destruction ordered by an inspector at a port.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This proposed rule would clarify the requirements at the port of first arrival for fruits and vegetables imported into the United States. If this proposed rule is adopted, State and local laws and regulations regarding the importation of fruits and vegetables under this rule would be preempted while the fruits and vegetables are in foreign commerce. Fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public, and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce

ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, 7 CFR part 319 would be amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.17, 2.51, and 371.2(c).

§ 319.37–6 [Amended]

2. In § 319.37–6, paragraph (e) would be amended by removing the word ''Mexico,''.

3. Section 319.56–6 would be revised to read as follows:

§ 319.56–6 Inspection and other requirements at the port of first arrival.

(a) *Inspection and treatment.* All imported fruits or vegetables shall be inspected, and shall be subject to such disinfection at the port of first arrival as may be required by an inspector, and shall be subject to reinspection at other locations at the option of an inspector. If an inspector finds a plant pest or evidence of a plant pest on or in any fruit or vegetable or its container, or finds that the fruit or vegetable may have been associated with other articles infested with plant pests, the owner or agent of the owner of the fruit or vegetable shall clean or treat the fruit or vegetable and its container as required by an inspector, and the fruit or vegetable shall also be subject to reinspection, cleaning, and treatment at the option of an inspector at any time and place before all applicable requirements of this subpart have been accomplished.

(b) *Assembly for inspection.* The owner or agent of the owner shall assemble imported fruits and vegetables for inspection at the port of first arrival, or at any other place prescribed by an inspector, at a place and time and in a manner designated by an inspector.

(c) *Refusal of entry.* If an inspector finds that an imported fruit or vegetable is prohibited or is so infested with a plant pest that, in the judgment of the inspector, it cannot be cleaned or treated, or contains soil or other prohibited contaminants, the entire lot may be refused entry into the United States.

(d) *Release for movement.* No person shall move from the port of first arrival any imported fruit or vegetable unless and until an inspector notifies the person (in person, in writing, by telephone, or through electronic means) that the fruit or vegetable:

(1) Has been released; or

(2) Requires reinspection, cleaning, or treatment of the fruit or vegetable at that port or at a place other than the port of first arrival, or is prohibited and must be exported from the United States.

(e) *Notice to owner of actions ordered by inspector.* If an inspector orders any disinfection, cleaning, treatment, reexportation, or other action with regard to imported fruits or vegetables, the inspector shall file an emergency action notification (PPQ Form 523) with the owner of the fruits or vegetables or an agent of the owner. The owner must, within the time specified in the PPQ Form 523, destroy the fruits and vegetables, ship them to a point outside the United States, move them to an authorized site, and/or apply treatments or other safeguards to the fruits and vegetables as prescribed by an inspector to prevent the introduction of plant pests into the United States.

(f) *Costs and charges.* The Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture will be responsible only for the costs of providing the services of an inspector during regularly assigned hours of duty and at the usual places of duty.[1] The owner of imported fruits or vegetables is responsible for all additional costs of inspection, treatment, movement, storage, or destruction ordered by an inspector under this subpart, including any labor, chemicals, packing materials, or other supplies required. APHIS will not be responsible for any costs or charges, other than those identified in this section.

[1] Provisions relating to costs for other services of an inspector are contained in 7 CFR part 354.

Done in Washington, DC, this 30th day of June 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–17019 Filed 7–11–95; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–14–AD]

Airworthiness Directives; Cessna Aircraft Company 150 and A150 Series and Models 152 and A152 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to Cessna Aircraft Company (Cessna)150 and A150 series and Models 152 and A152 airplanes that have a Bush Conversions, Inc., Short Takeoff and Landing (STOL) kit installed in accordance with Supplemental Type Certificate (STC) SA1371SW. The proposed action would require measuring the wing stall fence for maximum height, and installing a smaller fence if the fence exceeds the maximum height of 1.28 inches. An accident of a Cessna Model 152 airplane where the STOL kit adversely affected the airplane's stall characteristics prompted the proposed action. The actions specified by the proposed AD are intended to prevent the airplane from entering a stall condition because of improper wing stall fence height, which could result in loss of control of the airplane.

DATES: Comments must be received on or before September 15, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–14–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Figure 1 of the proposed AD may be obtained from the Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; and may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558,

601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Engler, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4122; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 95–CE–14–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–14–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA received a report of an accident involving a Cessna Model 152 airplane. After takeoff, the airplane turned 180 degrees as if to return to the airport, and rolled to the right and descended vertically to the ground. The Cessna Model 152 airplane was equipped with a Bush Conversions, Inc., Short Takeoff and Landing (STOL) kit installed in accordance with Supplemental Type Certificate (STC) SA1371SW. This kit includes a wing leading edge cuff and stall fence on each wing that is installed on the top of the wing chordwise in line with the aileron/flap juncture. The wing stall fence on this Cessna Model 152 airplane measured 1.625 inches in height at its trailing edge and maintained that height through approximately 70 percent of the fence's length, gradually tapering to the contour of the wing's leading edge.

The FAA approved the fence height of the Bush Conversions, Inc., STOL kit at a height of 1.16 inches (plus or minus .12 inches) for Cessna 150 and A150 series and Models 152 and A152 airplanes. Mid-America Drawing No. 1001 references this height and is included as part of STC SA1371SW. Mid-America Drawing No. 1001 is included as Figure 1 of the proposed AD.

Since the referenced accident, the National Transportation Safety Board (NTSB) and the FAA inspected three other Cessna 150 series airplanes and found the STOL kit fence heights ranging from 1.375 inches to 1.75 inches.

After examining the circumstances and reviewing all available information related to the accident and investigations described above, the FAA has determined that (1) the STOL kit fence height should be checked on Cessna 150 and A150 series and Models 152 and A152 airplanes; and (2) AD action should be taken to prevent the airplane operator from entering a stall condition because of improper wing stall fence height, which could result in loss of control of the airplane.

Since an unsafe condition has been identified that is likely to exist or develop in other Cessna 150 and A150 series and Models 152 and A152 airplanes of the same type design that have a Bush Conversions, Inc., STOL kit installed in accordance with STC SA1371SW, the proposed AD would require measuring the wing stall fence for maximum height, and installing a smaller fence if the fence exceeds the maximum height of 1.28 inches. Figure 1 of the proposed AD includes information for inspecting the stall fence height.

The FAA estimates that the STOL kit is installed on 25 of the Cessna 150 and A150 series and Models 152 and A152 airplanes in the U.S. registry, that it would take approximately 8 workhours per airplane to inspect the stall fences, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $12,000. This figure is based upon the assumption that none of the affected airplane owners/operators have inspected the STOL fence for correct height. The FAA has no way of determining how many owners/operators of the affected airplanes have accomplished the proposed inspection.

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

For the reasons discussed above, I certify that this 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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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:

Cessna Aircraft Corporation: Docket No. 95–CE–14–AD.

Applicability: The following airplane models (all serial numbers), certificated in any category, that have a Bush Conversions, Inc., Short Takeoff and Landing (STOL) kit

installed in accordance with Supplemental Type Certificate (STC) SA1371SW:

150 150A 150B 150C 150D 150E 150F 150G 150H 150J 150K A150K 150L A150L 150M A150M 152 A152

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 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent the airplane operator from entering a stall condition because of improper wing stall fence height, which, if not detected and corrected, could result in loss of control of the airplane, accomplish the following:

(a) Measure the height of the wing stall fence at its trailing edge to ensure that the height does not exceed 1.28 inches. (See Figure 1 of this AD).

(b) If the wing stall fence height exceeds 1.28 inches, prior to further flight, install a smaller fence in accordance with instructions obtained from the Wichita Aircraft Certification Office (ACO), FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209.

Note 2: Mid-America Drawing No. 1001 (part of STC SA1371SW) is included as Figure 1 of this AD for reference purposes.

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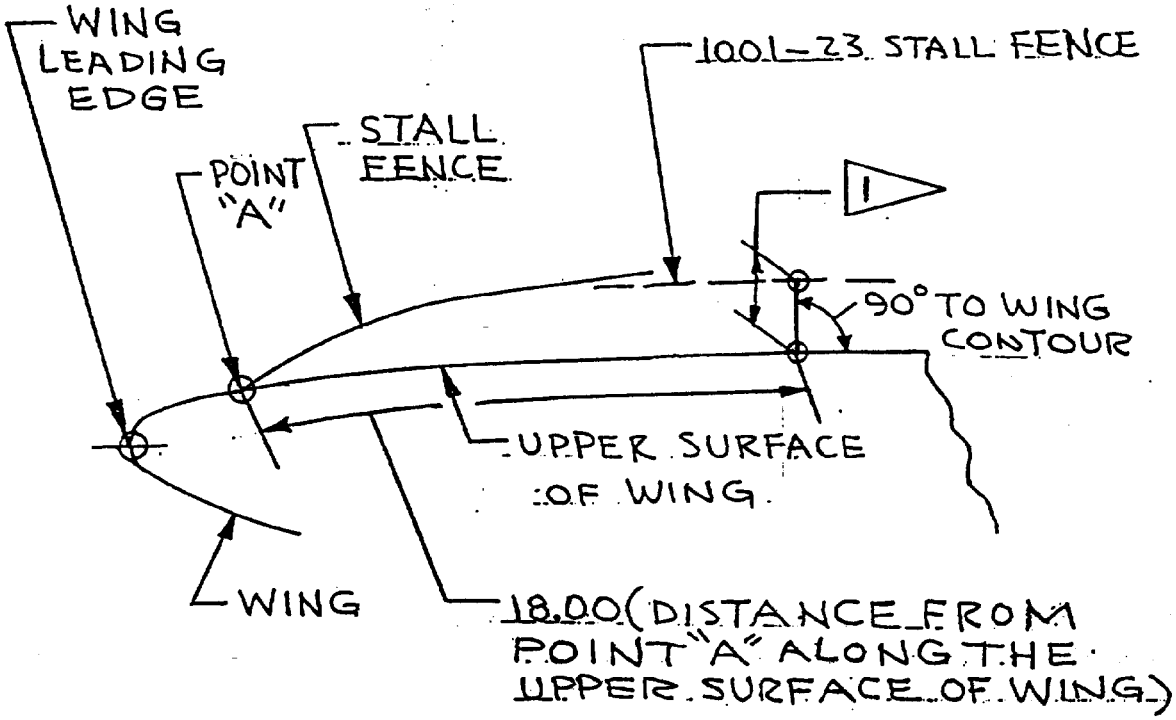

1 IF STALL FENCE IS 1.16 ± .12 HIGH, THAT IS CORRECT HEIGHT FOR STALL FENCE. IF GREATER THAN 1.28 HIGH. REMOVE STALL FENCES AND INSTALL THE CORRECT ONE.

FIGURE 1
MID-AMERICA DWG No. 1001
(STC SA1371SW)

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(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, Wichita ACO, 801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(e) Figure 1 of this AD may be obtained from the Wichita ACO at the address specified in paragraph (d) of this AD; and may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on July 5, 1995.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–16975 Filed 7–11–95; 8:45 am]

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14 CFR Part 39

[Docket No. 95–CE–22–AD]

Airworthiness Directives; Maule Aerospace Technologies, Inc. Models M–4–210 and M–4–210C Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Maule Aerospace Technologies, Inc. (Maule) Models M–4–210 and M–4–210C airplanes that have Dual Exhaust System 5230F installed. The proposed action would require relocating the gascolator and electric fuel pump away from the dual exhaust system. The Federal Aviation Administration (FAA) recently became aware that, with these dual exhaust systems installed on the affected airplanes, the left-hand exhaust stack is routed almost directly below the fuel gascolator. The close proximity of the flammable fuel to the exhaust system presents an unsafe condition and violates current regulations. The actions specified by the proposed AD are intended to prevent an airplane engine fire caused by the close proximity of the fuel gascolator and electric fuel pump to the exhaust system.

DATES: Comments must be received on or before September 15, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–22–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Maule Aerospace Technology, Inc., Lake Maule, Route 5, Box 318, Moultrie, Georgia 31768; telephone (912) 985–2045; facsimile (912) 890–2402. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Ms. Juanita Craft-Lloyd, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305 -7373; facsimile (404) 305–7348.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 95–CE–22–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–22–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

Maule Models M–4–210 and M–4–210C airplanes were originally type certificated with a single exhaust system. In 1975, the FAA approved Maule Service Kit No. 11: ''Installation of Maule IO–360 Dual Muffler System and Additional Cabin Heater Inlet Retrofit Kit.''

The FAA has recently become aware that installing Dual Exhaust System 5230F in accordance with Maule Service Kit No. 11 could present an unsafe condition on Maule Models M–4–210 and M–4–210C airplanes. Under this installation configuration, the left-hand stack is routed almost directly below the fuel gascolator, which, when combining the high temperatures from the exhaust system with flammable fuel, could result in an airplane engine fire. In addition, paragraphs (b) and (c) of section 23.1121 of the Federal Aviation Regulations (14 CFR 23.1121, paragraphs (b) and (c)) specify that the exhaust system must either be shielded or routed away from flammable fuels or vapors.

Maule has issued Service Bulletin (SB) No. 10, dated September 16, 1994, which specifies procedures for relocating the gascolator and electric fuel pump on Maule Models M–4–210 and M–4–210C airplanes that have Dual Exhaust System 5230F installed.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent an airplane engine fire caused by the close proximity of the fuel gascolator and electric fuel pump to the exhaust system.

Since an unsafe condition has been identified that is likely to exist or develop in other Maule Models M–4–210 and M–4–210C airplanes of the same type design that have Dual Exhaust System 5230F installed, the proposed AD would require relocating the gascolator and electric fuel pump. Accomplishment of the proposed action would be in accordance with Maule SB No. 10, dated September 16, 1994.

The FAA estimates that 125 airplanes in the U.S. registry would be affected by

the proposed AD, that it would take approximately 8 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $158 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $79,750. This figure is based on the assumption that no owner/operator of the affected airplanes has relocated the gascolator and electric fuel pump.

Maule has informed the FAA that enough parts have been distributed to accomplish the relocation on 2 of the affected airplanes. Assuming that each owner/operator that received parts has accomplished the proposed relocation, the cost impact upon the public would be reduced by $1,276 from $79,750 to $78,474.

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

For the reasons discussed above, I certify that this 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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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:

Maule Aerospace Technology, Inc.: Docket No. 95–CE–22–AD. Applicability: The following airplane models and serial numbers, certificated in any category, that have Dual Exhaust System 5230F installed:

Model	Serial Numbers
M–4–210	1001 through 1045.
M–4–210C	1001C through 1080C.

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 airplanes 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 an airplane engine fire caused by the close proximity of the fuel gascolator and electric fuel pump to the exhaust system, accomplish the following:

(a) Relocate the gascolator and fuel pump from above the air egress to the left-side of the airplane in accordance with Maule Service Bulletin No. 10, dated September 16, 1994.

(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, Atlanta Aircraft Certification Office (ACO), Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

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

(d) All persons affected by this directive may obtain copies of the document referred to herein upon request to Maule Aerospace Technology, Inc., Lake Maule, Route 5, Box 318, Moultrie, Georgia 31768; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on July 5, 1995.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–16976 Filed 7–11–95; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 102

RIN 1515–AB19; RIN 1515–AB34

Rules for Determining the Country of Origin of a Good for Purposes of Annex 311 of the North American Free Trade Agreement; Rules of Origin Applicable to Imported Merchandise

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: On May 5, 1995, Customs published in the **Federal Register** a notice of proposed rulemaking that set forth proposed amendments to the interim Customs Regulations, published in the **Federal Register** on January 3, 1994, as T.D. 94–4, which established the rules for determining when the country of origin of a good is one of the parties to the North American Free Trade Agreement for purposes of Annex 311 of that Agreement and republished, with some modifications, proposed amendments to the Customs Regulations to set forth uniform rules governing the determination of the country of origin of imported merchandise, which had also been published in the **Federal Register** on January 3, 1994. This document sets forth additional proposed amendments to the T.D. 94–4 interim regulations that were omitted from the May 5, 1995, notice of proposed rulemaking. Final action on the additional proposals set forth in this document will be included in the final action taken on the T.D. 94–4 interim regulations as discussed in the May 5, 1995, document.

DATES: Comments must be received on or before August 28, 1995.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, U.S. Customs Service, Franklin Court,

1301 Constitution Avenue NW., Washington, DC 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, Franklin Court, 1099 14th Street NW., Suite 4000, Washington, DC

FOR FURTHER INFORMATION CONTACT: Sandra Gethers, Office of Regulations and Rulings (202–482–6980).

SUPPLEMENTARY INFORMATION:

Background

On January 3, 1994, Customs published T.D. 94–4 in the **Federal Register** (59 FR 110) setting forth interim regulations to establish rules for determining the country of origin of a good for purposes of Annex 311 of the North American Free Trade Agreement (NAFTA). The United States, Canada and Mexico entered into the NAFTA on December 17, 1992, and the provisions of the NAFTA were adopted by the United States with the enactment of the North American Free Trade Agreement Implementation Act, Public Law 103–182, 107 Stat. 2057. T.D. 94–4 stated that the interim regulations were effective on January 1, 1994, and also provided for a 90-day public comment period which was subsequently extended to July 5, 1994, by a notice published in the **Federal Register** on March 11, 1994 (59 FR 11547). On February 3, 1994, a notice was published in the **Federal Register** (59 FR 5082) setting forth corrections to the interim regulations contained in T.D. 94–4.

On January 3, 1994, Customs also published a document in the **Federal Register** (59 FR 141) which proposed to amend the Customs Regulations to set forth uniform rules governing the determination of the country of origin of imported merchandise; this notice of proposed rulemaking represented a refinement and replacement of an earlier proposal published in the **Federal Register** on September 25, 1991 (56 FR 48448). This January 3, 1994, document proposed: (1) To amend § 102.0 of the interim regulations published as T.D. 94–4 so that those interim regulations would apply not only for the purposes stated in Annex 311 of the NAFTA but would also apply in the broader context of country of origin determinations ''for purposes of the Customs and related laws and the navigation laws of the United States''; and (2) to amend various provisions within parts 4, 10, 12, 134 and 177 of the Customs Regulations (19 CFR parts 4, 10, 12, 134 and 177) to ensure that the rules contained in interim part 102 would control wherever language requiring a country of origin determination appears in those other regulatory provisions. Thus, under this notice of proposed rulemaking the interim rules set forth in T.D. 94–4 would apply wherever a provision of the Customs and related laws or the navigation laws or a regulation thereunder uses language such as ''new and different article of commerce'', ''wholly the growth, product, or manufacture'', ''product of'', or ''substantial transformation'' for purposes of establishing the criteria for country of origin of a good. The notice of proposed rulemaking provided for a 90-day public comment period which was subsequently extended to July 5, 1994, by a notice published in the **Federal Register** on March 10, 1994 (59 FR 11225).

Since the January 3, 1994, notice of proposed rulemaking presented the same regulatory scheme as the rules contained in T.D. 94–4, each document referred to the other and stated that public comments submitted in response to either document would be considered in connection with the review of both documents. The notice of proposed rulemaking further indicated that the background section and interim part 102 regulatory texts set forth in T.D. 94–4 were applicable to it. Thus, it was intended that the two documents be read together so that, following public notice and comment procedures, one final rule document could be derived from the interim and proposed rule documents, consistent with the overall goal of promulgating uniform rules of origin for Customs and related purposes.

Based on a review of the comments received in response to the interim and proposed rule documents published in the **Federal Register** on January 3, 1994, and as a result of independent internal review of the interim and proposed texts, Customs determined (1) that some clarification and further explanation of the intent behind the proposed uniform rule concept should be provided and (2) that some changes should be made to the interim and proposed texts and that those changes should be the subject of public notice and comment procedures before proceeding to the final rule stage in this matter; the interim texts as published in T.D. 94–4 (and as subsequently corrected) were to remain in effect pending completion of such final rule action. In addition, Customs concluded that public comments should be solicited regarding the appropriate use of a delayed effective date for any final rule that results from the interim and proposed rules, including any new proposed changes thereto.

Accordingly, on May 5, 1995, Customs published in the **Federal Register** (60 FR 22312) a document that (1) provided supplemental background information regarding the proposed uniform rule concept, (2) set forth proposals to amend the interim regulatory texts contained in T.D. 94–4 published at 59 FR 110 and corrected at 59 FR 5082, (3) republished (and thus replaced) all of the proposed regulatory amendments published at 59 FR 141 on January 3, 1994, with certain changes thereto, and (4) invited public comments on the appropriate effective date for a final rule on this matter. This May 5, 1995, document stated that it was the intention of Customs to address in that document only those comments submitted in response to the January 3, 1994, notices that involved substantive changes to the interim or proposed texts requiring further public comment procedures; other such previously submitted comments would be addressed in an appropriate final rule or other document to be published at a later date. Comments would be accepted and considered in response to that document only in regard to (1) the proposed changes to the interim regulatory texts as discussed and set forth therein, (2) all other proposed regulatory amendments as discussed and set forth therein which represented a substantive change to the proposals published on January 3, 1994, and (3) the final rule delayed effective date issue. Therefore, comments which concerned other issues involved in the January 3, 1994, documents, or which did not otherwise relate to the new proposals set forth in the May 5, 1995, document, would not be accepted and considered by Customs. The May 5, 1995, document also stated that, for purposes of that document, the background sections of the January 3, 1994, interim and proposed rule documents were applicable except where otherwise required by a change set forth in that document.

After publication of the May 5, 1995, notice of proposed rulemaking, additional issues came to the attention of Customs that warrant publication of additional proposed changes to the interim regulatory texts published in T.D. 94–4, with opportunity for public comment thereon. Final action on the additional proposals set forth herein will be reflected in the single final rule document intended, as stated in the May 5, 1995, document, to cover both the T.D. 94–4 interim regulations and the proposals set forth in the May 5, 1995, document. Since the present document sets forth proposals that are

in addition to the proposed changes to the T.D. 94–4 interim regulations contained in the May 5, 1995, proposed rule document, the background section of that May 5, 1995, document is applicable for purposes of this document except where otherwise required by a change set forth herein. Comments submitted in response to this document will be accepted and considered only to the extent that they address specific proposals set forth herein; comments submitted in regard to matters raised in the May 5, 1995, proposed rule document that are not related to a specific proposal contained herein will remain subject to the public comment period specified in that earlier document. The additional proposed changes set forth in this document are discussed below.

Additional Proposed Changes to the Interim Texts

Subheadings 3808.10 and 3808.20–3808.90 (Insecticides, Fungicides, Herbicides, Rodenticides, and Pesticides)

The interim rule for subheading 3808.10 allows a change to this subheading from any other subheading, except from subheading 1302.14, 2916.19 or 2917.19. On the other hand, the interim rule for subheadings 3808.20 through 3808.90 allows a change to these subheadings from any other subheading, including any subheading within the group. Except in the case of mixtures of two or more active ingredients of Chapter 28 or 29, the production process for goods of heading 3808 involves standardized dilution. The bulk insecticide, fungicide, herbicide, rodenticide, or pesticide of Chapter 28 or 29, *i.e.*, the active ingredient, is diluted with inert ingredients or solvents and packaged for retail sale. However, the essential character of these products of heading 3808 is imparted by the bulk organic chemical compounds of Chapter 28 or 29. Therefore, it is proposed to revise the rules for subheadings 3808.10, 3808.20, 3808.30 and 3808.90 to disallow changes, to products of heading 3808 consisting of only one active ingredient, from insecticides, fungicides, herbicides, rodenticides, or pesticides of Chapter 28 or 29 (the rule for disinfectants of subheading 3808.40 would remain the same as in the interim texts). This proposed change makes clear that Customs is maintaining its longstanding position that origin changes will not result from the mere dilution, with inert ingredients, of these chemicals which are classified in bulk, undiluted form in Chapter 28 or 29, whether or not the standardized dilution is coupled with packaging for retail sale. See, *e.g.*, HRL 555604 dated March 29, 1990. In fact, operations consisting of ''mere dilution with water or another substance that does not materially alter the characteristics of the material'' and ''simple * * * packaging without more than minor processing'', are already identified under interim § 102.17 as non-qualifying operations, and thus any tariff shifts resulting solely from the operations described above would not confer origin. Hence, these proposed changes merely clarify and make more predictable the origin results that would be reached in the tariff shift circumstances described above.

In addition, in the case of a mixing of different types of active ingredients of Chapter 28 or 29 which become a product of subheading 3808.30 or 3808.90, it is further proposed to revise the rules for these subheadings to also allow a change from any other subheading in cases where a Chapter 28 or 29 ingredient of domestic origin constitutes no less than 40 percent by weight of the total Chapter 28 or 29 chemical compound.

New Chapter 72 Note

It is proposed to add a Note to the Chapter 72 rules to allow a change of origin as a result of cold reduction (cold rolling) of hot-rolled, flat-rolled steel products. Cold reduction is a cold-working process which causes a significant reduction in the thickness of hot-rolled, flat-rolled products and which changes the crystalline structure of the steel product by elongating it. As consistently expressed in rulings issued over the past 10 years, it is the position of Customs that this operation results in a substantial transformation of the hot-rolled, flat-rolled steel product. Thus, under the foregoing circumstances, notwithstanding the specific tariff shift rules for these goods, when cold-rolled steel is produced from cold reduction of hot-rolled, flat-rolled steel, the country of origin of the steel product will be the country in which the cold reduction (cold rolling) process occurred.

Comments

Before adopting the proposed amendments as a final rule, consideration will be given to any written comments (preferably in triplicate) timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, Franklin Court, 1099 14th Street, N.W., Suite 4000, Washington, D.C.

Executive Order 12866

This document does not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, the proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 102

Customs duties and inspections, Imports, Reporting and recordkeeping requirements, Rules of origin, Trade agreements.

Proposed Amendments to the Regulations

For the reasons stated above, it is proposed to amend part 102, Customs Regulations (19 CFR part 102), as set forth below.

PART 102—RULES OF ORIGIN

1. The authority citation for part 102 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624, 3314.

2. In § 102.20, the table is amended by removing the entry for HTSUS 3808.20–3808.90 under Section VI, by adding a Chapter 72 Note under Section XV, and by adding and revising the following HTSUS entries in numerical order to read as follows:

§ 102.20 Specific rules by tariff classification.

* * * * *

HTSUS	Tariff shift and/or other requirements
* * * * *	
3808.10	A change to subheading 3808.10 from any other subheading, except from subheading 1302.14 or from any insecticide of Chapter 28 or 29.

HTSUS	Tariff shift and/or other requirements
3808.20	A change to subheading 3808.20 from any other subheading, except from fungicides of Chapter 28 or 29.
3808.30	A change to subheading 3808.30 from any other subheading, except from herbicides, antisprouting products and plant-growth regulators of Chapter 28 or 29; or A change to a mixture of subheading 3808.30 from any other subheading, provided that the mixture is made from two or more active ingredients and a domestic active ingredient constitutes no less than 40 percent by weight of the total active ingredients.
3808.40	A change to subheading 3808.40 from any other subheading.
3808.90	A change to subheading 3808.90 from any other subheading, except from rodenticides and other pesticides of Chapter 28 or 29; or A change to a mixture of subheading 3808.90 from any other subheading, provided that the mixture is made from two or more active ingredients and a domestic active ingredient constitutes no less than 40 percent by weight of the total active ingredients.

* * * * *

Chapter 72 Note: Notwithstanding the specific rules of this chapter, hot-rolled flat-rolled steel which is cold-reduced (by cold rolling) shall be treated as a good of the country in which the cold-rolled steel is produced.

* * * * *

George J. Weise,

Commissioner of Customs.

Approved: June 19, 1995.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 95–17064 Filed 7–11–95; 8:45 am]

BILLING CODE 4820–02–P

19 CFR Part 162

RIN 1515–AB72

Search Warrants

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations by removing a regulation limiting the authority of Customs officers to whom search warrants are issued. The current regulation restricts such officers from removing letters, documents and other records in certain circumstances. The regulation is inconsistent with the current state of the law.

DATES: Comments must be received on or before September 11, 1995.

ADDRESSES: Written comments (preferably in triplicate) may be submitted to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, 1099 14th Street NW., Suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lars-Erik Hjelm, Office of the Chief Counsel (202–927–6900).

SUPPLEMENTARY INFORMATION:

Background

Section 162.14, Customs Regulations (19 CFR 162.14) provides that Customs officers to whom a search warrant is issued may not remove letters, other documents and records, unless such letters, other documents and records are instruments of crime which are seized pursuant to a lawful arrest. The authority for this regulation, which has been in effect since at least 1915, is 19 U.S.C. 1595. Until 1986, section 1595 only authorized Customs to obtain warrants for merchandise.

In 1986, section 1595 was expanded to allow Customs to seize ''* * * any document * * * which is evidence of a violation of * * * any law enforced or administered by the United States Customs Service.'' Public Law 99–570, October 27, 1986.

Another statute indicating that the authority of Customs officers with warrants to seize documents has expanded is 19 U.S.C. 1589a(2). This statute makes it clear that Customs officers have authority for any warrant, including a Federal Rules of Criminal Procedure Rule 41 warrant. A Rule 41 warrant can be issued for documents constituting evidence of crimes. See Public Law 98–573, October 30, 1984; Fed. R. Crim. Proc. Rule 41. The sources cited clearly indicate Congress' intent to provide Customs with the authority to search for and seize documentary evidence.

The Supreme Court has made it clear that officers may seize incriminating evidence in plain view during the course of a lawful search. See *United States* v. *Thompson*, 495 F. 2d 165 (D.C. Cir. 1974); *United States* v. *Michaelian*, 803 F. 2d 1042 (9th Cir. 1986). Also see *Horton* v. *California*, 496 U.S. 128 (1990), in which the Supreme Court held that the Fourth Amendment does not prohibit the warrantless seizure of evidence in plain view even though the discovery of the evidence was not inadvertent. Although inadvertence is a characteristic of most legitimate plain-view searches, it is not a necessary condition.

Proposal

Inasmuch as § 162.14, Customs Regulations, no longer reflects the state of the law regarding the search and seizure authority of Customs officers, Customs intends to delete § 162.14 from the Customs Regulations.

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, Suite 4000, 1099 14th Street NW., Washington, DC.

Authority: This change is proposed under the authority of 5 U.S.C. 301 and 19 U.S.C. 66, 1624.

The Regulatory Flexibility Act and Executive Order 12866

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and based upon the information set forth above, it is certified that the proposed change in the regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, the proposed change is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

This document does meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866.

Drafting Information

The principal author of this document was Janet L. Johnson, Regulations Branch. However, personnel from other offices participated in its development.

George J. Weise,

Commissioner of Customs.

Approved: June 20, 1995.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 95–17063 Filed 7–11–95; 8:45 am]

BILLING CODE 4820–02–P

Internal Revenue Service

26 CFR Parts 1 and 18

[PS–268–82]

RIN 1545–AE94

Definitions Under Subchapter S of the Internal Revenue Code

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations for S corporations and their shareholders relating to the definitions and the special rule provided in section 1377 of the Internal Revenue Code of 1986. The proposed regulations reflect changes to the law made by the Subchapter S Revision Act of 1982. The proposed regulations are necessary to provide guidance needed by taxpayers to comply with the law.

DATES: Written comments and requests for a public hearing must be received by October 10, 1995.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (PS–268–82), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (PS–268–82), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Brian J. O'Connor, (202) 622–3060; concerning submissions and the hearing, Michael Slaughter, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224.

A collection of information is required under § 1.1377–1(b). This information is required by the IRS to verify the event giving rise to the making of an election under section 1377(a)(2) by an S corporation. The likely respondents and/or recordkeepers will be S corporations and shareholders of S corporations.

Estimated total annual reporting burden: 1,000 hours.

The estimated annual burden per respondent varies from .2 hour to .5 hour, depending on individual circumstances, with an estimated average of .25 hour.

Estimated number of respondents: 4,000.

Estimated annual frequency of responses: 1.

Background

This document proposes amendments to the Income Tax Regulations (26 CFR part 1) under section 1377 of the Internal Revenue Code (Code). Section 18.1377–1 was issued by TD 7872 (48 FR 3590). The proposed regulations would conform the regulations to the addition of section 1377 to the Code by section 2 of the Subchapter S Revision Act of 1982, Pub. L. 97–354 (1982–2 C.B. 702, 710).

Explanation of Provisions

Shareholder's Pro Rata Share of Items of Income, Loss, Deduction, and Credit

Section 1366(a)(1) requires a shareholder of an S corporation to take into account the shareholder's pro rata share of the corporation's items of income, loss, deduction, and credit. The proposed regulations provide that, except in the case of an election under section 1377(a)(2), each shareholder's pro rata share of an item for a taxable year is the sum of the amounts determined with respect to the shareholder by assigning an equal portion of the item to each day of the S corporation's taxable year, and then dividing that portion pro rata among the shares outstanding on that day.

The proposed regulations contain several special rules for determining a shareholder's pro rata share. First, solely for purposes of determining a shareholder's pro rata share of an item, an S corporation's taxable year does not include any day on which the corporation has no shareholders. This rule ensures that the full amount of all items of the S corporation will be allocated to the corporation's shareholders. Second, a shareholder who disposes of stock of an S corporation is treated as the shareholder for the day of the disposition. Finally, a shareholder who dies is treated as the shareholder for the day of the shareholder's death.

Election To Treat Taxable Year as Separate Taxable Years

Under section 1377(a)(2), if a shareholder's interest in an S corporation is terminated during the taxable year and all persons who are shareholders during the taxable year agree, the corporation may elect (terminating election) to apply section 1377(a)(1) as if the taxable year of the S corporation consisted of two taxable years, the first of which ends on the date of the termination. The proposed regulations provide rules concerning the time and manner of making a terminating election and, therefore, it is proposed that § 18.1377–1 (which provides temporary rules concerning the time and manner of making a terminating election) be removed. The proposed regulations also provide that the terminating election is irrevocable and is effective only for the terminating event for which it is made.

The proposed regulations clarify that a terminating election may be made only if a shareholder's entire interest as a shareholder in the S corporation is terminated. A shareholder's entire interest as a shareholder is terminated under the proposed regulations on the occurrence of any event through which a shareholder's entire stock ownership in the S corporation ceases, including a sale, exchange, or other disposition of all of the stock held by the shareholder; a gift under section 102(a) of all the shareholder's stock; a spousal transfer under section 1041(a) of all the shareholder's stock; a redemption, as defined in section 317(b), of all of the shareholder's stock, regardless of the tax treatment of the redemption under section 302; and the death of the shareholder. A shareholder's entire interest in an S corporation is not terminated under the proposed regulations if the shareholder retains ownership of any stock that would result in the shareholder continuing to be considered a shareholder of the corporation for purposes of section 1362(a)(2). Thus, in determining whether a shareholder's entire interest in an S corporation has been terminated, any options held by the shareholder (other than options that are treated as stock under § 1.1361–1(l)(4)(iii)) and any interest in the S corporation held by the shareholder as a creditor, employee, director, or in any other non-shareholder capacity are disregarded.

The proposed regulations also describe the effects of a terminating election. Under the proposed regulations, an S corporation that makes a terminating election must treat its taxable year as two separate taxable

years for purposes of computing and allocating to each shareholder items of income (including tax-exempt income), loss, deduction, and credit; making adjustments to the accumulated adjustments account (AAA), earnings and profits, and basis; and determining the tax effect of a distribution to the shareholders. This treatment is required to give full effect to treating the taxable year as two separate taxable years. The proposed regulations also require the S corporation to assign items of income, loss, deduction, and credit to each deemed separate taxable year using the corporation's normal method of accounting as determined under section 446(a). The proposed regulations provide that a terminating election does not affect the due date of the S corporation's tax return for the taxable year or the time when the shareholders must include their pro rata allocations of items from the S corporation. The proposed regulations also provide that a terminating election by an S corporation that is a partner in a partnership is treated as a sale or exchange of the corporation's entire interest in the partnership for purposes of section 706(c) (closing of the partnership's taxable year) if the taxable year of the partnership ends after the shareholder's interest is terminated and within the full taxable year of the S corporation for which the terminating election is made. This rule conforms terminating elections with the rule for S termination years. See § 1.1362–3(c)(1).

The proposed regulations coordinate the application of the terminating election under section 1377(a)(2) with the election under section 1362(e)(3) (election to have items assigned to each short taxable year of an S termination year under normal accounting rules rather than pro rata) and the election under § 1.1368–1(g)(2) (election to terminate the taxable year when there is a qualifying disposition). Under the proposed regulations, if a transfer results in a termination of the shareholder's entire interest as a shareholder and the transfer also constitutes a qualifying disposition under § 1.1368–1(g)(2)(i), the terminating election rules under these proposed regulations take precedence and a qualifying disposition election cannot be made. If a termination of a shareholder's entire interest results in a termination under section 1362(d)(2) of the corporation's election to be an S corporation, however, the proposed regulations provide that the corporation may not make a terminating election. When a corporation's election to be an S corporation terminates, the portion of the corporation's taxable year ending at the close of the day preceding the day for which the terminating event is effective is treated as an S short year, and the remainder is treated as a C short year. Thus, because the day upon which a terminating event occurs is the first day of a C short year, as of that date there is no S corporation taxable year that may be divided into two separate years under section 1377(a)(2). Under section 1362(e)(2), the income or loss for the entire S termination year is allocated on a pro rata basis between the S and C short years. However, if the corporation makes an election under section 1362(e)(3), the corporation allocates income and loss to each short taxable year under the corporation's normal tax accounting rules. Thus, when a corporation makes an election under section 1362(e)(3), a shareholder of an S corporation may achieve a result similar to the result of an election under section 1377(a)(2) and these proposed regulations (which also require an allocation of income and loss to each short taxable year under normal accounting rules).

Post-Termination Transition Period

Section 1377(b) provides that the term *post-termination transition period* (PTTP) for purposes of subchapter S of chapter 1 of the Code means: (1) The period beginning on the day after the last day of the corporation's last taxable year as an S corporation and ending on the later of the day which is 1 year after such last day, or the due date for filing the return for the last taxable year as an S corporation (including extensions); and (2) the 120-day period beginning on the date of a determination that the corporation's election under section 1362(a) had terminated for a previous taxable year. The PTTP is relevant for purposes of section 1366(d)(3) (carryover of disallowed losses after the last taxable year for which a corporation is an S corporation) and section 1371(e) (distributions of money by a corporation with respect to its stock after termination of S corporation status).

The proposed regulations clarify that a PTTP arises following the termination under section 1362(d) of a corporation's S election. For example, a PTTP arises in the case of a C corporation that acquires the assets of an S corporation in a transaction to which section 381(a)(2) applies. However, if an S corporation acquires the assets of another S corporation in a transaction to which section 381(a)(2) applies, a PTTP does not arise. Instead, under § 1.1368–2(d)(2), the acquiring S corporation succeeds to and merges its AAA with the AAA of the distributor or transferor S corporation.

The proposed regulations clarify that the last day of a corporation's last taxable year as an S corporation is the last day of the short S taxable year under section 1362(e)(1)(A) or the date of transfer in the event that a C corporation acquires the assets of an S corporation in a transaction to which section 381(a)(2) applies. The proposed regulations also provide that the special treatment under section 1371(e)(1) is available only to those shareholders who were shareholders in the S corporation at the time of the termination.

The proposed regulations provide additional guidance on the definition of a determination for purposes of ascertaining when a PTTP begins under section 1377(b)(1)(B). Under the proposed regulations, a determination includes a written agreement between an S corporation and the Commissioner that the corporation failed to qualify as an S corporation. The agreement must be signed by the appropriate district director and an authorized officer of the corporation. In addition, if there is no written agreement, a determination results from the expiration of the period specified in section 6226 for filing a petition for readjustment of a final S corporation administrative adjustment finding that the corporation failed to qualify as an S corporation, provided that no petition is filed prior to the expiration of the period. For corporations not subject to the audit and assessment provisions of subchapter C of chapter 63 of subtitle A (dealing with the tax treatment of partnership items) a determination results from the expiration of the period for filing a petition under section 6213 for the shareholder's taxable year for which the Commissioner has made a finding that the corporation failed to qualify as an S corporation, provided that no petition was timely filed before the expiration of the period.

Effective Date

The regulations under section 1377 are proposed to apply to taxable years of an S corporation beginning after the date of publication as final regulations in the **Federal Register**.

Special Analysis

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory

Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Brian J. O'Connor, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Parts 1 and 18

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 18 are proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.1377–1 also issued under 26 U.S.C. 1377 (a)(2) and (c).

Par. 2. Sections 1.1377–0, 1.1377–1, 1.1377–2, and 1.1377–3 are added under the heading ''Small Business Corporations and Their Shareholders'' to read as follows:

§ 1.1377–0 Table of contents.

The following table of contents is provided to facilitate the use of §§ 1.1377–1 through 1.1377–3:

§ 1.1377–1 Pro rata share.

(a) *Computation of pro rata shares*—(1) *In general.* For purposes of subchapter S of chapter 1 of the Code and this section, each shareholder's pro rata share of any S corporation item described in section 1366(a) for any taxable year is the sum of the amounts determined with respect to the shareholder by assigning an equal portion of the item to each day of the S corporation's taxable year, and then dividing that portion pro rata among the shares outstanding on that day. See paragraph (b) of this section for rules pertaining to the computation of each shareholder's pro rata share when an election is made under section 1377(a)(2) to treat the taxable year of an S corporation as if it consisted of two taxable years in the case of a termination of a shareholder's entire interest in the corporation.

(2) *Special rules*—(i) *Days without shareholders.* Solely for purposes of determining a shareholder's pro rata share of an item for a taxable year under section 1377(a) and this section, an S corporation's taxable year does not include any day on which the corporation has no shareholders.

(ii) *Determining shareholder for day of stock disposition.* A shareholder who disposes of stock in an S corporation is treated as the shareholder for the day of the disposition. A shareholder who dies is treated as the shareholder for the day of the shareholder's death.

(b) *Election to terminate year*—(1) *In general.* If a shareholder's entire interest in an S corporation is terminated during the S corporation's taxable year and all persons who are shareholders during the taxable year agree (as prescribed in paragraph (b)(4) of this section), the S corporation may elect under section 1377(a)(2) and this paragraph (b) (terminating election) to treat its taxable year as if it consisted of two separate taxable years, the first of which ends at the close of the day on which the shareholder's entire interest in the S corporation is terminated. If the event resulting in the termination of the shareholder's entire interest also constitutes a qualifying disposition as described in § 1.1368–1(g)(2), the election under § 1.1368–1(g)(2) cannot be made. An S corporation may not make a terminating election if the cessation of a shareholder's interest occurs in a transaction which results in a termination under section 1362(d)(2) of the corporation's election to be an S corporation. (See section 1362(e)(3) for an election to have items assigned to each short taxable year under normal tax accounting rules in the case of a termination of a corporation's election to be an S corporation.) A terminating election is irrevocable and is effective only for the terminating event for which it is made.

(2) *Effect of the terminating election*—(i) *In general.* An S corporation that makes a terminating election for a taxable year must treat the taxable year as separate taxable years for purposes of allocating items of income (including tax-exempt income), loss, deduction, and credit; making adjustments to the accumulated adjustments account, earnings and profits, and basis; and determining the tax effect of a distribution to the shareholders. An S corporation that makes a terminating election must assign items of income (including tax-exempt income), loss, deduction, and credit to each deemed separate taxable year using its normal method of accounting as determined under section 446(a).

(ii) *Due date of S corporation return.* A terminating election does not affect the due date of the S corporation's return required to be filed under section 6037(a) for a taxable year (determined without regard to a terminating election).

(iii) *Taxable year of inclusion by shareholder.* A terminating election does not affect the taxable year in which a shareholder (including any shareholder whose entire interest in the corporation has terminated during the

corporation's taxable year) must take into account the shareholder's pro rata share of the S corporation's items of income, loss, deduction, and credit.

(iv) *S corporation that is a partner in a partnership.* A terminating election by an S corporation that is a partner in a partnership is treated as a sale or exchange of the corporation's entire interest in the partnership for purposes of section 706(c) (relating to closing the partnership taxable year), if the taxable year of the partnership ends after the shareholder's interest is terminated and within the taxable year of the S corporation (determined without regard to any terminating election) for which the terminating election is made.

(3) *Determination of whether an S shareholder's entire interest has terminated.* For purposes of section 1377(a)(2) and paragraph (b) of this section, a shareholder's entire interest in an S corporation is terminated on the occurrence of any event through which a shareholder's entire stock ownership in the S corporation ceases, including a sale, exchange, or other disposition of all of the stock held by the shareholder; a gift under section 102(a) of all the shareholder's stock; a spousal transfer under section 1041(a) of all the shareholder's stock; a redemption, as defined in section 317(b), of all the shareholder's stock, regardless of the tax treatment of the redemption under section 302; and the death of the shareholder. A shareholder's entire interest in an S corporation is not terminated if the shareholder retains ownership of any stock that would result in the shareholder continuing to be considered a shareholder of the corporation for purposes of section 1362(a)(2). Thus, in determining whether a shareholder's entire interest in an S corporation has been terminated, any options held by the shareholder (other than options that are treated as stock under § 1.1361–1(l)(4)(iii)) and any interest held by the shareholder as a creditor, employee, director, or in any other non-shareholder capacity are disregarded. (See § 1.1361–1(l)(4)(iii) for circumstances under which an option is treated as stock of the corporation and, therefore, the holder of the option is treated as owning a stock interest in the corporation.)

(4) *Time and manner of making terminating election*—(i) *In general.* An S corporation makes a terminating election by attaching a statement to its timely filed original or amended return required to be filed under section 6037(a) (that is, a Form 1120S) for the taxable year during which a shareholder's entire interest is terminated. A single election statement may be filed by the S corporation for all terminating elections for the taxable year. The election statement must include—

(A) A declaration by the S corporation that it is electing under section 1377(a)(2) and § 1.1377–1(b) to treat the taxable year as if it consisted of two separate taxable years;

(B) Information setting forth when and how the shareholder's entire interest was terminated (for example, a sale or gift);

(C) The signature on behalf of the S corporation of an authorized officer of the corporation under penalties of perjury; and

(D) A notice of consent, signed by each person who is a shareholder in the S corporation during the taxable year (determined without regard to the terminating election), including any shareholder whose entire interest terminates during the taxable year, in which each shareholder consents to the S corporation making the terminating election.

(ii) *Shareholders required to consent.* For purposes of paragraph (b)(4)(i)(D) of this section, a shareholder of the S corporation for the taxable year is a shareholder as described in section 1362(a)(2). For example, the person who under § 1.1362–6(b)(2) must consent to a corporation's S election in certain special cases is the person who must consent to the terminating election. In addition, an executor or administrator of an estate of a deceased shareholder may consent to the terminating election on behalf of the deceased shareholder.

(iii) *More than one terminating election.* A shareholder whose entire interest in an S corporation is terminated in an event for which a terminating election was made is not required to consent to a terminating election made with respect to a subsequent termination within the same taxable year of the entire interest of another shareholder.

(c) *Examples.* The following examples illustrate the provisions of this section.

Example 1. General rule. (i) On January 2, 1997, X, a calendar year corporation, is incorporated. On January 4, 1997, X acquires assets. On January 6, 1997, X issues 100 shares of common stock to each of A and B and files an election to be an S corporation effective for its 1997 taxable year. During its 1997 taxable year, X has nonseparately computed income (as defined in section 1366(a)(2)) of $720,000.

(ii) Each shareholder's pro rata share of X's nonseparately computed income for 1997 is determined by assigning an equal portion of the income to each day of X's taxable year on which X had shareholders. In the present case, there are only 360 days on which X had shareholders because X had no shareholders until January 6, 1997. Thus, $2,000 of nonseparately computed income is assigned to each day that X had shareholders ($720,000/360 days=$2,000 per day). The amount assigned to each day is multiplied by the percentage of shares held by the shareholder on that day. Because A and B each owned 50 percent of the shares of stock outstanding on each day that X had shareholders, each shareholder's daily pro rata share of X's nonseparately computed income is $1,000 ($2,000 per day×50%). Finally, the amounts of each shareholder's daily pro rata shares are aggregated to produce the shareholder's pro rata share of X's nonseparately computed income for 1997. During 1997, A and B each held X stock for 360 days. Thus, each shareholder's pro rata share of X's nonseparately computed income for 1997 is $360,000 ($1,000 per day×360 days).

Example 2. Shareholder's pro rata share in the case of a partial disposition of stock. (i) X, a newly incorporated calendar year corporation, issues 100 shares of common stock on January 6, 1997, to each of A and B and files an election to be an S corporation for its 1997 taxable year. On July 24, 1997, B sells 50 shares of X stock to C. Thus, in 1997, A owned 50 percent of the outstanding shares of X on each day of X's 1997 taxable year on which X had shareholders, B owned 50 percent on each day from January 6, 1997, to July 24, 1997 (200 days), and 25 percent from July 25, 1997, to December 31, 1997 (160 days), and C owned 25 percent from July 25, 1997, to December 31, 1997 (160 days).

(ii) Because B's entire interest in X is not terminated when B sells 50 shares to C on July 24, 1997, X cannot make a terminating election under section 1377(a)(2) and paragraph (b) of this section for B's sale of 50 shares to C. Although B's sale of 50 shares to C is a qualifying disposition under § 1.1368–1(g)(2)(i), X does not make an election to terminate its taxable year under § 1.1368–1(g)(2). During its 1997 taxable year, X has nonseparately computed income of $720,000.

(iii) For each day in X's 1997 taxable year, A's daily pro rata share of X's nonseparately computed income is $1,000 ($720,000/360 days×50%). Thus, A's pro rata share of X's nonseparately computed income for 1997 is $360,000 ($1,000×360 days). B's daily pro rata share of X's nonseparately computed income is $1,000 ($720,000/360×50%) for the first 200 days of X's taxable year on which X has shareholders, and $500 ($720,000/360×25%) for the following 160 days in 1997. Thus, B's pro rata share of X's nonseparately computed income for 1997 is $280,000 (($1,000×200 days) + ($500×160 days)). C's daily pro rata share of X's nonseparately computed income is $500 ($720,000/360×25%) for 160 days in 1997. Thus, C's pro rata share of X's nonseparately computed income for 1997 is $80,000 ($500×160 days).

Example 3. Shareholder's pro rata share when an S corporation makes a terminating election under section 1377(a)(2). (i) On January 6, 1997, X, a newly incorporated calendar year corporation, issues 100 shares of common stock to each of A and B and files an election to be treated as an S corporation for its 1997 taxable year. On July 24, 1997,

B sells B's entire 100 shares of X corporation stock to C. During its 1997 taxable year, X has nonseparately computed income of $720,000. X makes an election under section 1377(a)(2) and paragraph (b) of this section for the termination of B's entire interest arising from B's sale of 100 shares to C. As a result of the election, each shareholder's pro rata share is determined as if X's taxable year consisted of two separate taxable years, the first of which ends on July 24, 1997, the date B's entire interest in X terminates.

(ii) Under X's normal method of accounting, $200,000 of the $720,000 of nonseparately computed income is allocable to the period of January 6, 1997, through July 24, 1997 (the first deemed taxable year), and the remaining $520,000 is allocable to the period of July 25, 1997, through December 31, 1997 (the second deemed taxable year).

(iii) The pro rata share of the $200,000 of nonseparately computed income for each of A and B for the first deemed taxable year is determined by assigning the $200,000 of nonseparately computed income to each day of the first deemed taxable year ($200,000/200 days=$1,000 per day). Thus, for each day of the first deemed taxable year, $1,000 is allocated between A and B based on their proportionate stock ownership. Because A and B each held 50% of X's authorized and issued shares on each day of the first deemed taxable year, the daily pro rata share for each of A and B for each day of the first deemed taxable year is $500 ($1,000 per day×50%). Thus, each shareholder's pro rata share of the $200,000 of nonseparately computed income for the first deemed taxable year is $100,000 ($500 per day×200 days). A and B must report these amounts for their respective taxable years with or within which X's full taxable year ends (December 31, 1997).

(iv) The pro rata share of the $520,000 of nonseparately computed income for each of A and C for the second deemed taxable year is determined by assigning the $520,000 of nonseparately computed income to each day of the second deemed taxable year ($520,000/160 days=$3,250 per day). Thus, for each day of the second deemed taxable year, $3,250 is allocated between A and C based on their proportionate ownership. Because A and C each held 50% of X's authorized and issued shares on each day of the second deemed taxable year, the daily pro rata shares for each of A and C for each day of the second deemed taxable year is $1,625 ($3,250 per day×50%). Therefore, each shareholder's pro rata share of the $520,000 nonseparately computed income is $260,000 ($1,625 per day×160 days). A and C must report these amounts for their respective taxable years with or within which X's full taxable year ends (December 31, 1997).

Example 4. Interaction between the terminating election under section 1377(a)(2) and section 1362(e). (i) On January 1, 1997, X, a calendar year S corporation, has two shareholders, A and B, owning 60 shares and 40 shares, respectively. On June 29, 1997, B sells B's 40 shares to C. On July 20, 1997, C sells C's 40 shares to P, a partnership, causing a termination under section 1362(d)(2) of X's election to be an S corporation. X makes an election under section 1377(a)(2) and paragraph (b) of this section with regard to the termination of B's entire interest on June 29, 1997. Because the termination on July 20, 1997, of C's entire interest results in a termination of X's election to be an S corporation, X cannot make a terminating election under section 1377(a)(2) and paragraph (b) of this section with regard to C's sale of 40 shares to P. However, X makes an election under section 1362(e)(3) to assign items to each short taxable year of the S termination year under X's normal method of accounting. X has nonseparately computed income of $530,000 for its 1997 taxable year.

(ii) As a result of the election under section 1362(e)(3), the portion of X's taxable year ending at the close of the day prior to the termination of X's S corporation election (January 1, 1997, through July 19, 1997) is treated as a short taxable year for which X is an S corporation, and the portion of the year beginning on the day the termination is effective (July 20, 1997, through December 31, 1997) is treated as a short taxable year for which X is a C corporation. Under X's normal method of accounting, $200,000 of the $530,000 of X's taxable income is allocable to the S short year and the remaining $330,000 is allocable to the C short year. Of the $200,000 allocable to the S short year, $90,000 is allocable to the first deemed taxable year (January 1, 1997, through June 29, 1997) (180 days), and $110,000 is allocable to the second deemed taxable year (June 30, 1997, through July 19, 1997) (20 days) under X's normal method of accounting.

(iii) Each shareholder's pro rata share of X's income for the first deemed taxable year within the S short year is determined as follows. Because A owns 60% of the stock outstanding during the first deemed taxable year, A's pro rata share for that period is $54,000 ($90,000/180 days in the period×60%×180 days). B's pro rata share for that period, reflecting B's 40% ownership, is $36,000 ($90,000/180 days in the period×40%×180 days). A and B must report these amounts for their respective taxable years with or within which the S termination year ends (December 31, 1997).

(iv) Each shareholder's pro rata share of X's income for the second deemed taxable year within the S short year is determined as follows. Because A owns 60% of the stock outstanding during the second deemed taxable year, A's pro rata share for that period is $66,000 ($110,000/20 days in the period×60%×20 days). C's pro rata share for that period, reflecting C's 40% ownership, is $44,000 ($110,000/20 days in the period×40%×20 days). A and C must report these amounts for their respective taxable years with or within which the S termination year ends (December 31, 1997).

§ 1.1377–2 Post-termination transition period.

(a) *In general.* For purposes of subchapter S of chapter 1 of the Code and this section, the term post-termination transition period means—

(1) The period beginning on the day after the last day of the corporation's last taxable year as an S corporation and ending on the later of—

(i) The day which is 1 year after such last day; or

(ii) The due date for filing the return for the last taxable year as an S corporation (including extensions); and

(2) The 120-day period beginning on the date of a determination that the corporation's election under section 1362(a) had terminated for a previous taxable year.

(b) *When a post-termination transition period arises.* A post-termination transition period arises following the termination under section 1362(d) of a corporation's S election. For example, a post-termination transition period arises if a C corporation acquires the assets of an S corporation in a transaction to which section 381(a)(2) applies. However, if an S corporation acquires the assets of another S corporation in a transaction to which section 381(a)(2) applies, a post-termination transition period does not arise. (See § 1.1368–2(d)(2) for the treatment of the acquisition of the assets of an S corporation by another S corporation in a transaction to which section 381(a)(2) applies.) The special treatment under section 1371(e)(1) of distributions of money by a corporation with respect to its stock during the post-termination transition period is available only to those shareholders who were shareholders in the S corporation at the time of the termination.

(c) *Last day of last taxable year.* For purposes of section 1377(b)(1)(A) and paragraph (a)(1) of this section, the last day of a corporation's last taxable year as an S corporation is—

(1) The last day of the short S taxable year under section 1362(e)(1)(A); or

(2) The date of transfer (within the meaning of section 381(a)(2)) in the event that a C corporation acquires the assets of an S corporation in a transaction to which section 381(a)(2) applies.

(d) *Determination defined.* For purposes of section 1377(b)(1)(B) and paragraph (a)(2) of this section, the term determination means—

(1) A court decision rendered by a court of competent jurisdiction;

(2) A closing agreement entered into between the Secretary and the taxpayer pursuant to section 7121;

(3) A written agreement between the corporation and the Commissioner (including a statement acknowledging that the corporation's election to be an S corporation terminated under section 1362(d)) that the corporation failed to qualify as an S corporation;

(4) For a corporation subject to the audit and assessment provisions of subchapter C of chapter 63 of subtitle A,

the expiration of the period specified in section 6226 for filing a petition for readjustment of a final S corporation administrative adjustment finding that the corporation failed to qualify as an S corporation, provided that no petition was timely filed before the expiration of the period; and

(5) For a corporation not subject to the audit and assessment provisions of subchapter C of chapter 63 of subtitle A, the expiration of the period for filing a petition under section 6213 for the shareholder's taxable year for which the Commissioner has made a finding that the corporation failed to qualify as an S corporation, provided that no petition was timely filed before the expiration of the period.

(e) *Time of determination*—(1) *Court decision.* A court decision becomes a determination on the date the decision becomes final under rules applicable to the court rendering the decision.

(2) *Closing agreement.* A closing agreement becomes a determination on the date of its approval by the Commissioner.

(3) *Written agreement.* A written agreement described in paragraph (d)(3) of this section becomes a determination when it is signed by the district director having jurisdiction over the corporation (or by another Service official to whom authority to sign the agreement is delegated) and by an officer of the corporation authorized to sign on its behalf. Neither the request for a written agreement nor the terms of the written agreement suspend the running of any statute of limitations.

(4) *Implied agreement.* A determination under paragraph (d)(4) or (d)(5) of this section becomes effective on the day after the date of expiration of the period specified under section 6226 or 6213, respectively.

§ 1.1377–3 Effective date.

Sections 1.1377–1 and 1.1377–2 apply to taxable years of an S corporation beginning after [the date of publication as final regulations in the **Federal Register**].

PART 18—TEMPORARY INCOME TAX REGULATIONS UNDER THE SUBCHAPTER S REVISION ACT OF 1982

Par. 3. The authority citation for part 18 continues to read as follows:

Authority: 26 U.S.C. 7805 sec. (6)(c)(3)(B)(iii) of the Subchapter S Revision Act of 1982.

§ 18.1377–1 [Removed]

Par. 4. Section 18.1377–1 is removed.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 95–16653 Filed 7–11–95; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AC29

Cape Lookout National Seashore; Operation of Aircraft

AGENCY: National Park Service.

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) is proposing to close the Portsmouth Village Airstrip at Cape Lookout National Seashore, North Carolina, to the operation of aircraft. This action is necessary to prevent aircraft accidents and eliminate a use that is incompatible with preserving the historic scene in Portsmouth Village, a historic district listed on the National Register of Historic Places. The primary intent of this proposed rule is to protect the flying public by closing an airstrip that does not comply with Federal Aviation Administration and North Carolina Department of Transportation safety standards. Secondary goals include reducing the potential for an aircraft accident destroying one or more irreplaceable historic structures, eliminating the anachronistic intrusion of aircraft in a historic village and providing for the safety of park visitors who cross the runway as they walk from the Village to the beach. Aircraft noise and the visual intrusions detract from the visitor's opportunity to experience Portsmouth Village in a quiet setting, appropriate to the period it represents.

DATES: Written comments will be accepted through September 11, 1995.

ADDRESSES: All comments should be addressed to: Mr. William A. Harris, Superintendent, 131 Charles Street, Harkers Island, North Carolina 28531.

FOR FURTHER INFORMATION CONTACT: Charles F. Harris, Chief of Park Operations, 131 Charles Street, Harkers Island, North Carolina 28531; (919) 240–1409.

SUPPLEMENTARY INFORMATION:

Background

The Portsmouth Village Airstrip (Airstrip) is located on the northeast corner of Portsmouth Village (Village), NC. The Village is geographically remote because of its location on a part of the outer banks (Core Banks) that is not connected to the mainland by bridge. The origins of Portsmouth Village can be traced back to 1752, when it was authorized by the Colonial Legislature of North Carolina. There are no permanent residents in this well-preserved ''ghost town.'' The historical significance of Portsmouth Village is underscored by its listing on the National Register of Historic Places. Approximately 2,000+ people visit the Village annually.

Long-term residents in the Portsmouth Village area report that the unpaved Airstrip was constructed by private individuals for recreational use shortly after World War II. In this earlier period, the Airstrip was not as long as it is today, but was leveled and extended to its present approximate length of 1640 feet in 1959.

The NPS began managing the Airstrip after North Carolina ceded Core Banks to the Federal government to establish Cape Lookout National Seashore (Seashore) in 1976. Seashore management has maintained the grass surface and trimmed back encroaching woody vegetation to the extent that limited funding allows. In 1984, the NPS composed a regulation, Section 7.98(a), in Title 36, Code of Federal Regulations, legalizing aircraft operations on the Airstrip.

The NPS recently became concerned about potential hazards related to aircraft operations on the Airstrip. These concerns stem from a report by an inspector of the North Carolina Department of Transportation, Division of Aviation, that the airstrip does not meet the following Federal Aviation Administration runway standards:

Standard	Description
FAA, Part 77	Each end of the runway should have a 20 to 1 approach slope. (Obstacles should not exceed more than one foot of rise for every 20-foot increment of horizontal distance from the end of a runway).
FAA AC 150/ 5300–1300.	Each side of the runway centerline should be clear of obstacles by at least 125 feet.

Instead, brush and small trees up to 12 feet tall grow on the south end of the airstrip. Dense brush and trees growing on the airstrip edges narrow the area clear of obstacles from the centerline to an average of only 59 feet, less than half the recommended width.

Although several accidents have occurred to aircraft landing on or taking off from the airstrip, only three are officially documented with the National Transportation Safety Board (NTSB). A review of these NTSB reports indicate that the airstrip is considered ''unsuitable terrain'' because it has a soft spot at its center and has ''high obstructions'' (dense brush and trees up to 20 feet tall) lining the runway.

Protecting irreplaceable historic structures and preserving the historic scene are also very important concerns related to aircraft use. One of the most important historic structures in Portsmouth Village, the Portsmouth Life Saving Station (Station), is only 101 feet east of the airstrip centerline. A detached kitchen for the Station is only 78 feet east of the centerline. And, the Station-stable is only 89 feet west of the centerline. The possibility of aircraft eventually colliding with structures so close to the center line is high with continued use of this narrow Airstrip. It would be necessary to move the Station and nearby associated structures to bring the Airstrip completely into compliance with FAA standards. Moving historic structures from their original locations seriously degrades their historical significance. The National Historic Preservation Act provisions generally do not permit Federal agencies to take such action (incompatible uses do not justify such action).

Direct impact is not the only concern. The Airstrip and Village lie in a mixed brush/maritime forest. Dense vegetation of this plant community grows inside Portsmouth Village. Fire from an aircraft accident in the vicinity of the Airstrip could easily spread from the brush/forest into the Village and destroy many structures. Because of its isolated character, fire suppression services are minimal in the area. The foot and vehicle trail from the Village to the beach crosses the Airstrip at the old Lifesaving Station. Visitors are potentially exposed to aircraft takeoffs and landings that they often cannot hear. Visitors also desire a quiet, historic scene to enjoy Portsmouth Village. Aircraft noise and visual intrusions are not conducive to preserving such a setting.

Approximately 300 of the 2,000+ persons visiting the Village annually arrive by aircraft. (This estimate is based on approximately 75 aircraft landings recorded by staff annually, with an average of four visitors per aircraft.) An alternate airport, Ocracoke Island Airport, is just six miles from the Airstrip. Ferry boat services provide transportation between Ocracoke and the Village for $15 to $20 per person. At least one of these services offers free ground transportation between Ocracoke Island Airport and the ferry dock for groups that prefer landing at Ocracoke Island Airport rather than the Airstrip.

The anticipated costs, approximately $40,000, of clearing vegetation from the Airstrip centerline and repairing the runway surface (levelling and resodding) are prohibitive under present funding levels for the Seashore. The estimated annual cost for maintaining the grass surface of the Airstrip is $3,000, also prohibitive under present fiscal constraints.

Summary

The Airstrip does not comply with FAA safety standards. The flying public should not be exposed to the potential hazards associated with operating aircraft from a substandard airstrip; and, the taxpayer should not risk liability for an aircraft accident resulting from a defect in the Airstrip. Derogating the historical significance of nearby National Register structures to accommodate aircraft operations is not justifiable. Even if funding levels allowed compliance with safety standards, low visitor use and availability of a nearby alternate airport with connecting transportation services suggest that such an expenditure is neither cost-effective nor warranted. For these reasons, the NPS proposes closing Portsmouth Village Airstrip by revoking 36 CFR 7.98(a).

Public Participation

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rule making process. Accordingly, interested persons may submit written comments regarding this proposed rule to the address noted at the beginning of this rule making. The NPS will review comments and consider making changes to the rule based upon an analysis of the comments.

Draft Information.

The primary authors of this rule are Felix Revello, Supervisory Park Ranger and Charles Harris, Chief of Park Operations, both of Cape Lookout National Seashore.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq*.

Compliance With Other Laws

This rule was not subject to Office of Management and Budget review under Executive Order 12866. The Department of the Interior determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 USC 601 *et seq*). The economic effects of this rulemaking are local in nature and negligible in scope.

The NPS has determined that this proposed rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce incompatible uses which compromise the nature and character of the area or causing physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, and in accord with the procedural requirements of the National Environmental Policy Act (NEPA), and by Departmental Regulations in 516 DM 6, (49 FR 21438) an Environmental Assessment (EA) and a Finding of No Significant Impact (FONSI) have been prepared.

List of Subjects in 36 CFR Part 7

National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, it is proposed to amend 36 CFR Chapter I as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

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

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Section 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

§ 7.98 [Removed and Reserved]

2. Section 7.98 is removed and reserved.

Dated: June 9, 1995.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 95–16964 Filed 7–11–95; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 94–70, Notice 2]

Federal Motor Vehicle Safety Standard 206; Door Locks and Door Retention Components

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of public meeting and request for comments.

SUMMARY: This document announces a public meeting to seek comments on potential upgrading of Federal Motor Vehicle Safety Standard No. 206, Door Locks and Door Retention Components, to further reduce the likelihood of occupants being ejected through side door openings as a result of vehicle crashes.

The purpose of this public meeting is to inform all interested parties about the current status of NHTSA's research on side door ejections and potential countermeasures for ejection reduction, and to solicit comments on the agency's findings. In addition, the agency wishes to obtain information related to reduction of side door ejections through development of improved latches and other countermeasures that are being undertaken by domestic and foreign vehicle manufacturers, and other organizations. The information gathered at this meeting will assist the agency in deciding its future course of action to solve the side door ejection problem. In addition, the agency is also seeking information from safety groups or other interested parties who may have conducted their own investigation on the magnitude of the safety problem in this area and potential solutions.

DATES: The meeting will be held on August 7, 1995 at the address given below, starting at 9:00 a.m. Persons or organizations desiring to make presentations at the public meeting are asked to advise NHTSA of their intent by July 24, 1995. Copies of presentations, or an outline thereof, should be submitted to the contact person shown below not later than July 31, 1995. All written comments and statements on the subjects discussed at the meeting must be received by the agency no later than August 21, 1995 so that such comments and statements could be included in the final transcripts of the public meeting.

ADDRESSES: The public meeting will be held at the following address: Holiday Inn-Fair Oaks Mall, 11787 Lee Jackson Memorial Highway, Fairfax, VA 22033. Tel: (703)–352–2525 and Fax: (703)–352–4471.

Requests to make a presentation and a copy of the presentation, or an outline thereof, should be sent to: Dr. Joseph Kanianthra, Chief, Side and Rollover Crash Protection Division, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

Written comments should refer to the docket and notice number shown above and ten copies should be submitted to Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, DC 20590. However, submissions containing information for which confidential treatment is requested should be submitted with three copies to Chief Counsel, National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street SW., Washington, DC 20590. Seven additional copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Kanianthra, Chief, Side and Rollover Crash Protection Division, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh street SW., Washington, DC 20590. Tel: (202)–366–4924, and Fax: (202)–366–4329.

SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Safety Standard (FMVSS) No. 206, Door Locks and Door Retention Components (49 CFR 571.206), specifies performance requirements for side door locks, latches, hinges and other support means used in vehicles to minimize the likelihood of occupants being ejected through the side door openings. The standard requires, among other items, each latch and striker system and each hinge system not to disengage when a longitudinal force of 2,500 lbs or a transverse force of 2,000 lbs is applied. In addition, the standard requires each latch and striker system not to disengage when a 30-g inertial loading is applied in the longitudinal or transverse direction. To assess the effectiveness of the standard, the agency conducted a rulemaking evaluation study ''An Evaluation of Door Locks and Roof Crush Resistance of Passenger Cars—Federal Motor Vehicles Safety Standards Number 206 and 216'' (DOT HS 807–489, November 1989). In the study, the fatal ejection risk in rollovers was calculated for passenger cars manufactured during the 1963–1982 period. The study concluded that latch improvements implemented in 1963–1968 reduced the fatal ejection risk by 15 percent in rollover accidents.

It is well known that promoting seat belt usage is the most cost/effective means to reduce the risk of ejection. The agency and vehicle manufacturers have been promoting seat belt usage for many years and, consequently, the average seat belt usage rate has increased dramatically in recent years. However, the NASS accident data show that the total fatal ejections per year remain relatively constant since 1978 in spite of significant increases in seat belt usage in recent years. The agency believes that there are two counter balancing effects which contribute to maintaining the number of ejection fatalities and injuries relatively constant. The reduced ejection rates due to an increase in seat belt usage is probably off-set by the exceptional high ejection rates in small cars, light trucks and multipurpose passenger vehicles. The increasing number of small cars on the highway since the late 1970's and the current consumer preference of using pickups, mini-vans and utility vehicles for personal transportation are likely to increase the total number of fatal ejections in those vehicles. Thus, any benefits derived from increased seat belt usage appear to have been off-set by the increase in ejections experienced in small cars, light trucks, and multipurpose passenger vehicles. It is estimated that in 1995 and beyond side door ejections will result in approximately 1,475 fatalities and 1,925 AIS 3+ injured survivors. Therefore, side door ejections are and will remain a significant safety problem.

Since the issuance of FMVSS No. 206 in 1967, the agency has investigated many crashes associated with side door openings and ejections. In 1986, the agency initiated a pilot study ''Side Door Latch/Hinge Assembly Evaluation'' (DOT HS 807–234, October 1986) to investigate side door latch strength and occupant ejection problems. Since then, the agency has continued its research efforts in this area. To date, the agency has identified many real world latch failure mechanisms and has developed a set of test procedures that may be suitable for evaluating the performance of the latch and striker systems used in most production vehicles. These test procedures potentially address only a small portion of possible failure modes that are occurring in real world crashes. The agency has concluded that the side door ejection problem involves a variety of different latch failure mechanisms, and that there is not a single representative latch failure mode that

causes the door to open in real world crashes. Each latch failure mode must be dealt with individually as a unique event. Therefore, the agency's options are:

(1) To Upgrade FMVSS No. 206's Test Procedures: FMVSS No. 206 could be upgraded by including additional tests under FMVSS NO. 206. Those additional tests may include by-pass tests, full door longitudinal and transverse load tests, GM rotation tests, inertial loading tests and other tests. The performance levels have to be determined from the test results of latches of those vehicles selected from the accident data files with low and high door opening rates and latch failure rates. However, this option has the disadvantage of multiple tests for manufacturers' certification and the agency's enforcement efforts.

(2) To Require a Secondary Latch for All Doors: In 1994, NHTSA contracted EASi Engineering to develop and manufacture a secondary door latch system which is able to:

1. resist forces in different directions.
2. meet FMVSS No. 206's fully latched test requirements.
3. mitigate by-pass and linkage activation failures.

EASi Engineering, based on the above criteria, developed a secondary latch system for a 1991 Ford Taurus. Therefore, an alternative option is to amend FMVSS No. 206 requiring a secondary latch mechanism for all doors. This option has the definite advantage of limited test requirements for the latch itself. However, the effectiveness of a secondary latch system in real world crashes is not known at this time.

(3) To Use a modified FMVSS No. 214 test: FMVSS No. 214 specifies a static door crush test and requires side doors of a vehicle to remain attached in a dynamic side impact test. The static door crush test of FMVSS No. 214 includes longitudinal, transverse, and rotational forces experienced by the latch and striker system in a real world crash. FMVSS No. 214 requires that the peak crush resistance of a side door shall not be less than two times the curb weight of its vehicle or 7,000 pounds, whichever is less. In general, this peak transverse load would induce a longitudinal load in excess of 2,500 pounds to the latch and striker system of the door. It appears that the static door crush test requirements possibly surpass those of FMVSS No. 206's longitudinal tests. Therefore, the longitudinal load test of FMVSS No. 206 may be redundant. The transverse load tests of FMVSS No. 206 could be replaced by a modified FMVSS No. 214 test. In a static door crush test, both the latch and the hinges of a door are tested simultaneously and the latch and striker system of the door is subjected to pulling, shearing and twisting forces which simulate some of the real world loading conditions. In a dynamic side impact test, some of the dynamic effects on the side structure in crashes are also simulated. In addition, potential structural effects of the door and pillar component responses upon the latch strength could be duplicated in a test procedure developed for the purpose. It appears that FMVSS No. 214 types of tests are a potential option for rulemaking actions associated with side door ejection reduction.

A disadvantage of this option is that the door latch and striker system is not subjected to a significant longitudinal compression which was found in the agency's research to be a critical load component associated with by-pass failures.

PUBLIC MEETING: All interested persons and organizations are invited to attend the meeting. To assist interested parties to prepare for the meeting, the agency has developed a preliminary outline, shown below, or major topics to be discussed at the meeting. Any additional agenda items of interest could be included by making a request to the agency at the address given in the notice.

Preliminary Outline of Topics for Public Meeting

1. Accident Data
   (A) Estimated Target Population
   (B) Door Opening Rate Analysis
   (C) Hard Copy Accident Data Analysis
2. Status of Door Latch research: Test Procedures Evaluated
   (A) Bench Component Tests
   (B) In Vehicle Component Tests
   (C) Other Test Methods
3. Future Research: Potential Countermeasures
   (A) Upgrade of FMVSS No. 206
   (B) Secondary Latch System Development
   (C) FMVSS No. 214 Types of Tests Development
   (D) Other Methods

The agency intends to conduct the meeting informally, along the lines of the public meeting on head impact protection held on November 15, 1993. The agency will summarize its activities in the three major topic areas at the beginning of the discussion for each topic, followed by presentations by other interested parties. Before moving to the next major topic area, there will be an informal discussion period. Interested persons may ask questions or provide comments during this period. The public may submit written questions to the presiding official to consider asking of particular participants or presenters.

The agency will provide an overhead projector, a slide projector and a TV-VCR system. The agency requests that persons planning to use other visual aids in their presentations must indicate to the agency their requirements. A copy of the charts and other materials used in the presentation must be provided to the agency for the docket at the end of the meeting.

COMMENTS: The agency invites all interests parties to submit written comments concerning the agenda items planned to be discussed in the meeting. The agency notes that participation in the public meeting is not a prerequisite for submission of written comments. Anyone desiring submission of comments should send them to the same address as above and must follow the same requirements outlined in section **ADDRESSES.**

No comment may exceed 15 pages in length (49 CFR 553.21). This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion. Necessary attachments may be appended to a comment without regard to the 15-page limit. All comments that are submitted within two weeks after the date of the public meeting will be available for public review in the docket. Those persons who desire to be notified upon receipt of their written comments in the Docket Section should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receipt, the docket supervisor will return the postcard by mail.

Persons making oral presentations at the meeting are requested, but not required, to submit 25 written copies of the full text of their representation to Dr. Joseph Kanianthra no later than the day before the meeting. Presentations are limited to 15 to 20 minutes. If time permits, persons who have not requested presentation time, but want to make a statement will be afforded an opportunity to do so at the end of the meeting. Copies of all written statements, if provided by the commenters within two weeks after the meeting, will be placed in the docket. However, a verbatim transcript of the meeting will be prepared by NHTSA and placed in the basket as soon as possible after the meeting.

Authority: 49 U.S. §§ 322, 30111; delegation of authority at 49 CFR 1.50.

Issued on: July 7, 1995.

Patricia Breslin,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 95–17088 Filed 7–11–95; 8:45 am]

BILLING CODE 4910–58–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 228

[Docket No. 950504128–5128–01; I.D. 031095A]

RIN 0648–AG80

Small Takes of Marine Mammals; Harassment Takings Incidental to Specified Activities

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

ACTION: Proposed rule; extension of comment period.

SUMMARY: On June 20, 1995, NMFS received a letter from the U.S. Navy requesting an extension of the public comment period on the proposed rule to establish a process for timely authorizations of small takes of marine mammals by incidental harassment. The U.S. Navy is concerned about many aspects of the rule, as proposed, and has therefore distributed the proposed rule to affected field commands and activities for review and comment. As it will take several weeks to consolidate these responses and evaluate the operational and fiscal effect on the U.S. Navy's mission, an extension of the comment period has been requested. Accordingly, the comment period on the proposed rule is hereby extended.

DATES: Comments must be received no later than October 16, 1995.

ADDRESSES: Written comments on the proposed rule should be addressed to Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226. A copy of the Environmental Assessment (EA) may be obtained by writing to this address or by telephoning the contact listed below.

Comments regarding the burden-hour estimate or any other aspect of the collection-of-information requirement contained in this rule should be sent to the above individual and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: NOAA Desk Officer, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055.

SUPPLEMENTARY INFORMATION: On May 31, 1995, NMFS published a proposed rule (60 FR 28379) that sets forth a proposed process for applying for and obtaining an incidental harassment authorization; the time limits set by the statute for NMFS review, publication, and public notice and comment on any applications for authorization that would be granted; and the requirements for submission of a plan of cooperation and for scientific peer review of an applicant's monitoring plans (if that activity may affect the availability of a species or stock of marine mammal for taking for subsistence purposes). This rule also proposed changes to the existing regulations to clarify the requirements for obtaining a small take authorization.

Dated: July 6, 1995.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–17012 Filed 7–11–95; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 60, No. 133

Wednesday, July 12, 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

Forms Under Review by Office of Management and Budget

July 7, 1995.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) Who will be required or asked to report; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department of Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, D.C. 20250, (202) 690–2118.

Extension

• Consolidated Farm Service Agency
7 CFR 729 and 1446—Poundage Quota and Marketing Regulations for the 1991 through 1995 Crops of Peanuts
ACSC–278, 101, 1008, 1002, 1003, CFSA–1007, ASCS 1030, 1011, 1010, 1012, 1017, CCC–1042, ASCS–1006, 1006–1
Farms; 644,205 responses; 337,800 hours
Frankie Coln (202) 720–9011

Larry K. Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 95–17052 Filed 7–11–95; 8:45 am]

BILLING CODE 3410–01–M

Federal Crop Insurance Corporation

Office of Risk Management, Consolidated Farm Service Agency; Notice of Specialty Crops Research Studies

SUMMARY: The Federal Crop Insurance Corporation (''FCIC'') publishes this notice to advise all interested parties of FCIC's research studies. The purpose of the crop research studies is to assist the Corporation in determining the feasibility of formulating crop insurance policies for new crops.

EFFECTIVE DATE: July 12, 1995.

ADDRESSES: Research and Evaluation Branch, FCIC, P.O. Box 419293, Kansas City, Missouri 64141.

FOR FURTHER INFORMATION CONTACT: Vondie W. O'Conner, Jr., Acting Chief, or Floyd Niernberger, Acting Specialty Crop Coordinator, Research and Evaluation Branch, FCIC, P.O. Box 419293, Kansas City, Missouri 64141. Telephone (816) 926–6343.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to name the specialty crops for which research studies are being prepared. Proposals for additional crops to study or comments on the crops named can be forwarded to FCIC at the address listed above.

On Friday, April 14, 1995, FCIC published a notice in the **Federal Register** at 60 FR 19015 to outline the data collection guidelines to be used in formulating new crop insurance policies. The crop research studies will be conducted consistent with those data collection guidelines and will assist FCIC in determining the feasibility of formulating crop insurance policies for specialty crops.

The following crops are currently being researched:

Asparagus
Avocados
Broccoli
Cantaloupe
Carrots
Cauliflower
Celery
Cherries
Christmas Trees
Forage and Turfgrass Seeds
Hay
Honeydew
Hops
Lettuce
Millet
Mints
Mushrooms
Nursery Crops
Pecans
Pineapple
Pistachios
Strawberries
Sweet Potatoes
Turfgrass Sod
Watermelon

Notice

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501, *et seq.*), the FCIC herewith gives notice of the specialty crops for which research studies are being conducted for possible specialty crop insurance coverage.

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

Done in Washington, DC, on June 29, 1995.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 95–16584 Filed 7–11–95; 8:45 am]

BILLING CODE 3410–08–M

Forest Service

Northwest Sacramento Province Advisory Committee (PAC); Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Northwest Sacramento Province Advisory Committee will meet on August 2 and 3, 1995, for a field trip and meeting. The meeting will start at noon, August 2, at the Whiskeytown Environmental School (WES), located on Clear Creek below the dam for Whiskeytown Lake. Agenda items to be covered that day include: (1) Summary of the Record of Decision for the Northwest Forest Plan, (2) Summary of how the Northwest Forest Plan affects Federal agency resource management plans, (3) Overview on purpose of province Advisory Committee, (4) Role of the State CERT and Province Advisory Committee. The field trip will depart at 4:00 p.m. from WES to see the area included in the proposed Clear Creek Coordinated Resource Management Plan project—returning to WES at 6:00 p.m. The meeting on August 3 will begin at 8:00 a.m. at the Best Western Hilltop Inn in the California Room. Agenda topics include: (1) Old business from the May '95 meeting, (2) Report on the Intergagency

Advisory Committee, (3) Interfacing with other Province Advisory Committees, (4) Development of action plans for 6 major issues identified during the May '95 meeting, (5) Public participation to be available between 3:20 p.m. and 3:50 p.m., (6) Agenda for next meeting. All Northwest Sacramento Province Advisory Committee meetings are open to the public. Interested publics are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to David E. Howell, Designated Federal Official, Northwest Sacramento Province, U.S.D.I., Bureau of Land Management, 2550 North State Street, Ukiah, CA 95482–3023, (707) 468–4000, or Duane Lyon, Province Coordinator, U.S.D.A., Shasta-Trinity National Forests, 2400 Washington Avenue, Redding, CA 96001 (916) 246–5499.

Dated: July 5, 1995.

David E. Howell,

Designated Federal Official, Northwest Sacramento Province.

[FR Doc. 95–17098 Filed 7–11–95; 8:45 am]

BILLING CODE 3410–FK–M

Natural Resources Conservation Service

Jonathan Davis Wetland Restoration, Jefferson Parish, LA

AGENCY: Natural Resources Conservation Service, USDA (Formerly Soil Conservation Service).

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council of Environmental Quality Guidelines (40 CFR part 1500); and the natural Resources Conservation Service Guidelines (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Jonathan Davis Wetland Restoration Project, Jefferson Parish, Louisiana.

FOR FURTHER INFORMATION CONTACT: Donald W. Gohmert, State Conservationist, Natural Resources Conservation Service, 3737 Government Street, Alexandria, Louisiana 71302, telephone (318) 473–7751.

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

This plan proposes to reduce wetland loss on approximately 7,200 acres of intermediate marsh in Jefferson Parish, Louisiana. Project measures include 1,000 linear feet of rock weirs, 1,215 linear feet of plugs, 670 linear feet of channel breach armoring, and 34,000 linear feet of shoreline stabilization.

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

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

Dated: June 29, 1995.

Donald W. Gohmert,

State Conservationist.

[FR Doc. 95–16834 Filed 7–11–95; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 746]

Grant of Authority; Establishment of a Foreign-Trade Zone, New London, CT

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the New London Foreign-Trade Zone Commission (the Grantee) has made application to the Board (FTZ Doc. 59–93, 58 FR 65157, 12/13/93) requesting the establishment of a foreign-trade zone in New London, Connecticut, within the New London Customs port of entry; and,

Whereas, notice inviting public comment has been given in the **Federal Register** and the Board has found that the requirements of the Act and Board's regulations are satisfied with regard to proposed Site 1 (State Pier), and that approval for this site is in the public interest;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 208, at the State Pier site (Site 1) described in the application, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 26th day of June 1995.

Ronald H. Brown,

Secretary of Commerce, Chairman and Executive Officer.

[FR Doc. 95–17042 Filed 7–11–95; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–421–803]

Certain Cold-Rolled Carbon Steel Flat Products From The Netherlands; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request by the respondent, the Department of Commerce (the Department) has conducted an administrative review of the antidumping duty order on *Certain Cold-Rolled Carbon Steel Flat Products From the Netherlands* (A–421–804). The review covers one manufacturer/exporter of the subject merchandise to the United States during the period of review (POR) August 18, 1993 through July 31, 1994.

We have preliminarily determined that sales have been made below the foreign market value (FMV). If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs to assess antidumping duties equal to the difference between the United States price (USP) and the FMV.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: July 12, 1995.

FOR FURTHER INFORMATION CONTACT: Helen Kramer or Robin Gray, Office of

Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–0405 or (202) 482–0196, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 9, 1993, the Department published in the **Federal Register** (58 FR 37199) the final affirmative antidumping duty determination on Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands, for which we published an antidumping duty order on August 19, 1993 (58 FR 44172). On August 3, 1994, the Department published the notice of ''Opportunity to Request an Administrative Review'' of this order for the period August 18, 1993 through July 31, 1994 (59 FR 39543). One respondent, Hoogovens Groep BV (Hoogovens), requested an administrative review (59 FR 39543). We initiated the administrative review for the period August 18, 1993 through July 31, 1994, on September 8, 1994 (59 FR 46391). The Department is now conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Scope of the Review

The products covered by this review include cold-rolled (cold-reduced) carbon steel flat-rolled products, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (HTS) under item numbers 7209.11.0000, 7209.12.0030, 7209.12.0090, 7209.13.0030, 7209.13.0090, 7209.14.0030, 7209.14.0090, 7209.21.0000, 7209.22.0000, 7209.23.0000, 7209.24.1000, 7209.24.5000, 7209.31.0000, 7209.32.0000, 7209.33.0000, 7209.34.0000, 7209.41.0000, 7209.42.0000, 7209.43.0000, 7209.44.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.30.1030, 7211.30.1090, 7211.30.3000, 7211.30.5000, 7211.41.1000, 7211.41.3030, 7211.41.3090, 7211.41.5000, 7211.41.7030, 7211.41.7060, 7211.41.7090, 7211.49.1030, 7211.49.1090, 7211.49.3000, 7211.49.5030, 7211.49.5060, 7211.49.5090, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7217.11.1000, 7217.11.2000, 7217.11.3000, 7217.19.1000, 7217.19.5000, 7217.21.1000, 7217.29.1000, 7217.29.5000, 7217.31.1000, 7217.39.1000, and 7217.39.5000. Included in this review are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been bevelled or rounded at the edges. Excluded from this review is certain shadow mask steel, *i.e.*, aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, is of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface. These HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The POR is August 18, 1993, through July 31, 1994. This review covers sales of cold-rolled carbon steel by Hoogovens.

United States Price

The Department used exporter's sales price (ESP) and purchase price, as defined in section 772 of the Tariff Act. ESP was based on the packed, delivered price to unrelated purchasers in the United States after further manufacturing. We made adjustments, where applicable, for foreign inland freight, ocean freight, marine insurance, brokerage and handling, U.S. inland freight, U.S. duty, commissions to unrelated parties, U.S. credit, discounts, billing adjustments, warranties and technical service expenses and packing expenses incurred in the United States, and indirect selling expenses (which include inventory carrying costs, other U.S.-incurred selling expenses, and export selling expenses). We also adjusted ESP for value added in further manufacturing, including an allocation of profit earned on U.S. sales. On April 28, 1995, Hoogovens submitted, at the Department's request, minor corrections to the ESP sales listing and further manufacturing cost data. However, this submission also included the breakout of two new model numbers. Further manufacturing costs were not provided for these two new models. To calculate further manufacturing costs for these models, we are using for purposes of the preliminary determination, as the best information available (''BIA'') (pursuant to section 776(c) of the Act) the maximum further manufacturing costs provided by Hoogovens for secondary merchandise. *See Analysis Memorandum to the File, May 26, 1995.*

The purchase price sales were based on the sales price to the first unrelated purchaser in the United States. We made adjustments to purchase price, where appropriate, for foreign post-sale inland freight, foreign inland freight, ocean freight, marine insurance, brokerage and handling, U.S. duty, U.S. inland freight, discounts and billing adjustments.

We also adjusted USP (purchase price and ESP) for value-added taxes (VAT) in accordance with our practice as outlined in *Silicomanganese from Venezuela, Final Determination of Sales at Less Than Fair Value,* 59 FR 55439, November 7, 1994.

No other adjustments were claimed or allowed.

Foreign Market Value

Based on a comparison of the volume of home market and third country sales, we determined that the home market was viable. Therefore, in accordance with section 773(a)(1)(A) of the Tariff Act, we based FMV on the packed, delivered price to unrelated purchasers and related purchasers (where an arm's-length relationship was demonstrated) in the home market.

Based on a review of Hoogoven's submissions, the Department determined that Hoogovens need not report its home market sales made by related parties to the first unrelated party (downstream sales), because Hoogovens' downstream sales were only a small portion of the company's reported home market sales.

Hoogovens sold a small quantity of secondary subject merchandise in both the United States and home markets. In this review, the Department compared prime merchandise sold in the United States to prime merchandise sold in the home market, and secondary merchandise to secondary merchandise. In cases where a contemporaneous match for U.S. sales of secondary merchandise could not be found in the home market, the Department used the constructed value for prime merchandise to calculate FMV.

We made adjustments, where applicable, for post-sale inland freight, inland insurance and for home market direct expenses for credit, warranties and technical services. We also made adjustments for discounts and rebates. We adjusted for VAT in accordance with our practice as outlined in various determinations, including *Silicomanganese from Venezuela; Final Determination of Sales at Less Than Fair Value*, 59 FR 55435, 55439 (November 7, 1994).

In addition, for comparison to ESP sales, we adjusted FMV for indirect selling expenses (which include inventory carrying costs and other selling expenses) in the home market, limiting the home market indirect selling expense deductions by the amount of indirect selling expenses incurred in the United States. The deduction from FMV for home market indirect selling expenses was limited by the amount of the enhanced U.S. indirect selling expense, in accordance with section 353.56 (b)(2) of the Department's regulations. In cases where a commission was granted on the U.S. sale only, we increased the amount classified as U.S. indirect selling expenses by the amount of the U.S. commission for comparison to home market indirect selling expenses. Also, after deducting home market packing, we added to FMV packing expenses incurred in the Netherlands for U.S. sales.

We also adjusted for differences in physical characteristics. In calculating these differences, we adjusted the costs that Hoogovens had reduced for secondary merchandise so that they equalled those of prime merchandise. *See IPSCO v. United States*, 965 F.2d 1056, 1060 (Fed. Cir. 1992).

For comparison to purchase price sales, pursuant to section 773 of the Tariff Act, we added to FMV, where applicable, U.S. packing, credit, and warranty expenses.

No other adjustments were claimed or allowed.

Preliminary Results of Review

As a result of our comparison of USP to FMV we preliminarily determine that the following margin exists for the period August 18, 1993 through July 31, 1994:

Manufacturer	Margin (percent)
Hoogovens	3.81

Interested parties may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first business day thereafter. Case briefs and/or written comments from interested parties may be submitted no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication of this notice. The Department will publish the final results of these administrative reviews including the results of its analysis of issues raised in any such written comments or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between the USP and FMV may vary from the percentages stated above.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Tariff Act. A cash deposit of estimated antidumping duties shall be required on shipments of Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands as follows: (1) The cash deposit rates for the reviewed company will be those rates established in the final results of this review; (2) If the exporter is not a firm covered in this review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (3) If neither the exporter nor the manufacturer is a firm covered in this review, the cash deposit rate will be 20.19 percent. This is the ''all others'' rate from the LTFV investigation. *See Antidumping Duty Order and Amendments to Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products and Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands*, 58 FR 44172 (August 19, 1993).

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and this notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 5, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–17043 Filed 7–11–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–580–008]

Color Television Receivers From the Republic of Korea; Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Amended Final Results of Antidumping Duty Administrative Review.

SUMMARY: On September 27, 1993, the Department of Commerce (the Department) published the final results of the eighth administrative review of the antidumping duty order on color television receivers (CTVs) from the Republic of Korea (Korea) (58 FR 50333). The review covered the period April 1, 1990, through March 31, 1991. On July 5, 1994, the Court of International Trade (CIT) ordered the Department to recalculate the adjustment for taxes forgiven on CTVs manufactured by Samsung Electronics Corp. (Samsung) and exported to the United States. On December 28, 1994, the CIT affirmed the Department's recalculations. Since the CIT's ruling was not appealed, we are amending our final results of the eighth administrative review of the antidumping duty order on CTVs from Korea with respect to Samsung.

EFFECTIVE DATE: July 12, 1995.

FOR FURTHER INFORMATION CONTACT: Joseph Hanley or Zev Primor, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Scope of the Review

Imports covered by this review include CTVs, complete and incomplete, from the Republic of Korea. This merchandise is currently classified

under item numbers 8528.10.80, 8529.90.15, 8529.90.20, and 8540.11.00 of the Harmonized Tariff Schedule (HTS). Since the order covers all CTVs regardless of HTS classification, the HTS subheading is provided for convenience and for the U.S. Customs Service purposes. Our written description of the scope of the order remains dispositive. The period of review is April 1, 1990 through March 31, 1991.

Amended Final Results of Review

The CIT instructed the Department to recalculate the adjustment for taxes forgiven by reason of the exportation of the subject merchandise to the United States. Pursuant to the remand order, we have recalculated our adjustment to United States price to account for Korean taxes not collected on CTVs exported to the United States. These recalculations are in accordance with the methodology adopted by the Department following the decision by the United States Court of Appeals for the Federal Circuit in *Zenith Electronics Corp.* v. *United States*, 988 F.2d 1573, 1581 (Fed. Cir. 1993). As a result of our recalculations, we have determined that the following percentage weighted-average margin exists for the period April 1, 1990 through March 31, 1991:

Manufacturer/exporter	Percent margin
Samsung	0.47

While these amended final results reflect a change in Samsung's margin from 0.37 to 0.47 percent, Samsung's current cash deposit requirements with the U.S. Customs Service remain unchanged at zero percent, reflecting the fact that Samsung's margin remains *de minimis*.

Because the CIT's decision has not been appealed, the Department will order the immediate lifting of the suspension of liquidation of, and instruct the U.S. Customs Service to assess antidumping duties on, entries subject to this review, as appropriate. Individual differences between foreign market value and U.S. price may vary from the percentage stated above. The Department will issue appraisement instructions concerning these entries directly to the U.S. Customs Service.

This notice serves as a reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This amendment of final results of review and notice are in accordance with section 751(f) of the Tariff Act (19 U.S.C. 1673(d)) and 19 CFR 353.28(c).

Dated: July 5, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–17089 Filed 7–11–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–428–810]

High-Tenacity Rayon Filament Yarn From Germany; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request by the respondent, Akzo Nobel Faser A.G. and Akzo Nobel Fibers, Inc. (collectively, Akzo), a producer/exporter of high-tenacity rayon filament yarn from Germany, the Department of Commerce (the Department) has conducted an administrative review of the antidumping duty order on high-tenacity rayon filament yarn from Germany. The review covers one manufacturer/exporter of this merchandise to the United States, and the period June 1, 1993 through May 31, 1994.

We have preliminarily determined that no U.S. sales have been made below the foreign market value (FMV). If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service (Customs Service) not to assess antidumping duties on subject merchandise entered during the period of review (POR).

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: July 12, 1995.

FOR FURTHER INFORMATION CONTACT: Matthew Blaskovich or Zev Primor, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482–5831/4114.

SUPPLEMENTARY INFORMATION:

Background

On June 30, 1992, the Department published in the **Federal Register** the antidumping duty order on high-tenacity rayon filament yarn from Germany (57 FR 29062). On June 7, 1994, the Department published in the **Federal Register** a notice of ''Opportunity to Request an Administrative Review'' of the antidumping order on high-tenacity rayon filament yarn from Germany (59 FR 29441). In accordance with 19 CFR 353.22(a)(2), on June 30, 1994, Akzo requested an administrative review of the antidumping duty order covering the period June 1, 1993 through May 31, 1994. We published a notice of initiation of the antidumping duty administrative review on July 15, 1994 (59 FR 36160).

Applicable Statute and Regulations

The Department is conducting this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Scope of the Review

The product covered by this administrative review is high-tenacity rayon filament yarn from Germany. During the review period, such merchandise was classifiable under Harmonized Tariff Schedule (HTS) item number 5403.10.30.40. High-tenacity rayon filament yarn is a multifilament single yarn of viscose rayon with a twist of five turns or more per meter, having a denier of 1100 or greater, and a tenacity greater than 35 centinewtons per tax. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive as to the scope of the product coverage. This review covers Akzo and the period June 1, 1993, through May 31, 1994.

United States Price

In calculating USP, the Department treated Akzo's sales as purchase price, as defined in section 772 of the Act. There were no exporter's sale price (ESP) sales during the POR.

Purchase price sales were based on a packed f.o.b. price to unrelated purchasers in the United States. We made adjustments, where applicable, for foreign brokerage and handling, foreign inland freight (post-sale), ocean freight, U.S. duty, U.S. inland freight, foreign inland insurance, and U.S. brokerage. In

addition, we adjusted USP for taxes in accordance with our practice outlined in *Silicomanganese from Venezuela, Preliminary Determination of Sales at Less Than Fair Value*, 59 FR 31204 (at 31205), June 17, 1994.

No other adjustments to USP were claimed or allowed.

Foreign Market Value

In accordance with section 353.48 of the Department's regulations, we determined that Akzo's sales of subject merchandise in the home market serve as a viable basis for calculating FMV.

Based on findings in the previous review and the less-than-fair-value (LTFV) investigation that home market sales of the subject merchandise were made by Akzo at prices below the cost of production (COP), the Department conducted a cost investigation in this administrative review. In accordance with section 773(b) of the Act, we examined whether the home market sales of each model were made below their COP in substantial quantities over an extended period of time, and whether such sales were made at prices which would permit recovery of all costs within a reasonable period of time in the normal course of trade. We calculated Akzo's COP on a model-specific basis as the sum of all reported materials costs, labor expenses, factory overhead, selling expenses, net interest expense, and general and administrative expenses in accordance with 19 CFR 353.51. We compared COP to home market prices, net of movement charges, third-party payments, packing, rebates, and discounts. Based upon this comparison, we found that there were sales below cost.

For each model where less than 10 percent, by quantity, of the home market sales during the POR were made at prices below the COP, we included all sales of that model in the computation of FMV. For each model where 10 percent or more, but less than 90 percent, of the home market sales during the POR were priced below the merchandise's COP, we excluded from the calculation of FMV those home market sales which were priced below the merchandise's COP, provided that these below-cost sales were made over an extended period of time. For each model where 90 percent or more of the home market sales during the POR were priced below the COP, we disregarded all sales of that model from our calculation of FMV and used the constructed value (CV) of those models as described below.

In order to determine whether below-cost sales were made over an extended period of time, we compared the number of months in which below-cost sales occurred for each product to the number of months during the POR in which that model was sold. If the product was sold in fewer than three months during the POR, we did not exclude below-cost sales unless there were below-cost sales in each month of sale. If a product was sold in three or more months, we did not exclude the below-cost sales unless there were below-cost sales in at least three of the months during the POR.

Akzo has not submitted information indicating that any of its sales below cost were made at prices which would have permitted ''recovery of all costs within a reasonable period of time in the normal course of trade,'' as required by section 773 (b)(2) of the Act. Therefore, we have no basis for concluding that the costs of production of such sales have been recovered within a reasonable period of time, and have disregarded Akzo's below-cost sales made over an extended period of time.

We used CV as the basis for FMV in instances where there were insufficient sales (less than 10%) of the comparison home-market model at or above the COP. We calculated CV in accordance with section 773(e) of the Act. We summed the cost of materials, total selling expenses, general and administrative expenses, net interest expenses, and imputed credit. In our calculation of the selling, general, and administrative expenses (SG&A), where the sum of the actual selling expenses and general and administrative expenses was less than the statutory minimum of 10 percent of the cost of manufacturing (COM), we calculated SG&A as 10 percent of the COM. Where the actual profits were less than the statutory minimum of eight percent of COM plus SG&A, we calculated profit as eight percent of the sum of COM plus SG&A. We adjusted CV for selling, credit, and packing expenses.

For those models that had sufficient above-cost sales, we calculated FMV using home market prices based on the f.o.b. price to unrelated purchasers. Where applicable, we made adjustments for inland freight (post-sale), inland insurance, packing, discounts, other discounts, credit, interest revenue, rebates, and third party payments. We made a circumstance-of-sale adjustment for differences in technical services expenses and credit. We adjusted FMV for taxes in accordance with our tax adjustment methodology as outlined above. We also made, where applicable, adjustments for differences in the physical characteristics of the merchandise.

Preliminary Results of Review

As a result of our review, we preliminarily determine the dumping margin to be:

Manufacturer	Time period	Margin (percent)
Akzo Nobel Faser A.G., Akzo Nobel Fibers, Inc. (collectively, Akzo) ..	6/1/93–5/31/94	0.00

Parties to this proceeding may request disclosure within five days of publication of this notice and any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Interested parties may submit case briefs and/or written comments not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed not later than 37 days after the date of publication. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such briefs or comments.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of high-tenacity rayon filament yarn from Germany entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Akzo will be that established in the final results of this review; (2) For previously reviewed or investigated companies not covered in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) If the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) If neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be the ''all

others rate'' of 24.58 percent established in the LTFV investigation.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a preliminary reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 5, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–17045 Filed 7–11–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–122–506]

Oil Country Tubular Goods From Canada; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On April 21, 1995, the Department of Commerce (the Department) published the preliminary results of review of the antidumping duty order on oil country tubular goods (OCTG) from Canada (51 FR 21782; June 16, 1986). The review covers one manufacturer, IPSCO Inc. (IPSCO), and the period June 1, 1993, through May 31, 1994.

We gave interested parties an opportunity to comment on the preliminary results. Since the Department received no comments, the final results remain unchanged from the preliminary results.

EFFECTIVE DATE: July 12, 1995.

FOR FURTHER INFORMATION CONTACT: David Genovese or Zev Primor, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone (202) 482–5254.

SUPPLEMENTARY INFORMATION:

Background

On June 24, 1994, IPSCO requested an administrative review of the antidumping duty order on OCTG from Canada. The Department initiated the review on July 15, 1994 (59 FR 36160), covering the period June 1, 1993, through May 31, 1994. On April 21, 1995, the Department published the preliminary results of review (60 FR 19883). The Department has now completed this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

The products covered by this review include shipments of OCTG from Canada. This includes American Petroleum Institute (API) specification OCTG and all other pipe with the following characteristics except entries which the Department determined through its end-use certification procedure were not used in OCTG applications: Length of at least 16 feet; outside diameter of standard sizes published in the ALI or proprietary specifications for OCTG with tolerances of plus ⅛ inch for diameters less than or equal to 8⅝ inches and plus ¼ inch for diameters greater than 8⅝ inches, minimum wall thickness as identified for a given outer diameter as published in the ALI or proprietary specifications for OCTG; a minimum of 40,000 PSI yield strength and a minimum 60,000 PSI tensile strength; and if with seams, must be electric resistance welded. Furthermore, imports covered by this review include OCTG with non-standard size wall thickness greater than the minimum identified for a given outer diameter as published in the ALI or proprietary specifications for OCTG, with surface scabs or slivers, irregularly cut ends, ID or OD weld flash, or open seams; OCTG may be bent, flattened or oval, and may lack certification because the pipe has not been mechanically tested or has failed those tests.

This merchandise is currently classifiable under the Harmonized Tariff Schedules (HTS) item numbers 7304.20, 7305.20, and 7306.20. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Final Results of Review

We gave interested parties an opportunity to comment on the preliminary results. The Department received no comments. Accordingly, we have determined that, consistent with the preliminary results, a margin of zero percent exists for IPSCO for the period June 1, 1993 through May 31, 1994. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered or withdrawn from warehouse, for consumption on or after the publication date of these final results of review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for IPSCO will be zero percent; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a previous review or the original less-than-fair-value (LTFV) investigation, the cash deposit rate will continue to be the rate published in the most recent final results or determination for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, earlier reviews, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in these final results of review, earlier reviews, or the original investigation, whichever is the most recent; and (4) the ''all others'' rate will be 16.65 percent.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations

and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 6, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–17090 Filed 7–11–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–570–842 and A–583–824]

Notice of Postponement of Preliminary Determinations of Sales at Less Than Fair Value: Polyvinyl Alcohol From the People's Republic of China (PRC) and Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Everett Kelly, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–4136 or (202) 482–4194, respectively.

POSTPONEMENT OF PRELIMINARY DETERMINATIONS: We have determined that respondent parties to these proceedings are cooperating, thus far, in these investigations. We also have determined that both cases are extraordinarily complicated because they are among the first cases being conducted under the Tariff Act of 1930 (the Act), as amended by the Uruguay Round Agreements Act. As such, we will have to address a number of novel legal and methodological issues in the investigations. Accordingly, additional time is necessary to make the preliminary determinations. Therefore, pursuant to section 733(c)(1)(B) of the Act , as amended, we are postponing the date of the preliminary determinations as to whether sales of polyvinyl alcohol from the PRC and Taiwan have been made at less than fair value until not later than October 2, 1995.

This notice is published pursuant to section 733(c)(2) of the Act.

Dated: July 5, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–17044 Filed 7–11–95; 8:45 am]

BILLING CODE 3510–DS–P

[C–475–819 (Italy); C–489–806 (Turkey)]

Notice of Postponement of Preliminary Countervailing Duty Determinations: Certain Pasta From Italy and Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 12, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Yeske (Italy) or Elizabeth Graham (Turkey), Office of Countervailing Investigations, U.S. Department of Commerce, Room B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0189 and 482–4105, respectively.

Postponement

On June 1, 1995, the Department of Commerce (''the Department'') initiated countervailing duty investigations of certain pasta from Italy and Turkey. Respondents in both cases have indicated that they will be cooperating in these investigations. In addition, in both cases, the number of alleged countervailable subsidy practices and the number of firms whose activities must be investigated are substantial. Accordingly, we deem these investigations to be extraordinarily complicated. Therefore, pursuant to section 703(c)(1) of the Tariff Act of 1930, as amended (''the Act''), we are postponing the preliminary determinations in these investigations until no later than October 10, 1995.

This notice is published pursuant to section 703(c)(2) of the Act.

Dated: July 5, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–17046 Filed 7–11–95; 8:45 am]

BILLING CODE 3510–DS–P

Skidaway Institute of Oceanography, Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 95–010. *Applicant:* Skidaway Institute of Oceanography, Savannah, GA 31411. *Instrument:* Laser Ablation Accessory, Electrothermal Vaporization System, and Desolvating Nebulizer. *Manufacturer:* Fisons, United Kingdom. *Intended Use:* See notice at 60 FR 13700, March 14, 1995.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* This is a compatible accessory for an existing instrument purchased for the use of the applicant. The National Institutes of Health advises in its memorandum dated April 25, 1995, that the accessory is pertinent to the intended uses and that it knows of no comparable domestic accessory.

We know of no domestic accessory which can be readily adapted to the existing instrument.

Frank W. Creel

Director, Statutory Import Programs Staff

[FR Doc. 95–17047 Filed 7–11–95; 8:45 am]

BILLING CODE 3510–DS–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of Import Limits for Certain Wool Textile Products Produced or Manufactured in India

July 7, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: July 14, 1995

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715. For information on categories on which consultations have been requested, call (202) 482-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A notice published in the **Federal Register** on May 23, 1995 (60 FR 27275) announces that if no solution is agreed upon in consultations between the Governments of the United States and

India on Categories 434, 435, and 440, the Committee for the Implementation of Textile Agreements may establish a limit at levels of not less than 45,750 dozen (Category 434), 37,487 dozen (Category 435), and 76,698 dozen (Category 440) for the twelve-month period beginning on April 18, 1995 and extending through April 17, 1996.

Inasmuch as no agreement was reached during the consultation period on a mutually satisfactory solution, the United States Government has decided to control imports in Categories 434, 435,and 440 for the period beginning on April 18, 1995 and extending through April 17, 1996 at levels of 45,750 dozen (Category 434), 37,487 dozen (Category 435) and 76,698 dozen (Category 440).

This action is taken in accordance with the Uruguay Round Agreement on Textiles and Clothing and the Uruguay Round Agreements Act.

The United States remains committed to finding a solution concerning Categories 434, 435, and 440. Should such a solution be reached in consultations with the Government of India, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 7, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing; and in accordance with the provisions of Executive Order 11651 of March 30, 1972, as amended, you are directed to prohibit, effective on July 14, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in the following categories, produced or manufactured in India and exported during the period beginning on April 18, 1995 and extending through April 17, 1996, in excess of the following limits:

Category	New limit [1]
434	45,750 dozen.
435	37,487 dozen.
440	76,698 dozen.

[1] The limits have not been adjusted to account for any imports exported after April 18, 1995.

Textile products in Categories 434, 435, and 440 which have been exported to the United States prior to April 18, 1995 shall not be subject to this directive.

Import charges will be provided at a later date.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–17041 Filed 7–11–95; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF ENERGY

Environmental Management Advisory Board; Notice of Open Meeting

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following Advisory Committee meeting.

NAME: Environmental Management Advisory Board.

DATES AND TIMES: Friday, July 28, 1995 from 9:00 a.m. to 5:00 p.m.

PLACE: U.S. Department of Energy, 1000 Independence Avenue, S.W., Room 1E–245, Washington, D.C. 20585, (202) 586–4400.

FOR FURTHER INFORMATION CONTACT: James T. Melillo, Executive Director, Environmental Management Advisory Board, EM–5, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 586–4400. The Internet address is James.Melillo@em.doe.gov.

SUPPLEMENTARY INFORMATION: Purpose of the Board. The purpose of the Board is to provide the Assistant Secretary for Environmental Management (EM) with advice and recommendations on issues confronting the Environmental Management program and the Programmatic Environmental Management Impact Statement, from the perspectives of affected groups and State and local Governments. The Board will help to improve the Environmental Management Program by assisting in the process of securing consensus recommendations, and providing the Department's numerous publics with opportunities to express their opinions regarding the Environmental Management Program.

Tentative Agenda

Friday, July 28, 1995

9:00 a.m. Co-chairs Open the Meeting
- Opening Remarks

9:30 a.m. Update on the Risk Report to Congress
- Discussion of the Risk Committee's Findings Regarding the Consortium for Environmental Risk Evaluation (CERE) Interim Risk Report to the U.S. Department of Energy and Discussion of the Department of Energy's Risk Principles
- Board Vote on Formal Recommendations Regarding the CERE Report and the Department's Risk Principles
- Presentation of the Board's Risk Committee Findings Regarding the Risk Report to Congress
- Discussion of the Board's Risk Committee Findings Regarding the Draft Risk Report to Congress

12:30 p.m. Lunch

1:30 p.m. Continued Discussion of the Board's Risk Committee Findings Regarding the Draft Risk Report to Congress and Improving the Process
- Discussion of Board Recommendations Regarding the Risk Report to Congress
- Vote on Board Recommendations to the Department Regarding the Risk Report to Congress

4:15 p.m. Board Business

4:30 p.m. Public Comment Session

5:00 p.m. Meeting Adjourns

A final agenda will be available at the meeting.

Public Participation

The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should either contact James T. Melillo at the address or telephone number listed above, or call 1–(800) 736–3282, the Center for Environmental Management Information and register to speak during the public comment session of the meeting. Individuals may also register on July 28, 1995 at the meeting site. Every effort will be made to hear all those wishing to speak to the Board, on a first come, first serve basis. Those who call in and reserve time will be given the opportunity to speak first. The Board's Co-Chairs are empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts and Minutes

A meeting transcript and minutes will be available for public review and

copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on July 7, 1995.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–17054 Filed 7–11–95; 8:45 am]

BILLING CODE 6450–01–M

Office of Nonproliferation and National Security; Fundamental Review of Classification Policy

AGENCY: U.S. Department of Energy.

ACTION: Notice of meeting.

SUMMARY: On June 20, 1995, the DOE announced its intent to review and hold public meetings on its Fundamental Review of Classification Policy. In that Notice, DOE tentatively planned the meeting for late August, 1995, at a location to be determined. Today's notice is announcing the time and location of a meeting to discuss the Department's Classification Policy.

DATES AND ADDRESSES: The meeting will be held on July 28, 1995, at the DOE Operations Office, 1301 Clay Street, Oakland, California, 94612–5219, from 10:00 a.m. to 3:30 p.m.

FOR FURTHER INFORMATION CONTACT: W. Gerald Gibson, Director, Technical Guidance Division, USDOE, Office of Declassification (NN–522), 19901 Germantown Road, Germantown, MD 20874, (301) 903–3689.

SUPPLEMENTARY INFORMATION: Respondents to the prior Notice who requested an opportunity to participate in DOE's Fundamental Review of Classification Policy will be contacted regarding the July 28 meeting. Other interested parties who now wish to present issues for consideration during the Fundamental Review or suggest topics for potential declassification should contact Mr. Gibson at the phone number or address given above. Although advance registration of speakers will facilitate planning for the meeting, advance registration is not required. Speakers not registered in advance will be accommodated to the extent possible. To accommodate as many speakers as possible, a time limit for speakers may be imposed.

On March 16, 1995, the Secretary of Energy initiated a year-long review of the Department's classification policies. The review is being chaired by Dr. Albert Narath, President of Sandia Corporation. It will examine all areas of classified information falling under the purview of the Department of Energy. Its purpose is to identify which information continues to require protection in support of the common defense and security in light of the end of the Cold War, and which information no longer requires such protection. As part of this endeavor, the public is invited to submit written comments on any aspect of the Department's classification policies for consideration by the Fundamental Review panel. The Fundamental Review is scheduled to be completed in March, 1996.

Roger K. Heusser,

Deputy Director, Office of Declassification, Office of Security Affairs.

[FR Doc. 95–17055 Filed 7–11–95; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. RP95–372–000 and TM95–4–48–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

July 6, 1995.

Take notice that on June 30, 1995, ANR Pipeline Company (ANR), tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, be effective August 1, 1995, the following revised tariff sheet:

Third Revised Sheet No. 92

ANR states that the purposes of the instant filing are: (a) To comply with the annual redetermination of its ''Transporter's use (%)'' provision of its tariff (ANR states that it is proposing no change to such percentage levels); and (b) to change the effective date of such future redetermination filings to coincide with the beginning of the storage injection cycle.

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 385.211 or 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 385.214). All such motions or protests should be filed on or before July 13, 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 to the proceeding must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–17003 Filed 7–11–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–375–000]

East Tennessee Natural Gas Co.; Notice of Compliance Filing

July 6, 1995.

Take notice that on July 3, 1995, East Tennessee Natural Gas Company (East Tennessee), tendered for filing Substitute First Revised Sheet No. 139, Substitute First Revised Sheet No. 140 and Substitute First Revised Sheet No. 143 in compliance with the Commission's Order No. 577–A. East Tennessee states that the revised tariff sheets effect changes to East Tennessee's transportation capacity release provisions, necessitated by the changes to Commission Regulation 18 CFR 282.243(h)(1) made in Order No. 577–A, to allow for short term releases to span calendar months. East Tennessee further requests an effective date of May 4, 1995.

Any person desiring to be heard or to make any protest with reference to said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 211 and 214 of the Commission's Rules or Practice and Procedure, 18 CFR 385.211 and 385.214. All such petitions or protests should be filed on or before July 13, 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 this proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–17006 Filed 7–11–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–10–23–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

July 6, 1995.

Take notice that on June 30, 1995, Eastern Shore Natural Gas Company (ESNG) tendered for filing certain revised tariff sheets included in Appendix A attached to the filing. Such

revised tariff sheets bear a proposed effective date of August 1, 1995.

ESNG states that the above referenced tariff sheets have been filed pursuant to Section 154.308 of the Commission's Regulations and Sections 21 and 23, respectively, of the General Terms and Conditions of ESNG's FERC Gas Tariff to reflect changes in ESNG's jurisdictional rates. The sales rates set forth thereon reflect an overall increase of $0.0824 per dt in the Demand Charge, and an overall decrease of $0.1402 per dt in the Commodity Charge, as measured against ESNG's corresponding sales rates filed in Docket No. TQ95–3–23–000, an out-of-cycle PGA filing filed on May 1, 1995 and approved to be effective on May 31, 1995.

ESNG states that copies of the filing have been served upon its jurisdictional sales customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR Section 385.211 and Section 385.214). All such motions or protests should be filed on or before July 13, 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 to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–17009 Filed 7–11–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–374–000]

Gas Research Institute; Notice of Annual Application

July 6, 1995.

Take notice that on July 3, 1995, Gas Research Institute (GRI) filed an application requesting advance approval of its 1996–2000 Five-Year Research, Development and Demonstration (RD&D) Plan and the second year of the 1995–1996 RD&D Program, and the funding of its RD&D activities for 1996, pursuant to the Natural Gas Act and the Commission's Regulations, particularly 18 CFR 154.38(d)(5).

In its application, GRI proposes to increase its contract obligations to $218.8 million in 1996, an increase of 4% over the authorized 1994 obligations budget. GRI seeks to collect $208.3 million through jurisdictional rates and charges during the twelve months ending December 31, 1996. This $208.3 million, plus additional funds, will provide the necessary cash to fund the 1996 RD&D Program.

GRI proposes to fund the second year of its 1995–1996 RD&D Program through the following surcharges: (1) A demand/reservation surcharge on two-part rates of 26.6 cents per Dth per Month for ''high load-factor customers''; (2) a demand/reservation surcharge on two-part rates of 16.4 cents per Dth per month for ''low load-factor customers''; (3) a volumetric commodity/usage surcharge of 0.85 cents for firm services involving two-part rates and for one-part interruptible rates; (4) a special ''small customer'' surcharge of 2.0 cents per Dth; and (5) a surcharge of 1.73 cents per Dth per month for one-part, firm service outside the ''small customer'' class. GRI asserts that these surcharges comply with the Commission's March 22, 1993 ''Order on Contested Settlement'' approving, without modification, the ''Stipulation and Agreement Concerning Post-1993 GRI Funding Mechanism''.

The Commission Staff will analyze GRI's application and prepare a Commission Staff Report. This Staff Report will be served on all parties and filed with the Commission as a public document by August 25, 1995. Comments on the Staff Report by all parties, except GRI, must be filed with the Commission on or before September 8, 1995. GRI's reply comments must be filed on or before September 15, 1995.

Any person desiring to be heard or to protest GRI's application, except for GRI members and state regulatory commissions, who are automatically permitted to participate in the instant proceedings as intervenors, 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 214 and 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 and 385.211. All protests, motion to intervene and comments should be filed on or before July 17, 1995. All comments and protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party, other than a GRI member or a state regulatory commission, must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–17005 Filed 7–11–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP94–72–006 and FA92–59–000]

Iroquois Gas Transmission System, L.P.; Notice of Compliance Filing

July 6, 1995.

Take notice that on June 30, 1995, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets:

Eighth Revised Sheet No. 4
Second Revised Sheet No. 14
Second Revised Sheet No. 15
First Revised Sheet No. 15A
Original Sheet No. 15B
Second Revised Sheet No. 16
Second Revised Sheet No. 28
Second Revised Sheet No. 29
Third Revised Sheet No. 45
Second Revised Sheet No. 46
Original Sheet No. 46A
Third Revised Sheet No. 48
Second Revised Sheet No. 56
Second Revised Sheet No. 57
Second Revised Sheet No. 58
Original Sheet No. 58A
First Revised Sheet No. 75B
Original Sheet No. 75C
First Revised Sheet No. 84
Original Sheet No. 84A
Third Revised Sheet No. 118

The proposed effective date for these revised tariff sheets is July 1, 1995, except that Sheet Nos. First Revised Sheet No. 15A, Original Sheet No. 15B, and Second Revised Sheet No. 16 are proposed to be effective as of February 1, 1995.

Iroquois states that the revised tariff sheets are filed in compliance with, and implement the terms of, the uncontested Stipulation and Agreement dated March 30, 1995, which was approved, without modification, by the Commission's June 19, 1995 order in the above-captioned proceeding.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state commissions, as well as all persons on the official service lists in Docket Nos. RP94–72–000 and FA92–59–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, in accordance with 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before July 13,

1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make any protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–17000 filed 7–11–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–373–000]

National Fuel Gas Supply Corporation; Notice of Refund Filing

July 6, 1995.

Take notice that on June 30, 1995, National Fuel Gas Supply Corporation (National), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Fifth Revised Sheet Nos. 237A and 327B, to be effective August 1, 1995.

National states that these tariff sheets are submitted to flow through refunds, including interest, of Account Nos. 191 and 186-related dollars received from certain of National's former upstream pipeline-suppliers, as more fully described at Appendix B to the filing.

National further states that in accordance with Section 21(c) of the General Terms and Conditions of National's FERC Gas Tariff, Third Revised Volume No. 1, the refund commodity and demand balances are allocated between National's former RQ and CD customers based on the customers' demand determinants as of July 31, 1993, and the customers' commodity allocation, also based on the 12 months ending July 31, 1993.

National states that copies of this filing were served upon the company's jurisdictional customers and upon the Regulatory Commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts, and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC, 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.212). All such motions to intervene or protest should be filed on or before July 13, 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. 95–17004 Filed 7–11–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–5–28–000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

July 6, 1995.

Take notice that on June 30, 1995, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing proposed to become effective August 1, 1995.

Panhandle states that this filing is being submitted pursuant to the requirements of Section 26 of the General Terms and Conditions of its FERC Gas Tariff, First Revised Volume No. 1 which requires that at least 30 days prior to August 1 of each year Panhandle make a filing with the Commission to reflect the adjustment, if any, required to Panhandle's Base Transportation and Storage Rates to reflect the result of the Interruptible Revenue Credit Adjustment.

Panhandle states that no adjustment is required to Base Transportation Rates for Rate Schedules FT, EFT and SCT and that a (.21¢) reduction is required in the maximum Capacity Charge for storage service under Rate Schedules IOS, WS, PS and FS.

Panhandle states that copies of this filing have been sent to all affected customers and applicable state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 13, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–170007 Filed 7–11–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–323–001]

Southern Natural Gas Company; Notice of GSR Revised Tariff Sheets

July 6, 1995.

Take notice that on June 30, 1995, Southern Natural Gas Company (Southern) submitted for filing to become part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets to reflect a change in its T&C and Southern Energy Demand Surcharges due to a change in the FERC interest rate effective July 1, 1995:

First Substitute Nineteenth Revised Sheet No. 15
First Substitute Second Revised Sheet No. 15a
First Substitute Nineteenth Revised Sheet No. 17
First Substitute Second Revised Sheet No. 17a

Southern states that copies of the filing were served upon Southern's intervening customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before July 13, 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. Copies of Southern's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–17001 Filed 7–11–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–324–001]

Southern Natural Gas Company; Notice of GSR Revised Tariff Sheets

July 6, 1995.

Take notice that on June 30, 1995, Southern Natural Gas Company (Southern) submitted to become part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets, to reflect a change in its FT/FT–NN GSR Surcharge and its Interruptible

Transportation Rates due to an increase in the FERC interest rate effective July 1, 1995:

First Substitute Eighteenth Revised Sheet No. 15
First Substitute Eighteenth Revised Sheet No. 17
First Substitute Eleventh Revised Sheet No. 18

Southern states that copies of the filing were served upon Southern's intervening customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before July 13, 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. Copies of Southern's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–17002 Filed 7–11–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–5–17–000]

Texas Eastern Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

July 6, 1995.

Take notice that on June 30, 1995, Texas Eastern Transmission Corporation (Texas Eastern), tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1 and Original Volume No. 2, six copies of revised tariff sheets listed on Appendix A to the filing. The proposed effective date of these revised tariff sheets is August 1, 1995.

Texas Eastern states that these revised tariff sheets are filed pursuant to Section 15.1, Electric Power Cost (EPC) Adjustment, of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1. Texas Eastern states that Section 15.1 provides that Texas Eastern shall file to be effective each August 1 revised rates for each applicable zone and rate schedule based upon the projected annual electric power costs required for the operation of transmission compressor stations with electric motor prime movers.

Texas Eastern states that the revised tariff sheets reflect a reduction in Texas Eastern's projected expenditures for electric power for the twelve month period beginning August 1, 1995 based upon the latest available actual expenditures for the twelve month period ending April 30, 1995. Texas Eastern states that the rate reductions proposed to the primary firm capacity reservation charges, usage rates and 100% load factor average costs for full Access Area Boundary service from the farthest access area zone, South Texas, to the three market area zones are as follows:

Zone	Reservation	Usage	100% LF
Market 1	$(0.009)/dth	$(.0008)/dth	$(.0011)/dth
Market 2	$(0.027)/dth	$(.0027)/dth	$(.0036)/dth
Market 3	$(0.039)/dth	$(.0039)/dth	$(.0052)/dth

Texas Eastern states that copies of its filing have been served on all firm customers of Texas Eastern and current interruptible shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 13, 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–17008 Filed 7–11–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ95–3–35–000]

West Texas Gas, Inc.; Filing

July 6, 1995.

Take notice that on July 3, 1995, West Texas Gas, Inc. (WTG) filed its fifteenth Revised Sheet No. 4 to its FERC Gas Tariff, First Revised Volume No. 1, proposed to be effective July 1, 1995. WTG states that this tariff sheet and the accompanying explanatory schedules constitute WTG's quarterly PGA filing submitted in accordance with the Commission's purchased gas adjustments regulations. Because the filing reflects a reduction in WTG's purchased gas costs, the company requested a waiver of Section 154.308 of the regulations in order to allow the proposed tariff sheet to go into effect on July 1, 1995.

WTG states that copies of the filing were served upon WTG's customers and interested state commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, 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 385.214. All such motions or protests should be filed on or before July 13, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party 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. 95–17010 Filed 7–11–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–599–000]

Williston Basin Interstate Pipeline Company; Request Under Blanket Authorization

July 6, 1995.

Take notice that on July 3, 1995, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, filed in Docket No. CP95–599–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the

Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate facilities in North Dakota to implement a transportation service for Horse Creek Trading & Compression Company (Horse Creek), under the blanket certificate issued in Docket No. CP82–487–000, *et al.*, 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.

Williston Basin proposes to construct and operate a new metering station and appurtenant facilities located in Bowman County, North Dakota for use in providing up to 800 dt equivalent of firm deliveries of natural gas to Horse Creek, a new end user, under Rate Schedule FT–1. It is indicated that Horse Creek would consume the gas as compressor fuel in connection with supplying air to an enhanced oil recovery project in the Horse Creek Field in North Dakota. It is also indicated that the gas would be delivered into Horse Creek's non-jurisdictional 12.5 mile 4-inch line which extends to Horse Creek's compressor. Williston estimates a facility cost of $30,888 and indicates that Horse Creek has agreed to reimburse Williston Basin for the cost of the facilities.

Williston Basin indicates that the proposed activity is not prohibited by its existing tariff and that the addition of the proposed facilities would have no significant effect on Williston Basin's peak day or annual requirements. It is also indicated that capacity has been determined to exist on Williston Basin's system to serve this natural gas market.

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. 95–16999 Filed 7–11–95; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2083]

Petition for Reconsideration of Actions in Rulemaking Proceedings

July 7, 1995.

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, NW., Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to this petition must be filed July 27, 1995. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896–901 MHz and the 935–940 MHz Bands Allotted to the Specialized Mobile Radio Pool. (PR Docket No. 89–553.)

Implementation of Section 309(j) of the Communications Act—Competitive Bidding. (PP Docket No. 93–253.)

Implementation of Sections 3(n) and 332 of the Communications Act. (GN Docket No. 93–252.)

Number of Petitions Filed: 8.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–17036 Filed 7–11–95; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1058–DR]

Oklahoma; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Oklahoma, (FEMA–1058–DR), dated June 26, 1995, and related determinations.

EFFECTIVE DATE: July 5, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Oklahoma dated June 26, 1995, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 26, 1995:

Alfalfa, Atoka, Canadian, Carter, Cotton, Custer, Ellis, Grant, Kingfisher, Major, Murray, Nowata, Osage, Ottawa, Pottawatomie, Roger Mills, Seminole, Washita, and Woodward Counties for Public Assistance and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 95–17068 Filed 7–11–95; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1059–DR]

Virginia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Virginia, (FEMA–1059–DR), dated July 1, 1995, and related determinations.

EFFECTIVE DATE: July 6, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of Virginia dated July 1, 1995, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 1, 1995:

The City of Roanoke for Individual Assistance only.

The Counties of Orange, Warren, Bath, Rappahannock, Halifax, and Pittsylvania for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

G. Clay Hollister,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 95–17069 Filed 7–11–95; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in section 560.602 and/or 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No: 224–200952.

Title: Port of Houston Authority/ Shippers Stevedoring Company Guarantee Assignment Numbers 30 and 31 Terminal Agreement.

Parties:

Port of Houston Authority (''Port'')

Shippers Stevedoring Company (''SSC'')

Filing Agent: Martha T. Williams, Esquire, Port of Houston Authority, P.O. Box 2562, Houston, TX 77252–2562.

Synopsis: The proposed Agreement authorizes SSC to perform freight handling services at the Port's Wharves and Transit Shed Areas 30 and 31. The term of the Agreement expires December 31, 1997.

Dated: July 6, 1995.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–16978 Filed 7–11–95; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended: Silversea Cruises, Ltd., 110 East Broward Blvd., Fort Lauderdale, Florida 33301.

Vessel: SILVER WIND.

Dated: July 6, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 95–16967 Filed 7–11–95; 8:45 am]

BILLING CODE 6730–01–M

[Docket No. 95–10]

Puerto Rico Shipping Association v. Puerto Rico Ports Authority; Filing of Complaint and Assignment

Notice is given that a complaint filed by Puerto Rico Shipping Association (''Complainant'') against Puerto Rico Ports Authority (''Respondent'') was served July 6, 1995. Complainant alleges that Respondent has violated sections 10(b)(12) and (d) of the Shipping Act of 1984, 46 U.S.C. app. §§ 1709(b)(12) and (d) and sections 16 First, and 17 of the Shipping Act of 1916, 46 U.S.C. app §§ 815 First, and 816, in connection with its establishment of an April 5, 1995, rate increase for services and facilities it makes available to common carriers by water and other users of marine terminal facilities in the port of San Juan.

This proceeding has been assigned to the office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by July 6, 1996, and the final decision of the Commission shall be issued by November 6, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 95–17066 Filed 7–11–95; 8:45 am]

BILLING CODE 6730–01–M

[Petition P3–95]

Marine Terminal Tariff Provisions Regarding Liability of Vessel Agents; Petition For Rulemaking; Filing of Petition

Notice is given that a petition for has been filed by various associations of maritime interests including independent vessel agents (''Petitioners''). Petitioners seek the establishment by the Commission of a rule which would declare unlawful any maine terminal tariff provision that holds the vessel agent liable for terminal charges of its disclosed principal.

Interested persons are requested to reply to the petition no later than August 14, 1995. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, D.C. 20573–0001, shall consist of an original and 15 copies, and shall be served on counsel for petitioners, Richard W. Kurrus, Esq., Kurrus & Kirchner, P.C., 2445 M St., N.W., Washington, D.C. 20037.

Copies of the petition are available for examination at the Washington, D.C. office of the Secretary of the Commission, 800 N. Capitol Street, N.W., Room 1046.

Joseph C. Polking,

Secretary.

[FR Doc. 95–17067 Filed 7–11–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

USABancShares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 4, 1995.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. USABancShares, Inc., Philadelphia, Pennsylvania; to become a bank holding company by acquiring 100 percent of voting shares of Peoples Thrift Savings Bank, Norristown, Pennsylvania.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Barlow Banking Corporation, Iowa Falls, Iowa; to become a bank holding company by acquiring 59.67 percent of voting shares of Iowa Falls State Bank, Iowa Falls, Iowa.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. FirstBank Holding Company of Colorado Employee Stock Ownership Plan, and its subsidiary FirstBank Holding Company of Colorado, both of Lakewood, Colorado; to acquire 100 percent of voting shares of FirstBank of Colorado Springs, Colorado Springs, Colorado, a *de novo* bank.

D. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Kandiyohi Bancshares, Inc., Kandiyohi, Minnesota; to acquire 100 percent of the voting shares of Cosmos Bancorporation, Inc., Cosmos, Minnesota, and thereby indirectly acquire First State Bank of Cosmos, Cosmos, Minnesota.

Board of Governors of the Federal Reserve System, July 6, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–17020 Filed 7–11–95; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[Dkt. C–3583]

La Asociacion Medica de Puerto Rico, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, the Medical Association, the Physiatry Section, and the two doctors from encouraging, organizing or entering into: any boycott or refusal to deal with any third-party payer; or any agreement to refuse to provide services to patients covered by any third-party payer. In addition, the consent order prohibits, for five years, the respondents from soliciting information from physiatrists regarding their decisions whether to participate in agreements with insurers and provide service; from passing such information along to other doctors; and from giving physiatrists advice about making those decisions.

DATES: Complaint and Order issued June 2, 1995.[1]

FOR FURTHER INFORMATION CONTACT: Alan Loughnan or Alice Au, New York Regional Office, Federal Trade Commission, 150 William Street, Suite 1300, New York, N.Y. 10038. (212) 264–1207.

SUPPLEMENTARY INFORMATION: On Wednesday, March 29, 1995, there was published in the **Federal Register**, 60 FR 16144, a proposed consent agreement with analysis In the Matter of La Asociacion Medica de Puerto Rico, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 95–17057 Filed 7–11–95; 8:45 am]

BILLING CODE 6750–01–M

[File No. 901–0094]

Port Washington Real Estate Board, Inc.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a New York-based brokerage service from restricting the use of exclusive agency listings, fixing commission splits between listing and selling brokers, restricting or prohibiting members from holding open houses or using ''For Sale'' signs, restricting brokers from advertising free services to property owners, and excluding from membership brokers who do not operate a full-time office in the territory served by the Board's multiple listing service.

DATES: Comments must be received on or before September 11, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michael Bloom or Alan Loughnan, New York Regional Office, Federal Trade Commission, 150 William Street, 13th Floor, New York, N.Y. 10038. (212) 264–1207.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue NW., Washington, D.C. 20580.

the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii).

In the matter of Port Washington Real Estate Board, Inc., a corporation. File No. 9010094.

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Port Washington Real Estate Board, Inc., a corporation, and it now appearing that Port Washington Real Estate Board, Inc., hereinafter sometimes referred to as proposed respondent or ''PWREB'', is willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

It is hereby agreed by and between PWREB, by its duly authorized officer and its attorney, and counsel for the Federal Trade Commission that:

(1) Proposed respondent PWREB is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at the following address: Port Washington Real Estate Board, Inc., care of Charles Walker, President of Charles E. Hyde Agency, 277 Main Street, Port Washington, New York 11050.

(2) Proposed respondent admits all the jurisdictional facts set forth in the draft complaint.

(3) Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

(4) This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information with respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

(5) This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft complaint, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

(6) This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft complaint and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public with respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

(7) Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that, for the purposes of this order, the following definitions shall apply:

(1) ''PWREB'' means the Port Washington Real Estate Board, Inc., or any affiliated or successor organization comprised of real estate brokers doing business in PWREB's service area which operates a multiple listing service.

(2) ''Multiple listing service'' means a clearinghouse through which member real estate brokerage firms exchange information on listings of real estate properties and share commissions with other members.

(3) ''PWREB's service area'' means the territory within which PWREB provides its multiple listing service.

(4) ''Broker'' means any person, firm, or corporation that, for another and for a fee or commission, lists for sale, sells, exchanges, or offers or attempts to negotiate a sale, exchange, or purchase of an estate or interest in real estate.

(5) ''Member'' means any real estate broker that is entitled to participate in a multiple listing service offered by PWREB.

(6) ''Applicant'' means any owner or co-owner of a real estate brokerage firm who is duly licensed as a real estate broker by the State of New York, and who has applied individually or on behalf of his or her firm for membership in PWREB's multiple listing service.

(7) ''Listing broker'' means any broker who lists a real estate property with a multiple listing service pursuant to a listing agreement with the property owner.

(8) ''Listing agreement'' means any agreement between a real estate broker and a property owner for the provision of real estate brokerage services.

(9) ''Selling broker'' means any broker, other than the listing broker, who locates the purchaser for a listed property.

(10) ''Exclusive agency listing'' means any listing under which a property owner appoints a broker as exclusive agent for the sale or lease of the property at an agreed commission, but reserves the right to sell the property personally to a direct purchaser (one not procured in any way through the efforts of any broker) at an agreed reduction in the commission or with no commission owed to the agent broker.

(11) ''Exclusive right to sell listing'' means any listing under which a property owner contracts to pay the broker an agreed commission if the property is sold, whether the purchaser is procured by the broker or any other person, including the property owner.

(12) ''Open house'' means making a particular property available at a designated time for view by the public, potential buyers, or real estate brokers, without prior arrangement or appointment.

II

It is further ordered that respondent PWREB, its successors and assigns, and its directors, officers, committees, agents, representatives, and employees, directly or indirectly, or through any corporation, subsidiary, division, or other device, in connection with the

operation of a multiple listing service in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, shall forthwith cease and desist from adopting, maintaining, or enforcing any rule, policy, or practice, or taking any other action that has the purpose or effect of:

(A) restricting or interfering with (1) any broker's offering or accepting any exclusive agency listing; or (2) the publication on a PWREB multiple listing service of any exclusive agency listing submitted by a member; provided, however, that nothing contained in this subpart shall preclude respondent from (a) including a simple designation, such as a code or symbol, that a published listing is an exclusive agency listing; or (b) applying reasonable terms and conditions equally applicable to the publication of any listing, whether an exclusive agency listing or an exclusive right to sell listing.

(B) suggesting or fixing any rate, range, or amount of any division or split of commission or other fees between any listing broker and any selling broker, or restricting any property owner's participation in the determination of the division or split of commission or other fees between any listing broker and any selling broker.

(C) restricting or interfering with the ability of member brokers or homeowners to hold open houses or to place signs on any property; provided, however, that nothing contained in this subpart shall preclude PWREB from requiring its members to comply with local ordinances governing open houses or use of signs.

(D) restricting or interfering with the ability of its member brokers to advertise free services to property owners.

(E) conditioning membership in or use of a multiple listing service operated by PWREB on any applicant or member operating or maintaining a full-time office, or on such applicant or member operating or maintaining an office in PWREB's service area; provided, however, that nothing contained in this subpart shall prohibit respondent from adopting or enforcing any reasonable and nondiscriminatory policy to assure that its members are actively engaged in real estate brokerage and that listings published on respondent's multiple listing service are adequately serviced.

III

It is further ordered that respondent PWREB shall:

(A) Within thirty (30) days after this order becomes final, furnish an announcement in the form shown in Appendix A to each member of PWREB or a multiple listing service operated by PWREB.

(B) Within sixty (60) days after this order becomes final, amend its by-laws, rules and regulations, and other of its materials to conform to the provisions of this order and provide each member of PWREB or a multiple listing service operated by PWREB with a copy of the amended by-laws, rules and regulations, and other materials.

(C) For a period of three (3) years after this order becomes final, furnish an announcement in the form shown in Appendix A to any new member, applicant, or any person who inquires about possible membership in PWREB or its multiple listing service, within thirty (30) days after such person's initial application or inquiry.

IV

It is further ordered that respondent PWREB shall:

(A) Within ninety (90) days after this order becomes final, submit a verified written report to the Federal Trade Commission setting forth in detail the manner and form in which respondent has complied and is complying with this order.

(B) In addition to the report required by Paragraph IV(A), annually for a period of three (3) years on or before the anniversary date on which this order becomes final, and at such other times as the Federal Trade Commission or its staff may by written notice to respondent require, file a verified written report with the Federal Trade Commission setting forth in detail the manner and form in which respondent has complied and is complying with this order.

(C) For a period of five (5) years after this order becomes final, maintain and make available to the Commission staff for inspection and copying, upon reasonable notice, all documents that relate to the manner and form in which respondent has complied with this order.

(D) Notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in respondent, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in respondent that may affect compliance obligations arising out of this order.

V

It is further ordered that this Order shall terminate on [insert date twenty years from the date of issuance].

Appendix A

[Date]

[Respondent's Letterhead]

The Federal Trade Commission has conducted an investigation into certain rules and practices of the multiple listing service (''MLS'') operated by the Port Washington Real Estate Board (''PWREB'') that have been alleged to be unlawful restraints of trade. To avoid litigation, PWREB has entered into a consent agreement. The agreement is not an admission that PWREB or any of its members has violated any law. For your information, PWREB is prohibited from the following practices in connection with the operation of an MLS:

1. Restricting of interfering with any broker's offering or accepting an exclusive agency listing, or limiting the publication on the MLS of any exclusive agency listing entered into by an MLS member.

2. Requiring or fixing the rate, range or amount of any split or division of a commission or other fees between a listing broker and a selling broker, or restricting any property owner's participation in the determination of the split or division of any commission or other fees between the listing and selling brokers.

3. Restricting or interfering with the ability of member brokers or homeowners to conduct open houses or to place signs on property.

4. Restricting or interfering with the ability of member brokers to advertise free services to homeowners.

5. Requiring as a condition of membership in its MLS that a member or applicant for membership operate an office full-time or engage in real estate brokerage full-time in PWREB's service area.

President
Port Washington Real
Estate Board, Inc.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from the Port Washington Real Estate Board, Inc., which operates a multiple listing service serving the area surrounding Port Washington, a community in Nassau County (Long Island), New York.

The proposed consent order has been placed on the pubic record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the

agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that the Port Washington Real Estate Board, Inc. (''PWREB''), in combination with its member brokers, has through its multiple listing service adopted certain rules and policies and engaged in certain practices that have restrained trade in the provision of residential real estate brokerage services in PWREB's service area. The complaint alleges that this conduct violates Section 5 of the Federal Trade Commission Act.

PWREB has signed a consent agreement to the proposed consent order that prohibits it from restricting or interfering with any member broker's offering or accepting exclusive agency listings, or restricting the publication on its multiple listing service of exclusive agency listings submitted by a member. An exclusive agency listing is defined as a listing under which a property owner appoints a broker as exclusive agent for the sale or lease of the property at an agreed commission, but reserves the right to sell the property to a direct purchaser (one not procured through the efforts of a broker) at an agreed reduction in the commission or with no commission owed to the agent broker.

The proposed order also prohibits PWREB from suggesting or fixing the range or amount of any division or split of commissions between a listing broker and a selling broker, or restricting a property owner's participation in the determination of the commission split between the brokers. A selling broker is defined as any broker, other than the broker with whom the property is listed, who locates the purchaser for a listed property.

The proposed consent order further prohibits PWREB from restricting or interfering with the ability of member brokers or homeowners to hold open houses or place signs on a property (provided, however, that PWREB may require members to comply with any local ordinances covering open houses or signs). The order also prohibits PWREB from restricting or interfering with the ability of member brokers to advertise free services to property owners.

Finally, the proposed order prohibits PWREB from conditioning membership in or use of a PWREB multiple listing service on a broker operating a full-time office, or operating an office in the territory served by PWREB. The order provides, however, that PWREB may adopt a reasonable and nondiscriminatory policy to assure that members are actively engaged in real estate brokerage and that listings published on the multiple listing service are adequately serviced.

The proposed order requires PWREB to mail a letter to its members (and for three years, to all new members, applicants, or persons who inquire about possible membership) summarizing the provisions of the proposed order. The order also requires PWREB to modify its by-laws, rules, and regulations to conform to the provisions of the proposed order, and to provide members with copies.

The proposed order provides that the order shall terminate 20 years after the date of its issuance by the Commission.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 95–17058 Filed 7–11–95; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3585]

Schnuck Markets, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order—in connection with Schnuck Markets' proposed acquisition of supermarkets currently owned by National Holdings, Inc.—requires, among other things, the Missouri-based corporation to divest 24 stores in the St. Louis area to Commission-approved purchasers, and requires the respondent, for ten years, to obtain Commission approval before acquiring an interest in a supermarket, or another entity that operates a supermarket, in the relevant area.

DATES: Complaint and Order issued June 8, 1995.[1]

FOR FURTHER INFORMATION CONTACT: Ronald Rowe, FTC/S–2105, Washington, D.C. 20580. (202) 326–2610.

SUPPLEMENTARY INFORMATION: On Wednesday, March 15, 1995, there was published in the **Federal Register**, 60 FR 13988, a proposed consent agreement with analysis In the Matter of Schnuck Markets, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 95–17059 Filed 7–11–95; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint, the Decision and Order, and Commissioner Azcuenaga's Concurring Statement are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue NW., Washington, D.C. 20580.

[Dkt. C–3587]

Taleigh Corporation, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, two marketing corporations and the owner from misrepresenting that any product is new or unique, the existence or conclusions of any test or study, or that an endorsement for any product represents the typical experience of people who use it. The consent order requires the respondents to have scientific evidence to substantiate any representation regarding the performance, benefits, efficacy or safety of any weight-loss or stop-smoking product, or for any food, dietary supplement, drug, or device. In addition, the consent order requires the owner to post a $300,000 performance bond before marketing any weight-loss product or smoking deterrent or cessation product in the future.

DATES: Complaint and Order issued June 16, 1995.[1]

FOR FURTHER INFORMATION CONTACT:

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue NW., Washington, D.C. 20580.

Richard Cleland, FTC/S–4002, Washington, D.C. 20580. (202) 326–3088.

SUPPLEMENTARY INFORMATION: On Wednesday, March 29, 1995, there was published in the **Federal Register**, 60 FR 16148, a proposed consent agreement with analysis In the Matter of Taleigh Corporation, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Donald S. Clark,

Secretary.

[FR Doc. 95–17060 Filed 7–11–95; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3575]

Tele-Communications, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order permits, among other things, Tele-Communications, Inc. (TCI) to complete its acquisition of TeleCable, on the condition that it divest either its own Columbus cable TV assets, or those of TeleCable, within twelve months. If the divestiture is not completed on time, the consent order permits the Commission to appoint a trustee to complete a sale of one of the systems. In addition, TCI, for ten years, is required to obtain Commission approval before acquiring any cable TV system in the Columbus, GA, area.

DATES: Complaint and Order issued May 3, 1995.[1]

FOR FURTHER INFORMATION CONTACT: Ronald Rowe, FTC/S–2105, Washington, DC 20580. (202) 326–2610.

SUPPLEMENTARY INFORMATION: On Wednesday, February 22, 1995, there was published in the **Federal Register**, 60 FR 9847, a proposed consent agreement with analysis In the Matter of Tele-Communication, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 95–17061 Filed 7–11–95; 8:45 am]

BILLING CODE 6750–01–M

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board; Notice of Meeting

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, notice is hereby given that the monthly meeting of the Federal Accounting Standards Advisory Board will be held on Thursday, July 20 from 9:00 a.m. to 4:00 in room 7C13 of the General Accounting Office, 441 G Street NW., Washington, D.C.

The agenda for the meeting includes reviews of the draft final statement *Accounting for Property, Plant, and Equipment* and the FASAB future project agenda.

We advise that other items may be added to the agenda; interested parties should contact the Staff Director for more specific information and to confirm the date of the meeting. Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Ronald S. Young, Executive Staff Director, 750 First Street NE., Room 1001, Washington, D.C. 20002, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463, Section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: July 6, 1995.

Ronald S. Young,

Executive Director.

[FR Doc. 95–16974 Filed 7–11–95; 8:45 am]

BILLING CODE 1610–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Information Collection Under OMB Review

Title: Low income home energy assistance program (LIHEAP) carryover and reallotment report.

OMB No.: 0970–0106.

Description: The data collected will be used to determine the amount of LIHEAP funds to be held available for the following fiscal year and the amount, if any, available for reallotment to other grantees in order to carry out the requirements of section 2610 of the LIHEAP statute.

Respondents: State governments.

Title	Number of respondents	Number of responses per respondent	Average burden per response	Burden
C&R Rpt	177	1	3	531

Estimated Total Annual Burden: 531.

Additional Information: Copies of the proposed collection may be obtained from Bob Sargis of the Division of

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

Information Resource Management, ACF, by calling (202) 690–7275.

OMB Comment: Consideration will be given to comments and suggestions received within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street NW., Washington, D.C. 20503, Attn: Ms. Wendy Taylor.

Dated: June 30, 1995.

Roberta Katson,

Acting Director, Office of Information Resource Management.

[FR Doc. 95–16970 Filed 7–11–95; 8:45 am]

BILLING CODE 4184–01–M

Agency Information Collection Under OMB Review

Title: Head Start grants administration (45 CFR 1301).

OMB No.: 0980–0243.

Description: The information collected is used by the Head Start program office to verify that a Head Start Program is keeping development and administrative costs below regulated ceilings.

Respondents: State governments.

Title	Number of Respondents	Number of Responses per Respondent	Average Burden Per Response	Burden
45 CFR 1301	2050	1	2	4,100

Estimated Total Annual Burden: 4,100.

Additional Information: Copies of the proposed collection may be obtained from Bob Sargis of the Division of Information Resource Management, ACF, by calling (202) 690–7275.

OMB Comment: Consideration will be given to comments and suggestions received within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street NW., Washington, D.C. 20503, Attn: Ms. Wendy Taylor.

Dated: June 30, 1995.

Roberta Katson,

Acting Director, Office of Information Resource Management.

[FR Doc. 95–16969 Filed 7–11–95; 8:45 am]

BILLING CODE 4184–01–M

[Program Announcement No. ANA 93612–952A]

Availability of Competitive Financial Assistance for the Mitigation of Environmental Impacts to Indian Lands Due to Department of Defense Activities

AGENCY: Administration for Native Americans (ANA), Administration for Children and Families, HHS.

ACTION: Extension of due date for receipt of applications for the program announcement cited above.

SUMMARY: This notice amends program announcement number 93612–952 published in the **Federal Register** on October 26, 1994, by extending the due date for submission of applications to October 27, 1995.

FOR FURTHER INFORMATION CONTACT: Vilma G. Guinn (202) 690–5563.

SUPPLEMENTARY INFORMATION: On October 26, 1994, the Administration for Native Americans published a program announcement in the **Federal Register** soliciting applications from Federally recognized Indian tribes; incorporated Non-Federally and State recognized Indian Tribes; Alaska Native Villages, tribes, or tribal governing bodies (IRA or traditional councils) as recognized by the Bureau of Indian Affairs in the **Federal Register** Notice dated October 21, 1993; nonprofit Alaska Native Regional Associations and/or Corporations with village specific projects; other tribal or village organizations or consortia of Indian tribes; and in addition current ANA grantees who meet the above eligibility criteria, but do not have a mitigation grant under program announcement 93612–943 are also eligible to apply for a grant award under this program announcement; to address the mitigation of environmental problems and impacts from Department of Defense activities to Indian lands.

Because the provision of technical assistance to potential applicants has been delayed, we are allowing all prospective applicants more time to submit their applications. Therefore, we are extending the due date for submission of applications by approximately two months to October 27, 1995.

(Catalog of Federal Domestic Assistance Program Number 93.612 Native American Programs)

Dated: June 30, 1995.

Gary N. Kimble,

Commissioner, Administration for Native Americans.

[FR Doc. 95–16968 Filed 7–11–95; 8:45 am]

BILLING CODE 4184–01–M

Food and Drug Administration

[Docket No. 95F–0171]

Ciba-Geigy Corp., Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 2-[[2,4,8,10-tetrakis (1,1-dimethylethyl)dibenzo[d.f][1,3,2] -dioxaphosphepin-6-yl]oxy]-N,N-bis [2-[[2,4,8,10-tetrakis (dimethylethyl)dibenzo [d.f][1,3,2] dioxaphosphepin-6-yl]oxy]ethyl]ethanamine as a process stabilizer for high density olefin copolymers intended for use in contact with food.

DATES: Written comments on the petitioner's environmental assessment by August 11, 1995.

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

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and

Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 5B4469) has been filed by Ciba-Geigy Corp., Seven Skyline Dr., Hawthorne, NY 10532–2188. The petition proposes that the food additive regulations be amended in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the safe use of 2-[[2,4,8,10-tetrakis(1,1-dimethylethyl)dibenzo [d.f][1,3,2]dioxaphosphepin-6-yl]oxy]-N,N-bis[2-[[2,4,8,10-tetrakis(1,1-dimethylethyl)dibenzo [d.f][1,3,2]dioxaphosphepin-6-yl] oxy]ethyl]ethanamine as a process stabilizer in high density olefin copolymers intended for use in contact with food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before August 11, 1995, submit to the Dockets Management Branch (address above) written comments. 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. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: June 23, 1995.

Alan M. Rulis,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–17094 Filed 7–11–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95F–0177]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of N,N‴-[1,2-ethanediylbis[[[4,6-bis[butyl(1,2,2,6,6-pentamethyl-4-piperidinyl)amino]-1,3,5-triazin-2-yl]imino]-3,1-propanediyl]]bis[N′,N″-dibutyl-N′,N″-bis(1,2,2,6,6-pentamethyl-4-piperidinyl)-1,3,5-triazine-2,4,6-triamine] as a light/thermal stabilizer in polypropylene and high-density polyethylene polymers intended for use in contact with food.

DATES: Written comments on the petitioner's environmental assessment by August 11, 1995.

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

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 5B4474) has been filed by Ciba-Geigy Corp., Seven Skyline Dr., Hawthorne, NY 10532–2188. The petition proposes to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the safe use of N,N‴-[1,2-ethanediylbis[[[4,6-bis[butyl(1,2,2,6,6-pentamethyl-4-piperidinyl)amino]-1,3,5-triazin-2-yl]imino]-3,1-propanediyl]]bis[N′,N″-dibutyl-N′,N″-bis(1,2,2,6,6-pentamethyl-4-piperidinyl)-1,3,5-triazine-2,4,6-triamine] as a light/thermal stabilizer in polypropylene and high density polyethylene polymers intended for use in contact with food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before August 11, 1995, submit to the Dockets Management Branch (address above) written comments. 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. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: June 28, 1995.

Alan M. Rulis,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–17095 Filed 7–11–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95F–0170]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 2-4-dimethyl-6-(1-methylpentadecyl)phenol as an antioxidant and/or stabilizer in acrylonitrile-butadiene-styrene copolymers and rigid polyvinyl chloride intended for food-contact applications.

DATES: Written comments on the petitioner's environmental assessment by August 11, 1995.

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

FOR FURTHER INFORMATION CONTACT: Andrew J. Zajac, Center for Food Safety

and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3095.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 5B4468) has been filed by Ciba-Geigy Corp., Seven Skyline Drive, Hawthorne, NY 10532–2188. The petition proposes that the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the safe use of 2-4-dimethyl-6-(1-methylpentadecyl)phenol as an antioxidant and/or stabilizer in acrylonitrile-butadiene-styrene copolymers and rigid polyvinyl chloride intended for food-contact applications.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before August 11, 1995, submit to the Dockets Management Branch (address above) written comments. 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 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. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the final regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: June 23, 1995.

Alan M. Rulis,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–17096 Filed 7–11–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 91F–0286]

Healthy Business, Inc.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 1A4255) proposing that the food additive regulations be amended to provide for the safe use of polysorbate 80, disodium EDTA, and sodium lauryl sulfate as components of a fruit and vegetable wash.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3071.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of September 5, 1991 (56 FR 43927), FDA announced that a food additive petition (FAP 1A4255) had been filed by Healthy Business, Inc., 1407 Larimer Sq., Denver, CO 80202 (formerly, 695 South Colorado Blvd., Denver, CO 80222). The petition proposed to amend the food additive regulations in § 173.315 *Chemicals used in washing or to assist in the lye peeling of fruits and vegetables* (21 CFR 173.315) to provide for the safe use of polysorbate 80, disodium EDTA, and sodium lauryl sulfate as components of a fruit and vegetable wash. Healthy Business, Inc., has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: June 23, 1995.

Alan M. Rulis,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–17092 Filed 7–11–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95F–0150]

Hoechst Aktiengesellschaft; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Hoechst Aktiengesellschaft has filed a petition proposing that the food additive regulations be amended to provide for the safe use of polymeric 2,2,4,4-tetramethyl-7-oxa-3,20-diaza-20-(2,3-epoxypropyl)-dispiro-[5.1.11.2]-heneicosane-21-one as an antioxidant and/or stabilizer for polyolefins intended for contact with food.

DATES: Written comments on the petitioner's environmental assessment by August 11, 1995.

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

FOR FURTHER INFORMATION CONTACT: Daniel N. Harrison, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204–0002, 202–418–3080.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 5B4461) has been filed by Hoechst Aktiengesellschaft, c/o 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposes to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the safe use of polymeric 2,2,4,4-tetramethyl-7-oxa-3,20-diaza-20-(2,3-epoxypropyl)-dispiro-[5.1.11.2]-heneicosane-21-one (CAS Reg. No. 78301–43–6) as an antioxidant and/or stabilizer for polyolefins intended for contact with food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before August 11, 1995, submit to the Dockets Management Branch (address above) written comments. 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. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the

notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: June 23, 1995.

Alan M. Rulis,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–17093 Filed 7–11–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93F–0244]

National Starch and Chemical Co.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 3B4385) proposing that the food additive regulations be amended to provide for the safe use of starch, modified by treatment with diethylaminoethylchloride, hydrochloride salt and 2-chloro-*N*-(2,2-dimethoxyethyl)-*N*-methylacetamide as an internal sizing for paper and paperboard intended to contact food.

FOR FURTHER INFORMATION CONTACT: Mitchell A. Cheeseman, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3083.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of August 12, 1993 (58 FR 42977), FDA announced that a food additive petition (FAP 3B4385) had been filed by National Starch and Chemical Co., Finderne Ave., Bridgewater, NJ 08807. The petition proposed to amend the food additive regulations in § 178.3520 *Industrial starch-modified* (21 CFR 178.3520) to provide for the safe use of starch, modified by treatment with diethylaminoethylchloride, hydrochloride salt (CAS Reg. No. 869–24–9) and 2-chloro-*N*-(2,2-dimethoxyethyl)-*N*-methylacetamide (CAS Reg. No. 69184–36–7) as an internal sizing for paper and paperboard intended to contact food. National Starch and Chemical Co. has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: June 23, 1995.

Alan M. Rulis,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–17097 Filed 7–11–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 89F–0111]

Rhone-Poulenc, Inc.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to future filing, of a food additive petition (FAP 9B4140) proposing that the food additive regulations be amended to provide for the safe use of alkyl (C_{14}–C_{30}) benzene as a component of adhesives for articles intended to contact food.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3086.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of May 2, 1989 (54 FR 18700), FDA announced that a food additive petition (FAP 9B4140) had been filed by Rhone-Poulenc, Inc., 1669 Corporate Rd. West, Lakewood, NJ 08071. The petition proposed to amend the food additive regulations in § 175.105 *Adhesives* (21 CFR 175.105) to provide for the safe use of alkyl (C_{14}–C_{30}) benzene as a component of adhesives for articles intended to contact food. Rhone-Poulenc, Inc., has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: June 23, 1995.

Alan M. Rulis,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–17091 Filed 7–11–95; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority; Office of the Actuary

Part F of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), (**Federal Register**, Vol. 59, No. 60, pp. 14643–14644, dated Tuesday, March 29, 1994) is amended to reflect changes in the substructure of the Office of the Actuary (OACT). The OACT functional statement has not been changed; however, the remaining OACT substructure is being published to reflect the organizational changes resulting from streamlining efforts.

The specific amendments to Part F are as follows:

- Section F.10.C.4. (Organization) is amended to read as follows:

4. Office of the Actuary

a. Office of Medicare and Medicaid Cost Estimates

b. Office of National Health Statistics

- Section F.20.C.4. (Functions) is amended by modifying office statements and deleting the office substructure in their entirety. The new functional statements read as follows:

a. Office of Medicare and Medicaid Cost Estimates (FKC1)

- Prepares cost estimates for the Hospital Insurance (HI) program, the Supplementary Medical Insurance (SMI) program, and the Medicaid program for use in the President's budget.
- Evaluates the operations of the Medicare trust funds particularly relating to outlays and program solvency.
- Develops such variables as the Part B premium rates, the inpatient hospital deductible, the Part A premium rate for voluntary enrollees, and the physicians' economic index applicable to prevailing fees.
- Develops the payment rates for the annual update of the adjusted average per capita cost (AAPCC) ratebook, which is used to pay health maintenance organizations that enter into a risk contract with HCFA to provide benefits to Medicare enrollees.
- Provides cost estimates for the Medicaid program, including the development of cost estimates for proposed changes in Medicaid or in programs affecting Medicaid, and overall Medicaid program costs for years after the current budget year.
- Serves as technical consultant throughout the Government on Medicare and Medicaid cost estimate issues.
- Provides actuarial consultation to other organizations in the research of AAPCC methodology.

b. Office of National Health Statistics (FKC2)

- Develops, maintains and makes analytical use of the National Health Accounts (NHA) which include annual

estimates and publication of National Health Expenditures (NHE) and periodic estimates and publication of NHE by age groupings or by region.

• Provides technical support for HCFA regulatory processes, especially those related to payment systems or reform.

• Develops, analyzes and publishes, health sector models and associated estimates which allow assessments of historical relationships and projections of current law or evaluation of the impact of proposed changes to the current system.

• Plans and manages the Medicare Current Beneficiary Survey. Provides all the in-house activities needed for survey management, data analysis, and coordination and information dissemination.

• Conducts and evaluates surveys containing information relevant to the health care system.

• Maintains, updates and revises the provider market basket input price indexes and the Medicare Economic Index.

Dated: June 12, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 95–16977 Filed 7–11–95; 8:45 am]

BILLING CODE 4120–01–P

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given to amend the notice of the National Cancer Advisory Board Subcommittee on Activities and Agenda meeting which was published in the **Federal Register** (60 FR 33425) on June 28, 1995 to add a closed session.

The Subcommittee meeting is scheduled to be open on July 14, 1995 from 9 am to approximately 2:30 pm. In accordance with provisions set forth in sec. 552b(c)(9)(B), Title 5, U.S.C., and sec. 10(d) of Pub. L. 92–463, the meeting will be closed from approximately 2:30 pm to adjournment for discussion of pending confidential budget matters. These discussions could disclose information, the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action.

Dated: July 6, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–16991 Filed 7–11–95; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Notice of Closed Meetings

Pursuant to Sec 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings:

Purpose/Agenda: Review, discussion and evaluation of individual grant applications.

Committee Name: Cancer Clinical Investigations Review Committee.

Contact Person: Dr. John Meyer, Executive Plaza North, Room 611C, Telephone: (301) 496–7721.

Date of Meeting: July 25–26, 1995.

Place of Meeting: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Time: 8 am.

Committee Name: Subcommittee B of the Cancer Centers and Research Programs Review Committee.

Contact Person: Dr. Mary Fletcher, Executive Plaza North, Room 643A, Telephone: (301) 496–4964.

Date of Meeting: August 2, 1995.

Place of Meeting: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Time: 8:30 am.

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 the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: June 30, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–16990 Filed 7–11–95; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the following Heart, Lung, and Blood Special Emphasis Panel.

The meeting will be open to the public to provide concept review of proposed contract or grant solicitations.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below in advance of the meeting.

Name of Panel: NHLBI SEP on Tissue Engineering.

Dates of Meeting: July 25–26, 1995.

Time of Meeting: 1 p.m.

Place of Meeting: Holderness School, Plymouth, New Hampshire.

Agenda: The panel will review the current status of research in the designated areas, identify gaps and make recommendations regarding opportunities and priorities for future contract or grant solicitations.

Contact Person: Paul Didisheim, M.D., Rockledge Building II, 6701 Rockledge Drive, Room 9180, Bethesda, Maryland 20892–7940, (301) 435–0513.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: July 5, 1995.

Margery G. Grubb,

Senior Committee Management Specialist, National Institutes of Health.

[FR Doc. 95–16984 Filed 7–11–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Amended Notice of Meeting

Notice is hereby given of a change in the July 13, 1995, meeting of the Communication Disorders Review Committee, which was published in the **Federal Register** on June 26, 1995, 60 FR 32987.

The name of the Committee was incorrect. The correct name of the Committee is the National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: July 5, 1995.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 95–16992 Filed 7–11–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; 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 Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

Date: July 20, 1995.
Time: 4 pm–8 pm.
Place: Red Lion Hotel, Omaha, NE.
Contact Person: Mary V. Nekola, Ph.D., Scientific Review Administrator, NIDCD/DEA/SRB, EPS Room 400C, 6120 Executive Boulevard, MSC 7180, Bethesda, MD 20892–7180, 301/496–8683.
Purpose Agenda: To review and evaluate Program Project applications (PO1).

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 application and/or proposal and the discussion 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 review cycle.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: July 5, 1995.

Margery G. Grubb,

Senior Committee Management Specialist, National Institutes of Health.

[FR Doc. 95–16986 Filed 7–11–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; 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: July 17, 1995.
Time: 8 a.m.
Place: Holiday Inn, Bethesda, MD.
Contact Person: Dr. Gopal Sharma, Scientific Review Administrator, 6701 Rockledge Drive, Room 4112, Bethesda, MD 20892, (301) 435–1783.

Name of SEP: Microbiological and Immunological Sciences.
Date: July 24, 1995.
Time: 8:30 a.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Gilbert Meier, Scientific Review Administrator, 6701 Rockledge Drive, Room 4200, Bethesda, MD 20892, (301) 435–1219.

Name of SEP: Behavioral and Neurosciences.
Date: July 27, 1995.
Time: 2 p.m.
Place: NIH, Rockledge II, Room 5172, Telephone Conference.
Contact Person: Dr. Leonard Jakubczak, Scientific Review Administrator, 6701 Rockledge Drive, Room 5172, Bethesda, MD 20892, (301) 435–1247.

Name of SEP: Behavioral and Neurosciences.
Date: July 31, 1995.
Time: 12:00 noon.
Place: NIH, Rockledge II, Room 5198, Telephone Conference.
Contact Person: Dr. Peggy McCardle, Scientific Review Administrator, 6701 Rockledge Drive, Room 5198, Bethesda, MD 20892, (301) 435–1258.

Name of SEP: Chemistry and Related Sciences.
Date: August 1, 1995.
Time: 2 p.m.
Place: NIH, Rockledge II, Room 4168, Telephone Conference.
Contact Person: Dr. Edward Zapolski, Scientific Review Administrator, 6701 Rockledge Drive, Room 4168, Bethesda, MD 20892, (301) 435–1725.

Name of SEP: Chemistry and Related Sciences.
Date: August 1, 1995.
Time: 10 a.m.
Place: NIH, Rockledge II, Room 4156, Telephone Conference.
Contact Person: Dr. Ronald Dubois, Scientific Review Administrator, 6701 Rockledge Drive, Room 4156, Bethesda, MD 20892, (301) 435–5172.

Name of SEP: Chemistry and Related Sciences.
Date: August 2, 1995.
Time: 2 p.m.
Place: NIH, Rockledge II, Room 4168, Telephone Conference.
Contact Person: Dr. Edward Zapolski, Scientific Review Administrator, 6701 Rockledge Drive, Room 4168, Bethesda, MD 20892, (301) 435–1725.

Name of SEP: Behavioral and Neurosciences.
Date: August 2, 1995.
Time: 2 p.m.
Place: NIH, Rockledge II, Room 5172, Telephone Conference.
Contact Person: Dr. Leonard Jakubczak, Scientific Review Administrator, 6701 Rockledge Drive, Room 5172, Bethesda, MD 20892, (301) 435–1247.

Name of SEP: Biological Physiological Sciences.
Date: August 3, 1995.
Time: 2 p.m.
Place: NIH, Rockledge II, Room 5126, Telephone Conference.
Contact Person: Dr. Anne Clark, Scientific Review Administrator, 6701 Rockledge Drive, Room 5126, Bethesda, MD 20892, (301) 435–1017.

Name of SEP: Multidisciplinary Sciences.
Date: August 8, 1995.
Time: 1 p.m.
Place: NIH, Rockledge II, Room 5104, Telephone Conference.
Contact Person: Dr. Donald Schneider, Scientific Review Administrator, 6701 Rockledge Drive, Room 5104, Bethesda, MD 20892, (301) 435–1165.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets of commercial property such as patentable material and personnel 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: July 5, 1995.

Margery G. Grubb,

Senior Committee Management Specialist, National Institutes of Health.

[FR Doc. 95–16985 Filed 7–11–95; 8:45 am]

BILLING CODE 4041–01–M

Division of Research Grants; 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: Multidisciplinary Sciences.
Date: July 19, 1995.
Time: 2 p.m.
Place: NIH, Rockledge II, Room 5100, Telephone Conference.
Contact Person: Dr. Elliott Postow, Scientific Review Administrator, 6701 Rockledge Drive, Room 5100, Bethesda, MD 20892, (301) 435–1750.

Name of SEP: Clinical Sciences.
Date: July 25, 1995.
Time: 3 p.m.
Place: NIH, Rockledge II, Room 4140, Telephone Conference.
Contact Person: Dr. Lawrence Pinkus, Scientific Review Administrator, 6701 Rockledge Drive, Room 4140, Bethesda, MD 20892, (301) 435–1214.

Name of SEP: Microbiological and Immunological Sciences.
Date: July 27, 1995.
Time: 3 p.m.
Place: NIH, Rockledge II, Room 4186, Telephone Conference.
Contact Person: Dr. Gerald Liddel, Scientific Review Administrator, 6701 Rockledge Drive, Room 4186, Bethesda, MD 20892, (301) 435–1150.

Name of SEP: Multidisciplinary Sciences.

Date: August 2, 1995.
Time: 1 p.m.
Place: NIH, Rockledge II, Room 5208, Telephone Conference.
Contact Person: Dr. Houston Baker, Scientific Review Administrator, 6701 Rockledge Drive, Room 5208, Bethesda, MD 20892, (301) 435–1175.

Name of SEP: Microbiological and Immunological Sciences.
Date: August 9, 1995.
Time: 2 p.m.
Place: NIH, Rockledge II, Room 4186, Telephone Conference.
Contact Person: Dr. Gerald Liddel, Scientific Review Administrator, 6701 Rockledge Drive, Room 4186, Bethesda, MD 20892, (301) 435–1150.

Name of SEP: Clinical Sciences.
Date: August 11, 1995.
Time: 8 p.m.
Place: Holiday Inn, Gaithersburg, MD.
Contact Person: Ms. Josephine Pelham, Scientific Review Administrator, 6701 Rockledge Drive, Room 4106, Bethesda, MD 20892, (301) 435–1786.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets of 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: July 5, 1995.

Margery G. Grubb,

Senior Committee Management Specialist, National Institutes of Health.

[FR Doc. 95–16987 Filed 7–11–95; 8:45 am]

BILLING CODE 4041–01–M

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: Microbiological and Immunological Sciences.
Date: July 21, 1995.
Time: 1 p.m.
Place: NIH, Rockledge II, Room 4198, Telephone Conference.
Contact Person: Dr. Mohindar Poonian, Scientific Review Admin., 6701 Rockledge Drive, Room 4198, Bethesda, MD 20892, (301) 435–1218.

Name of SEP: Behavioral and Neurosciences.
Date: July 25, 1995.
Time: 2 p.m.
Place: NIH, Rockledge II, Room 5172, Telephone Conference.
Contact Person: Dr. Leonard Jakubczak, Scientific Review Admin., 6701 Rockledge Drive, Room 5172, Bethesda, MD 20892, (301) 435–1247.

Name of SEP: Microbiological and Immunological Sciences.
Date: August 14, 1995.
Time: 8:30 a.m.
Place: Ramada Inn, Rockville, MD.
Contact Person: Dr. Martin Slater, Scientific Review Administrator, 6701 Rockledge Drive, Room 4184, Bethesda, MD 20892, (301) 435–1149.

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: June 30, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–16989 Filed 7–11–95; 8:45 am]

BILLING CODE 4140–01–M

Meeting of the Women's Health Initiative Program Advisory Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Women's Health Initiative Program Advisory Committee (WHIPAC), Office of the Director, July 28, 1995 from 9 am to 5 pm at the Sheraton Reston Hotel, 11810 Sunrise Valley Drive, Reston, Virginia 22091. The meeting will be open to the public, with attendance limited to space available.

The purpose of the meeting is to review the status and progress in the planning and conduct of the Women's Health Initiative (WHI), and to advise the NIH Director on the comprehensive plan of prevention studies in the WHI. There will be a panel discussion on the NHLBI PEPI Trial, Behavioral Issues within the WHI Protocol, and the National Recruitment and Public Awareness Campaign.

Dr. Loretta P. Finnegan, Director, Women's Health Initiative, National Institutes of Health, Bethesda, Maryland 20892 (301–402–2900) will provide a summary of the meeting, a roster of committee members, and substantive program information, upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mrs. Nancy Morris 301–402–2900 by July 21.

Dated: July 5, 1995.

Margery G. Grubb,

Senior Committee Management Specialist, National Institutes of Health.

[FR Doc. 95–16988 Filed 7–11–95; 8:45 am]

BILLING CODE 4140–01–M

Substance Abuse and Mental Health Services Administration

Proposed Data Collections

AGENCY: Substance Abuse and Mental Health Services Administration (SAMHSA), HHS.

ACTION: Notices

SUMMARY: SAMHSA is publishing this notice to solicit public comment on three proposed data collections: the National Treatment Study (NTS) and the Life Events Analysis of Substance Abuse Clients (LEASAC); the Evaluation of the Comprehensive Mental Health Services Program for Children; and the Survey of Alcohol and Other Drug Treatment Facilities and PATH Grant Programs Regarding Tuberculosis Screening. Written comments are requested within 60 days of the publication of this notice.

Authority/Justification

Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that Federal agencies provide a 60-day notice in the **Federal Register** concerning each proposed collection of information.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To

request copies of data collection plans and instruments, call the SAMHSA Reports Clearance Officer on (301) 443–0525.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Deborah Trunzo, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Proposed Projects

1. National Treatment Study (NTS) and the Life Events Analysis of Substance Abuse Clients (LEASAC)—New—The NTS and the LEASAC, sponsored by SAMHSA and NIAAA, respectively, will interview directors at a sample of 200 substance abuse treatment facilities about treatment content and process. The coordinated studies will also interview 3000 clients up to 5 times over a 15-month period in order to obtain a natural history of treatment. Automated collection techniques are not cost-effective for this study. The annual burden estimates are as follows:

	No. of respondents	No. of responses per respondent	Avg. burden/response
Treatment facility directors	200	1	1.5 hours
Clients	3,000	3.6	1.16 hours
Collaterals	1,000	4	.15 hours

2. Evaluation of the Comprehensive Mental Health Services Program for Children—Revision of a currently approved collection (OMB No. 0930–0171)—The Comprehensive Community Mental Health Services Program for Children with Serious Emotional Disturbances supports the development of more accessible and appropriate services for children and adolescents with serious emotional, behavioral and mental disorders in 19 sites. The evaluation will be conducted over a five year period in all sites and will collect process and outcome data using MIS data, standardized assessment instruments and qualitative data. Four comparison sites are added in this revision. The annual burden estimates are as follows:

	No. of respondents	No. of responses per respondent	Avg. burden/response
Children & families	9,250	3	.5 hours
Service providers	728	1	.5 hours

3. Survey of Alcohol and Other Drug Treatment Facilities and PATH Grant Programs Regarding Tuberculosis Screening—New—SAMHSA plans to conduct a mail survey of alcohol and other drug (AOD) treatment facilities and PATH grant programs to document tuberculosis (TB) services provided to clients and employees. Approximately 1,600 AOD facilities and 400 PATH grantees will be included in the survey.

	No. of respondents	No. of responses per respondent	Avg. burden/response
Treatment facilities & PATH grantees	2,000	1	.5 hours

Dated: June 21, 1995.

Patricia S. Bransford,

Acting Executive Officer, SAMHSA.

[FR Doc. 95–17071 Filed 7–11–95; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management; Alaska

[AK–962–1410–00–P; Notice for Publication, AA–6688–A]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Ouzinkie Native Corporation for approximately 1,248.13 acres. The lands involved are in the vicinity of Ouzinkie, Alaska.

Seward Meridian, Alaska

Land description	Acreage
T. 26 S., R. 19 W	307.00
T. 26 S., R. 20 W	941.13

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Kodiak Daily Mirror.* Copies of the decision may be obtained by contacting the Alaska State

Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 (907) 271–5960.

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until August 11, 1995 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Patricia A. Baker,

Acting Chief, Branch of Gulf Rim Adjudication.

[FR Doc. 95–17034 Filed 7–11–95; 8:45 am]

BILLING CODE 4310–JA–P

[CO–933–95–1320–01; COC 54608]

Notice of Coal Lease Re-Offering By Sealed Bid; COC 54608

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of competitive coal lease sale.

SUMMARY: Bureau of Land Management, Colorado State Office, Lakewood, Colorado, hereby gives notice that certain coal resources in the lands hereinafter described in Routt County, Colorado, will be re-offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 et seq.). On June 23, 1995, these resources were offered for competitive lease by sealed bid to the highest qualified bidder provided that the high bid met the fair market value of the coal resources as determined by the authorized officer after the sale. Cyprus Western Coal Company was the only bidder. The bid did not meet the fair market value established for this tract. Therefore, the bid was rejected and the tract is being re-offered.

DATES: The lease sale will be held at 11 a.m., Friday, August 18, 1995. Sealed bids must be submitted no later than 10 a.m., Friday, August 18, 1995.

ADDRESSES: The lease sale will be held in the Conference Room, Fourth Floor, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado. Sealed bids must be submitted to the Cashier, First Floor, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Karen Purvis at (303) 239–3795.

SUPPLEMENTARY INFORMATION: The tract will be leased to the qualified bidder submitting the highest offer, provided that the high bid meets the fair market value determination of the coal resource. The minimum bid for this tract is $100 per acre or fraction thereof. No bid less than $100 per acre or fraction thereof will be considered. The minimum bid is not intended to represent fair market value.

Sealed bids received after the time specified above will not be considered.

In the event identical high sealed bids are received, the tying high bidders will be requested to submit follow-up bids until a high bid is received. All tie-breaking sealed bids must be submitted within 15 minutes following the Sale Official's announcement at the sale that identical high bids have been received.

Fair market value will be determined by the authorized officer after the sale.

Coal Offered

The coal resource to be offered is limited to coal recoverable by underground mining methods in the Wadge seam on the Twentymile Tract in the following lands:

Sixth Principal Meridian

T. 5 N., R. 86 W.,
Sec. 21 N½, and SE¼;
Sec. 22, E½E½, and W½;
Sec. 23, all;
Sec. 26, N½, and N½SW¼;
Sec. 27, W½;
Sec. 28, NE¼, and E½NW¼;
Sec. 33, NE¼NE¼.

The land described contains 2,600 acres, more or less.

Total recoverable reserves are estimated to be 24,300,000 tons. The Wadge seam underground minable coal is ranked as high volatile C bituminous coal. The estimated coal quality for the Wadge seam on an as-received bases is as follows:

Btu—11,745 Btu/lb.
Moisture—7.76%
Sulfur Content—0.48%
Ash Content—8.80%

Rental and Royalty

The lease issued as a result of this offering will provide for payment of an annual rental of $3.00 per acre or fraction thereof and a royalty payable to the United States of 8 percent of the value of coal mined by underground methods. The value of the coal will be determined in accordance with 30 CFR 206.

Notice of Availability

Bidding instruction for the offered tract are included in the Detailed Statement of Coal Lease Sale. Copies of the statement and the proposed coal lease are available upon request in person or by mail from the Colorado State Office at the address given above. The case file is available for inspection in the Public Room, Colorado State Office, during normal business hours at the address given above.

Dated: July 5, 1995.

Karen A. Purvis,

Solid Minerals Team Resource Services.

[FR Doc. 95–17029 Filed 7–11–95; 8:45 am]

BILLING CODE 4310–JB–M

[UTU–74111]

Utah; Notice of Invitation To Participate in Coal Exploration Program; Horizon Coal Corporation, Beaver Creek Tract

Horizon Coal Corporation is inviting all qualified parties to participate in its proposed exploration of certain Federal coal deposits in the following described lands in Carbon County, Utah:

T. 13 S., R. 8 E., SLM, Utah,
Sec. 7, S2SE;
Sec. 8, N2S2, SWSE;
Sec. 17, N2NW, SWNE;
Sec. 18, NENE.

Containing 440.00 acres.

Any party electing to participate in this exploration program must send written notice of such election to the Bureau of Land Management, Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145–0155 and to Brad Bourquin, 1131 S. Dover, Lakewood, Colorado 80232. Such written notice must be received within thirty days after publication of this notice in the **Federal Register**.

Any party wishing to participate in this exploration program must be qualified to hold a lease under the provisions of 43 CFR 3472.1 and must share all cost on a pro rata basis. An exploration plan submitted by Horizon Coal Corporation, detailing the scope and timing of this exploration program is available for public review during normal business hours in the Public Room of the BLM State Office, 324 South State Street, Salt Lake City, Utah under serial number UTU–74111.

Douglas M. Koza,

Deputy State Director, Mineral Resources.

[FR Doc. 95–17085 Filed 7–11–95; 8:45 am]

BILLING CODE 4310–DQ–M

[OR–020–05–1330–01: G5–162]

Intent To Prepare Environmental Impact Statement, Harney County, OR

AGENCY: Burns District, Bureau of Land Management (BLM), DOI.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) for a Plan of Operations for a proposed geothermal electric generating plant and associated geothermal facilities and operations near Borax Lake in Pueblo Valley, southern Harney County.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, and 43 CFR Part 3200, the Bureau of Land Management (BLM) will be directing a third party contractor in the preparation of an EIS on the impacts of a proposed geothermal electric generating plant and associated facilities and operations known as the Pueblo Valley Geothermal Project, which would be located on public land about 1-mile southwest of Borax Lake and 5 miles northeast of Fields, Oregon. Comments are being requested to help identify significant issues or concerns related to the proposed action, to determine the scope of the issues and alternatives that need to be analyzed, and to eliminate from detailed study those issues that are not significant. Supporting documentation should be included with comments recommending that the EIS address specific environmental issues.

DATES: Scoping meetings to encourage public participation will be held in Burns, Fields, Bend, and Portland. Once a third party contractor has been selected, the exact dates and locations will be published in the Burns Times-Herald, Bend Bulletin, and the Oregonian.

ADDRESSES: Written comments should be addressed to the Bureau of Land Management, HC 74–12533 Hwy 20 West, Hines, Oregon 97738, Attn: Pueblo Valley Geothermal Project Manager.

FOR FURTHER INFORMATION CONTACT: Craig (Cody) M. Hansen (503) 573–4400.

SUPPLEMENTARY INFORMATION: Anadarko Petroleum Corporation submitted a Plan of Development, Utilization, Production, Injection, and Disposal for a project to drill and test production and injection wells and to supply, build, and operate a 22.9 MW (net) air-cooled binary geothermal electric power plant and supporting facilities in the Alvord Known Geothermal Resource Area (KGRA) in Pueblo Valley. The development would be located within portions of Sections 21, 22, 23, and 27, Township 37 South, Range 33 East of the Willamette Meridian. Geothermal fluid (hot water) would be pumped from an underground reservoir and produced initially from 6 to 10 geothermal production wells. The hot water would be transported via surface pipelines to a proposed binary power plant where it would be used to heat a second fluid system, which in turn would run turbines to generate electricity. After heat extraction, the cooled geothermal water would be pumped via surface pipelines to six to eight injection wells to be returned to the subsurface geothermal reservoir. The plant would use a closed production loop with no release of geothermal liquid or gases to the surface environment. Well spacing would be approximately one well per 25 acres and well pads would occupy between 1.2 and 2.2 acres. The production facility would occupy 12.6 acres. The proposed plan includes monitoring of Borax Lake and the collection of seismic data in the area as well as a suite of mitigation measures to reduce adverse impacts. The estimated viable life of the project is expected to be 30 years.

This EIS will address potential impacts to nearby Borax Lake as well as to geology, minerals, gothermal resources, groundwater, soil, vegetation, grazing management, wildlife, recreation, visual resources, air quality, cultural and paleontological resources, land use, access, and social and economic values related to development of the project.

Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the BLM's decision are invited to participate in the scoping process. The Authorized Officer will respond to public input and comment as part of the final EIS through the third party contractor. The decision regarding the proposal will be recorded as a Record of Decision, which is subject to appeal under 43 CFR Part 4.

Date: July 5, 1995.

Jerome A. Petzold,

Assistant District Manager for Operations.

[FR Doc. 95–17073 Filed 7–11–95; 8:45 am]

BILLING CODE 4310–33–M

[NV–930–1430–01; N–59254]

Notice of Realty Action: Non-Competitive Sale of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Non-Competitive Sale of Public Lands in Clark County, Nevada.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for sale utilizing non-competitive procedures, at not less than the fair market value. Authority for the sale is Section 203 and Section 209 of the Federal Land Policy and Management Act of 1976 (FLPMA).

Mount Diablo Meridian, Nevada

T. 22 S., R. 60 E.,
Sec. 22: N½SE¼NE¼SE¼NE¼.
Containing 1.250 acres, more or less.

This parcel of land, situated in Clark County is being offered as a direct sale to Ernest A. Becker, Jr.

This land is not required for any federal purposes. The sale is consistent with current Bureau planning for this area and would be in the public interest.

In the event of a sale, conveyance of the available mineral interests will occur simultaneously with the sale of the land. The mineral interests being offered for conveyance have no known mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 nonreturnable filing fee for conveyance of the available mineral interests.

The patent, when issued, 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, Act of August 30, 1890 (43 U.S.C. 945).

2. Oil, gas, sodium, potassium and saleable minerals and will be subject to an easement for roads, public utilities and flood control purposes in accordance with the Transportation plan for Clark County.

1. Those rights for highway purposes which have been granted to Nevada Department of Transportation by Permit No. NEV–062275 under the Act of August 27, 1958 (23 USC317(A)).

2. Those rights for public road purposes which have been granted to Clark County by Permit No. N–58939 under the Act of October 21, 1976 (43USC1761). 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 sales and disposals under the mineral disposal laws. This segregation will terminate upon issuance of a patent or 270 days from the date of this publication, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may

submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA, or other applicable laws. The lands will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

Dated: June 30, 1995.

Michael F. Dwyer,

District Manager, Las Vegas, NV.

[FR Doc. 95–16983 Filed 7–11–95; 8:45 am]

BILLING CODE 4310–HC–M

[UT–942–4212–13; UTU–65659]

Notice of Issuance of Land Exchange Conveyance Document; Utah; Correction

In notice document 95–13619 beginning on page 29705 in the issue of Monday, June 5, 1995, make the following corrections:

1. On page 29705, paragraph 2, the land description belongs in paragraph 3.

2. On page 29705, paragraph 3, the land description belongs in paragraph 2.

3. On page 29705, paragraph 4, the land described as T. 7 S., R. 5 W., sec. 22, W½NW¼, should state that the United States received the surface and 50% of the mineral estate, except oil and gas.

Michael L. Crocker,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 95–17084 Filed 7–11–95; 8:45 am]

BILLING CODE 4310–DQ–M

National Park Service

Jean Lafitte National Historical Park and Preserve; Notice of Meeting

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Cane River National Heritage Area Commission will be held at 1 p.m. at the following location and date.

DATE: August 5, 1995.

LOCATION: Student Union Ballroom, Northwestern State University, Natchitoches, Louisiana 71497.

FOR FURTHER INFORMATION CONTACT: Henry Law, Acting Superintendent, Cane River Creole National Historical Park and National Heritage Area, c/o Superintendent, National Park Service, 365 Canal Street, Suite 3080, New Orleans, Louisiana 70130–1142, (504) 589–3882, extension 108.

SUPPLEMENTARY INFORMATION: The Cane River National Heritage Area Commission was established pursuant to Section 402 of Public Law 103–449, to assist in the implementation of the Cane River Creole National Historical park and the Cane River National Heritage Area and to provide guidance for the management of the heritage area.

The matters to be discussed at this meeting include:

—Impanelment of the Commission
—Election of Commission Officers
—National Park Service Presentations on Heritage Areas and Commission Operations
—General Management Plan
—Budget
—Activation Status of Cane River Creole National Historical Park and National Heritage Area

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with the Acting Superintendent, Cane River Creole National Historical Park and National Heritage Area.

Minutes of the meeting will be available for public inspection four weeks after the meeting at the offices of Jean Lafitte National Historical Park and Preserve.

Dated: June 29, 1995.

Frank A. Catroppa,

Acting Field Director, Southeast Area.

[FR Doc. 95–17039 Filed 7–11–95; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 1, 1995. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by July 27, 1995.

Patrick Andrus,

Acting Chief of Registration, National Register.

ARKANSAS

Hempstead County

Hope Historic Commercial District, Roughly bounded by the Union Pacific RR tracks, Louisiana St., 3rd St. and Walnut St., Hope, 95000905

North Elm Street Historic District, Roughly bounded by the Union Pacific RR tracks, Hervey St., G Ave. and Hazel St., Hope, 95000904

North Washington Street Historic District, Along N. Washington St., between B and E Sts., E side, Hope, 95000903

COLORADO

Mesa County

De Beque House, 233 Denver Ave., DeBeque, 95000936

Prowers County

Holly Santa Fe Depot, 302 S. Main St., Holly, 95000935

Pueblo County

Pueblo City Park Zoo, 3455 Nuckolls Ave., Pueblo, 95000934

CONNECTICUT

New Haven County

Whitneyville Congregational Church, 1247—1253 Whitney Ave., Hamden, 95000906

FLORIDA

Brevard County

Hotel Mims, 3202 FL 46, Mims, 95000913

Broward County

Butler, James D. and Alice, House, 380 E. Hillsboro Blvd., Deerfield Beach, 95000916

Hendry County

Forrey Building and Annex, 264—282 Bridge St., LaBelle, 95000914

Marion County

East Hall, 307 SE. 26th Terr., Ocala, 95000924

Polk County

Oates Building, 230 S. Florida Ave., Lakeland, 95000925

GEORGIA

Dougherty County

Mount Zion Baptist Church, 328 W. Whitney Ave., Albany, 95000911

Fulton County

Atlanta Spring and Bed Company—Block Candy Company, 512 Means St., Atlanta, 95000910

Mozley Park Historic District, Roughly bounded by Westview Dr., West Lake Ave., Seaboard Coast Line RR tracks and M. L. King and Rockmart Dr., Atlanta, 95000909

Lamar County

Thomaston Street Historic District, Roughly, along Thomaston and Greenwood Sts. and

Stafford and Georgia Aves., Barnesville, 95000908

KANSAS

Douglas County

English Lutheran Church, 1040 New Hampshire St., Lawrence, 95000945

Geary County

Leithoff—Powers Ranch Historic District, KS 57 SE of Junction City, Junction City vicinity, 95000946

Montgomery County

Bethel African Methodist Episcopal Church, 202 W. 12th St., Coffeyville, 95000943

Morris County

First Baptist Church, 325 W. Main St., Council Grove, 95000915

Osage County

Rapp School District No. 50, US 56 NW of Osage City, Osage City vicinity, 95000944

Shawnee County

Sargent, John, House, 225 SW. Clay St., Topeka, 95000930

LOUISIANA

St. Martin Parish

Breaux Bridge Historic District, Roughly bounded by Bayou Teche, Van Buren St., Main St. and Bridge St., Breaux Bridge, 95000907

West Feliciana Parish

Trudeau House (Louisiana's French Creole Architecture MPS) Jct. of LA 66 and Old Tunica Rd., Tunica, 95000919

MINNESOTA

Hennepin County

Morse, Elisha, Jr. and Lizzie, House, 2325—2327 Pillsbury Ave., S., Minneapolis, 95000920

MISSOURI

Pike County

Bethel Chapel AME Church, Jct. of 6th and Tennessee Sts., Louisiana, 95000926

OHIO

Champaign County

Richards—Sewell House, 222 College St., Urbana, 95000937

Highland County

Lyle, Samuel, Log House, 7190 Pondlick Rd., Seaman, 95000939

Knox County

McKee—Pumphrey House, 165 N. Market St., Martinsburg, 95000938

Stark County

Alliance Bank Building, 502 E. Main St., Alliance, 95000940

RHODE ISLAND

Providence County

Whipple—Angell—Bennett House, 157 Olney Ave., North Providence, 95000917

Washington County

Hope Village Historic District, Roughly bounded by the Pawtuxet R., Hope Furnace Rd., Hope Mill Pond, North Rd., White Ln. and Harrington and Potter Sts., Hope, 95000918

TENNESSEE

Giles County

Gardner, Matt, House, US 31 at jct. with Dixontown Rd., Elkton, 95000942

Obion County

Union City, Mobile and Ohio Railroad Depot, 214 E. Church St., Union City, 95000933

Shelby County

Cordova School, 1017 Sanga Rd., Memphis, 95000932

Shadowlawn Historic District, Roughly bounded by Shadowlawn, Wellington, S. Parkway and Essex Sts., Memphis, 95000941

Sullivan County

Hall, Alexander Doak, Farm, 440 Proffitt Ln., Kingsport vicinity, 95000931

TEXAS

Hays County

Pound, Dr. Joseph M. and Sarah, Farmstead, Ranch Rd. 12 N., Dripping Springs, 95000929

Navarro County

West Side Historic District (Corsicana MPS) Roughly bounded by W. 3rd Ave., 15th St., W. 6th Ave. and 31st St., Corsicana, 95000912

VIRGINIA

Arlington County

Barcroft Community House, 800 S. Buchanan St., Arlington, 95000928

Cherrydale Volunteer Fire House, 3900 N. Lee Hwy., Arlington, 95000927

Hanover County

Cold Harbor National Cemetery (Civil War Era National Era Cemeteries MPS) VA 156, 0.5 mi. E of jct. with VA 619, Mechanicsville vicinity, 95000922

Henrico County

Fort Harrison National Cemetery (Civil War Era National Cemeteries MPS) 8620 Varina Rd., Richmond vicinity, 95000921

Hopewell Independent City

City Point National Cemetery (Civil War Era National Cemeteries MPS) Jct. of 10th Ave. and Davis St., Hopewell, 95000923

[FR Doc. 95–17021 Filed 7–11–95; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–702 (Final)]

Ferrovanadium and Nitrided Vanadium From Russia

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Russia of ferrovanadium and nitrided vanadium, provided for in subheadings 2850.00.2000, 7202.92.0000, 7202.99.5040, 8112.40.3000, and 8112.40.6000 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective December 30, 1995, following a preliminary determination by the Department of Commerce that imports of ferrovanadium and nitrided vanadium from Russia were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)).[2] Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of January 19, 1995 (60 FR 3873). The hearing was held in Washington, DC, on May 23, 1995, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on June 30, 1995. The views of the Commission are contained in USITC Publication 2904 (June 1995), entitled ''Ferrovanadium and Nitrided Vanadium from Russia: Investigation No. 731–TA–702 (Final).''

Issued: July 6, 1995.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] The petition in this investigation was filed prior to the effective date of the Uruguay Round Agreements Act (''URAA''). This investigation, thus, remains subject to the substantive and procedural rules of the pre-existing law. See P.L. 103–465, approved Dec. 8, 1994, 108 Stat. 4809, at section 291.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–17053 Filed 7–11–95; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

National Institute of Justice

[OJP (NIJ) No. 1054]

RIN 1121–ZA16

National Institute of Justice Solicitation for Proposals to Assess School-based Prevention Programs

AGENCY: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice.

ACTION: Announcement of the availability of the National Institute of Justice Solicitation for Proposals to Assess School-based Prevention Programs.

ADDRESSES: National Institute of Justice, 633 Indiana Avenue, NW., Washington, DC 20531.

DATES: The deadline for receipt of proposals is close of business on August 10, 1995.

FOR FURTHER INFORMATION CONTACT: James Trudeau at (202) 307–1355 or Rosemary Murphy at (202) 307–2959, National Institute of Justice, 633 Indiana Avenue, NW., Washington, DC 20531.

SUPPLEMENTARY INFORMATION: The following supplementary information is provided:

Authority: This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, sections 201–03, as amended, 42 U.S.C. 3721–23 (1988).

Background

The National Institute of Justice is soliciting proposals to conduct an assessment of school-based prevention programs. Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of ''NIJ Requests Proposals to Assess School-based Prevention Programs'' (refer to document No. SL000129). The solicitation is available electronically via the NCJRS Bulletin Board, which can be accessed via Internet. Telnet to ncjrsbbs.aspensys.com, or gopher to ncjrs.aspensys.com 71. Those without Internet access can dial the NCJRS Bulletin Board via modem: dial 301–738–8895. Set modem at 9600 baud, 8–N–1.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 95–17040 Filed 7–11–95; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting Notice

Pursuant to the provisions of the Federal Advisory Committee Act (P.L. 92–463 as amended), notice is hereby given of a meeting of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

DATE, TIME AND PLACE: July 27, 1995, 10 a.m.–12 noon, U.S. Department of Labor, Room S–1011, 200 Constitution Ave., NW., Washington, DC 20210.

PURPOSE: The meeting will include a review and discussion of current issues which influence U.S. trade policy. Potential U.S. negotiating objectives and bargaining positions in current and anticipated trade negotiations will be discussed. Pursuant to section 9(B) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(9)(B) it has been determined that the meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions. Accordingly, the meeting will be closed to the public.

FOR FURTHER INFORMATION CONTACT: Fernand Lavallee, Director, Trade Advisory Group, Phone: (202) 219–4752.

Signed at Washington, DC, this 5th day of July 1995.

Joaquin Otero,

Deputy Under Secretary, International Affairs.

[FR Doc. 95–17082 Filed 7–11–95; 8:45 am]

BILLING CODE 4510–28–M

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

July 6, 1995.

The Department of Labor has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act (44 U.S.C. Chapter 35) of 1980, as amended (Pub. L. 96–511). Copies may be obtained by calling the Department of Labor Acting Departmental Clearance Officer, Theresa M. O'Malley ((202) 219–5095). Comments and questions about the ICRs listed below should be directed to Ms. O'Malley, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OAW/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 10325, Washington, DC 20503 ((202) 395–7316).

Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219–4720 between 1 p.m. and 4 p.m. Eastern time, Monday through Friday.

Type of Review: Reinstatement.

Title: Job Corps Placement and Assistance Record.

OMB Number: 1205–0035.

Frequency: On occasion.

Affected Public: State, Local or Tribal Governments; business or other for-profit.

Number of Respondents: 60,000.

Estimated Time Per Respondent: 41.7.

Total Burden Hours: 25,020.

Description: This information is used in evaluating overall program effectiveness. It provides placement agencies with basic information regarding terminated students and provides the Department of Labor with information on the status of students subsequent to termination from the program.

Type of Review: New.

Agency: Pension Welfare Benefits Administration.

Title: Class Exemption 94–71—Grant of Class Exemption to Permit Certain Transactions Authorized Pursuant to Settlement Agreements Between the U.S. Department of Labor and Plans.

OMB Number: 1210–0 new.

Frequency: On occasion.

Affected Public: Business and other for-profit.

Number of Respondents: 10.

Estimated Time Per Respondent: 101 hours.

Total Burden Hours: 1010.

Description: This class exemption applies to prospective transactions involving employee benefit plans where such transactions are specifically authorized by the Department pursuant to a settlement agreement.

Type of Review: New.

Agency: Employment Standards Administration.

Title: 29 CFR Part 9—Executive Order 12933 of October 20, 1994;

''Nondisplacement of Qualified Workers Under Certain Contracts''.

OMB Number: 1215–0 new.

Frequency: On occasion.

Affected Public: Individuals of households; business or other for-profit; Federal Government.

Number of Respondents: 36.

Estimated Time per Respondent: 15 minutes.

Total Burden Hours: 1 hour (NPRM); proposed 9 hours.

Description: ESA has proposed Regulations, 29 CFR Part 9, which will require that a contractor subject to the Executive Order maintain copies of any written offers of employment documentation.

Cheryl Ann Robinson,

Acting Department Clearance Officer.

[FR Doc. 95–17083 Filed 7–11–95; 8:45 am]

BILLING CODE 4510–27–M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 95–60; Application Number D–09662]

Class Exemption for Certain Transactions Involving Insurance Company General Accounts

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of class exemption.

SUMMARY: This document contains a final exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and from certain taxes imposed by the Internal Revenue Code of 1986 (the Code). The exemption permits prospectively and retroactively to January 1, 1975, certain transactions engaged in by insurance company general accounts in which an employee benefit plan has an interest, if certain specified conditions are met. Additional exemptive relief is provided for plans to engage in transactions with persons who provide services to insurance company general accounts. The exemption also permits transactions relating to the origination and operation of certain asset pool investment trusts in which a general account has an interest as a result of the acquisition of certificates issued by the trust. The exemption affects participants and beneficiaries of employee benefit plans, insurance company general accounts, and other persons engaging in the described transactions.

EFFECTIVE DATE: The effective date of the exemption is January 1, 1975.

FOR FURTHER INFORMATION CONTACT: Lyssa Hall, Pension and Welfare Benefits Administration, Office of Exemption Determinations, U.S. Department of Labor, Washington, DC 20210, (202) 219–8971 (not a toll-free number) or Timothy Hauser, Plan Benefits Security Division, Office of the Solicitor, (202) 219–8637 (not a toll-free number).

SUPPLEMENTARY INFORMATION: Exemptive relief for the transactions described herein, as well as for other transactions not covered by the proposed exemption, was requested in an application dated March 25, 1994, submitted by the American Council of Life Insurance (the ACLI) pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR section 2570 subpart B (55 FR 32836 August 10, 1990). In addition, the Department proposed additional relief on its own motion pursuant to the authority described above.

On August 22, 1994, the Department published a notice in the **Federal Register** (59 FR 43134) of the pendency of a proposed class exemption from certain restrictions of sections 406 and 407 of ERISA and from certain taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1) of the Code.[1] The notice of pendency invited all interested persons to submit written comments concerning the proposed class exemption by October 21, 1994. The Department received fifteen public comments. Upon consideration of all of the comments received, the Department has determined to grant the proposed class exemption, subject to certain modifications. These modifications and the major comments are discussed below.

Discussion of Comments

A. General Exemption

The proposed general exemption provided relief from the restrictions of sections 406(a) and 407(a) for:

(1) Any transaction between a party in interest with respect to a plan and an insurance company general account, in which the plan has an interest as a contractholder; (2) any acquisition or holding by the general account of employer securities or employer real property; and (3) any acquisition or holding of qualifying employer securities or qualifying employer real property by a plan (other than through an insurance company general account) if the acquisition or holding contravenes the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407(a) of ERISA solely by reason of being aggregated with employer securities or employer real property held by an insurance company general account. The above exemptions are subject to the requirement that the plan's participation in the general account, as measured by the amount of the reserves arising from the contract held by the plan (determined under section 807(d) of the Code), does not exceed 10% of all liabilities of the general account.

Several commenters expressed concern regarding imposition of the 10% limitation. The commenters objected to the retroactive application of this requirement stating that it was unfair in light of the industry's prior reliance on the Department's interpretive guidance in IB 75–2 (29 CFR 2509.75–2). A commenter noted that, for many general account transactions, there will be no way of determining whether any particular condition has been met and, therefore, whether exemptive relief is available. Other commenters objected to the prospective application of the 10% limitation and suggested that, if not deleted by the Department, the percentage requirement should be raised to no less than 20 percent. One of the commenters suggested eliminating the percentage limitation if the insurance company satisfied other objective financial standards (e.g., a minimum capitalization or ratings requirement or standards similar to those used to determine ''qualified professional asset manager'' status in PTE 84–14.) In general, the commenters represented that it is unlikely that many insurance companies would fail to satisfy the 10% limitation. Nevertheless, the commenters stated that this limitation will add numerous steps to the compliance process for insurance companies and third parties. One commenter represented that, since the *Harris Trust* decision, securities transactions have been significantly impeded by the inability of many insurance companies to provide factual information concerning the level of beneficial ownership of general account assets held by plans. Finally, commenters represented that there has been no evidence of abuse involving third parties and insurance company general accounts.

The Department continues to believe that a limitation on the amount of

[1] Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 Fed. Reg. 1063, January 3, 1978), generally transferred the authority of the Secretary of the Treasury to issue exemptions under section 4975(c)(2) of the Code to the Secretary of Labor. In the discussion of the exemption, references to sections 406 and 408 of the Act should be read to refer as well to the corresponding provisions of section 4975 of the Code.

business that a plan provides to an entity is necessary to reduce the risk that the plan would be in a position to improperly influence the investment decisions of the entity. Moreover, in light of the commenters' belief that the 10% limitation is unlikely to be exceeded, the Department is not persuaded by the arguments in favor of prospective modification of the 10% limitation. Accordingly, after consideration of the comments, the Department has determined not to revise the 10% limitation for transactions occurring after the date of publication of the grant of this exemption. In response to the comment regarding adoption of financial standards in place of the percentage limitation, the Department does not believe that the commenter's suggested alternative would adequately address the Department's concern with respect to the exercise of undue influence upon the insurance company's decision making processes. Therefore, the Department has determined not to adopt the commenter's suggestion.

With respect to the retroactive application of the 10% limitation, the Department believes that the arguments presented by the commenters have merit and has determined to modify the proposed exemption as requested. Therefore, the Department has deleted the percentage limitation for transactions occurring prior to the date of publication of the grant of this exemption.

A commenter recommended that, for purposes of determining compliance with the percentage limitation, if the percentage limitation requirement is met any time during the calendar year, the requirement should be deemed satisfied for the entire year. The Department believes that testing as of each transaction assures consistent treatment of all plan contractholders and provides for a more accurate characterization of the degree of a plan's interest in the general account at a given time. Accordingly, the Department has determined not to revise this condition as requested.

Two commenters requested that the Department modify the definition of reserves referenced in section I of the exemption. In this regard, the proposed exemption provides that the 10% limitation is to be measured based upon the amount of reserves arising from the contract(s) held by the plan, as determined under section 807(d) of the Code. The commenters urged the Department to modify this provision to provide that the percentage limitation be calculated based on general account reserves and liabilities required to be set forth in the annual statement for life insurance companies approved by the National Association of Insurance Commissioners (NAIC). The ACLI represents that the NAIC definition of reserves and liabilities is a more appropriate measure than the definition of reserves in section 807(d) of the Code because it is a broader definition of insurance company obligations. According to the ACLI, some general account contracts held by ERISA plans, e.g., guaranteed interest contracts (GICs) and other forms of funding arrangements without annuity purchase rate options, do not have section 807(d) reserves associated with them. These contracts would be included in the NAIC Annual Statement as separate liabilities and would be captured in the ACLI's suggested definition. In addition, the ACLI believes that it will be easier for insurers to identify the appropriate reserve and liability numbers using the NAIC definition and, therefore, easier to comply with this condition. Lastly, the ACLI notes that all states require that insurers use the form published by the NAIC.

The ACLI also states that it does not believe that the Department intended to include separate account liabilities associated with a contract held by an employee benefit plan as part of either the numerator or denominator of the 10% test, and requests that the final exemption clarify that liabilities associated with separate accounts are not included under the 10% test.

Finally, the ACLI recommends that surplus be included in the denominator of the calculation. The commenter states that surplus is the excess of assets over liabilities and represents additional amounts that could be made available to cover contract liabilities. The ACLI asserts that, under the proposed the 10% test, the Department actually rewards companies that have significant liabilities in relation to surplus and penalizes companies that have lower levels of liabilities relative to surplus. The commenter provides the following example as an illustration of this problem:

Company A. Assume Company A has an ERISA contractholder for which $7.5 million in reserves are held. Company A also has $50 million of total liabilities and $50 million of surplus. Company A would not satisfy the proposed 10% test ($7.5/$50=15%).

Company B. Assume Company B has the same level of general account reserves attributable to an ERISA contractholder ($7.5 million). However, Company B has $75 million of total liabilities and only $25 million of surplus. Company B would meet the test ($7.5/$75=10%).

According to the ACLI, the rule as structured permits parties in interest to make greater investments in and, presumably, to wield more influence over, financially weaker companies. Therefore, the ACLI believes that it makes more sense to measure reserves and liabilities of ERISA general account contracts against total general account liabilities and surplus.

The ACLI suggests that the percentage limitation should be calculated by

(a) adding—

(i) the amount of the reserves and liabilities set forth in the annual statement for life insurance companies approved by the National Association of Insurance Commissioners for the general account contract(s) held by or on behalf of the plan, to

(ii) the amount of the reserves and liabilities set forth in the annual statement for life insurance companies approved by the National Association of Insurance Commissioners for the general account contract(s) held by or on behalf of any other plans maintained by the same employer or affiliate thereof, and

(b) dividing by the total reserves and liabilities of the general account (exclusive of separate account liabilities) plus surplus set forth in the annual statement for life insurance companies approved by the National Association of Insurance Commissioners.

The Department finds merit in this comment and has modified the definition of reserves accordingly.[2] However, the Department has determined that it would be appropriate in calculating the percentage limitation to include in the numerator and denominator those reserves and liabilities associated with plan contracts that have been ceded by the insurance company to other insurance companies on a coinsurance basis.

The Department also concurs with the ACLI's suggestion to include surplus as set forth in the annual statement for life insurance companies approved by the NAIC in the denominator of the 10% test. Finally, the Department has modified the final exemption to clarify that liabilities associated with insurance company separate accounts are not included in the calculation of the 10% test.

A commenter noted that the language, ''in which the plan has an interest as a contractholder, * * *'' under section I(a) is too restrictive and may exclude

[2] The Department notes that the definition of reserves, as modified pursuant to the ACLI's recommendation, also applies to transactions described in section I(b) of the exemption.

certain general account transactions that should be covered by the exemption. For example, according to the commenter, the language in the proposal may not provide relief with respect to certain plans that have an interest in the general account because the plans are funded with general account contracts, i.e., individual or group annuity contracts, owned by the trustee of a trust. The commenter suggests that the exemption provide relief for transactions with the general account under circumstances in which the plan has an interest in contracts issued under any employer's plan, which is subject to title I of ERISA, and which are funded through the general account. This would include contracts under which the plan trustee is designated as the contractholder under the contract. The Department did not intend to exclude from relief transactions involving a general account in which a plan has an interest as the beneficial owner of a general account contract. The Department concurs with this comment and has modified section I of the exemption accordingly.

Several commenters requested that the Department expand section I of the proposal to include relief from section 406(b)(2) of ERISA. According to the commenters, section I is substantially similar to PTE 90–1 (55 FR 2891 (January 29, 1990) and PTE 91–38 (56 FR 31966 (July 12, 1991)) with the exception of not providing relief from section 406(b)(2) of ERISA. One of the commenters provided an example of a transaction that they believed would create a situation in which a violation of section 406(b)(2) would occur for which no relief would be available under the exemption. In the example provided by the commenter, ABC Commercial Bank serves as the investment manager of the equity investment portfolio of the XYZ Company Pension Trust. Certain of the benefits due under the XYZ Pension Trust are provided under a participating annuity contract with PDQ Insurance Company. ABC decides to securitize its student loan portfolio by placing those loans in a trust, selling participation interests in the trust, and continuing to service the student loans. The commenter asserts that, if PDQ Insurance Company purchases participation interests in such trust in the initial offering for its general account, ABC Bank, as seller, would technically be in violation of section 406(b)(2) of ERISA. As the Department explained in Advisory Opinion 79–72A [October 10, 1979], a fiduciary may avoid engaging in an act described in sections 406(b)(1) or 406(b)(2), absent any arrangement, agreement, or understanding with respect to a proposed transaction in which he or she may have an interest, by removing himself or herself from all consideration by the plan of whether or not to enter into the proposed transaction and by not otherwise exercising, with respect to the proposed transaction, any of the authority, control, or responsibility that makes him or her a fiduciary.

Since the example does not suggest that ABC Commercial Bank exercises any discretionary authority or control with respect to the transaction on behalf of the XYZ Pension Trust or PDQ Insurance Company, the Department does not believe that any issues are raised under section 406(b)(2) of ERISA. Thus, the Department is not persuaded by the arguments in favor of expanding the scope of section I of the exemption to provide relief from section 406(b)(2) of ERISA. However, upon further demonstration that this is a realistic concern, the Department would be prepared to consider further relief, if appropriate under the circumstances.

Several commenters requested that the Department modify section I of the exemption to provide relief from section 406(b) of ERISA for transactions involving affiliates and subsidiaries of the insurance company. According to the comments, affiliate transactions are regulated carefully under state and federal law to ensure that they are conducted on reasonable terms. Specifically, the commenters note that state insurance law requires that transactions between affiliates and subsidiaries be conducted on fair and reasonable terms, disclosed to the state insurance commissioner, and, under some circumstances, submitted in advance for approval to the state insurance commissioner. Moreover, the commenters state that the Code requires that transactions among affiliates be reflected on an arm's-length basis for tax purposes.

The Department notes that this request was initially included as part of the ACLI's application for exemption. As noted in the proposal, the Department did not believe that it had sufficient information regarding the operation of insurance companies to make the findings required by section 408(a) of ERISA. In a May 20, 1994 letter to the ACLI, the Department posed 72 questions to the insurance industry that were designed to provide the Department with the information needed to determine whether relief could be provided for transactions involving the internal operations of general accounts, as well as for transactions between a general account and an insurance company affiliate or subsidiary. The Department continues to believe that it is appropriate to consider affiliate transactions as part of its review of the information provided by the ACLI regarding the internal operation of general accounts. Moreover, the Department notes that it did not propose relief from section 406(b) of ERISA for affiliate transactions at the time the class exemption was proposed, and pursuant to the requirements of section 408(a) of ERISA, the Department is required to offer interested persons an opportunity for a hearing before granting an exemption from section 406(b). Accordingly, the Department does not believe that it would be appropriate to modify the exemption at this time.

Another commenter was concerned that the proposed exemption in section I(a) is too broad, especially with regard to the acquisition and holding of employer securities and employer real property. The commenter argued that the exemption could invite abuses if an insurance company general account were able to purchase a significant amount of employer stock, especially if the employer is a small company. The commenter recommended that the following limitations be incorporated into the final exemption:

(1) The number of shares of employer securities or the amount of employer real property acquired or held by the insurance company general account is *de minimis* in comparison to the number of shares of employer securities issued and outstanding or the total amount of employer real property;

(2) The acquisition or holding by the insurance company general account is accomplished through a mutual fund or portfolio investment;

(3) With respect to acquisition or holding of employer securities by an insurance company general account, the insurance company retains an independent fiduciary to vote the stock (and the independent fiduciary remains independent throughout the time the general account holds the employer securities); and

(4) No employee or member of the board of directors of the insurance company is also a member of the board of directors of the employer whose securities or real property is acquired or held by the insurance company general account.

The Department does not believe that the commenter has made a sufficient showing that the conditions currently contained in the proposed exemption would not adequately protect employee benefit plans investing in insurance

company general accounts. In this regard, the Department notes that section IV(b) of the proposal provides that no relief is available under the exemption if the transaction is part of an agreement, arrangement, or understanding designed to benefit a party in interest. Therefore, the Department has determined not to accept this suggestion.

B. Specific Exemptions

Section II of the proposed exemption is divided into two subparts. Section II(a) would permit transactions involving persons who are parties in interest to a plan solely by reason of providing services to an insurance company general account in which the plan has an interest as a contractholder. Section II(b) would permit the furnishing of services, facilities, and any goods incidental to such services and facilities by a place of public accommodation owned by an insurance company general account to parties in interest if the services, facilities, and incidental goods are furnished on a comparable basis to the general public.

One commenter requested that the Department expand section II(a) to include persons who are parties in interest by reason of a relationship to a service provider described in section 3(14)(E) of ERISA. Another commenter suggested that broad relief be provided for transactions between a general account and persons who are parties in interest to a plan by reason of providing services to the plan.

Section 3(14)(E) of ERISA describes the circumstances under which a person will be a party in interest with respect to a plan by reason of a relationship to a sponsoring employer or an employee organization whose members are covered by a plan. The definition of party in interest under section 3(14)(E) does not involve a relationship to a service provider. Since the commenter provided no rationale as to why the relief should be extended to parties in interest by virtue of a relationship to the plan sponsor or participating employee organization, the Department has determined not to modify the exemption based on this comment.

The Department notes that section II(a) of the proposed exemption was intended to provide broad relief only for those service providers whose relationship to a plan arises as a result of providing services to an insurance company general account in which the plan has an interest as a contractholder. In response to the comment requesting broad relief for general account transactions with service providers to plans, the Department continues to believe that compliance with the prospective percentage limitation will not be difficult in light of the size of most general accounts. Accordingly, the Department is of the view that section I(a) of the exemption provides appropriate relief for any transaction involving a party in interest who is a service provider to a plan. Therefore, the Department cannot conclude that further relief is warranted.

C. Asset Pool Investment Trusts

Section III of the proposed exemption provided relief from sections 406(a), 406(b), and 407(a) of ERISA for the operation of asset pool investment trusts in which the insurance general account has an interest as a result of the acquisition of subordinated certificates. The proposal requires that the conditions of either PTE 83–1 (48 FR 895, January 7, 1983) or an applicable Underwriter Exemption be met other than the requirements that the certificates acquired by the general account not be subordinated and receive a rating that is in one of the three highest generic rating categories from an independent rating agency. In addition, the Department proposed relief for the operation of such trusts where a plan acquired subordinated certificates in a transaction that was not prohibited or otherwise satisfied the conditions of PTE 75–1.

A commenter urged the Department to clarify the condition under section III of the exemption which requires that the underlying assets of a trust include plan assets under section 2510.3–101(f) of the plan assets regulation with respect to the class of certificates acquired by the plan as a result of an insurance company general account investment in such class of certificates. According to the commenter, this exemption is of limited value because it only provides relief to the extent that a plan invests in the same class of securities as an insurance company general account. The commenter was concerned that the exemption would not be available for the operation of an asset pool investment trust where a general account investment results in benefit plan investors owning 25% or more of a different class of securities backed by the same pool of assets as the class of securities owned by a plan.

The Department did not intend to exclude the situation described by the commenter from the scope of relief provided by section III of the exemption. The Department has accepted this comment and modified the final exemption.

Several commenters requested that the Department expand the relief provided in section III of the proposed exemption to include other fixed investments and entities not covered by PTE 83–1 or the ''Underwriter Exemptions''. According to the commenters, other types of passive investment trusts that hold assets not specified in PTE 83–1 or the Underwriter Exemptions have been developed by the financial community to facilitate the provision of credit. General accounts have invested in every type of securities product collateralized by assets, including credit card receivables, trade receivables, accounts receivables, ''repackaged'' securities and other unsecured consumer and commercial loans, as well as swap contracts, foreign securities, and notional principal contracts.

The commenters represent that insurance company general accounts have comprised a significant and growing portion of the market for asset backed securities with current estimates indicating that life insurance companies comprise over 8% of the investors in collateralized asset pools. The commenters further assert that it is unfair to condition retroactive relief under section III of the proposed exemption upon compliance with the conditions set forth in PTE 83–1 or the Underwriter Exemptions due to the financial community's reliance on IB 75–2 prior to the *Harris Trust* decision.

One of the commenters argued that trusts which are non- qualifying trusts by reason of holding non-qualifying assets or by failing to satisfy other requirements of PTE 83–1 or the Underwriter Exemptions, but that are substantially similar to the fixed investment vehicles described in these exemptions, should be entitled to exemptive relief. The commenter suggests that section III of the exemption be modified as follows:

1. For Qualifying and Non-Qualifying Trusts and other fixed investment vehicles that were formed prior to a specified date (*e.g.*, 30 days after the publication date of the Proposed Exemption in final form in the **Federal Register**), the Department should reaffirm that IB 75–2 provides unconditional relief from the provisions of sections 406 and 407 of ERISA and section 4975 of the Code for transactions in connection with the servicing, management and operation of the entity. This relief would apply to investments made by General Accounts or plans in such investment vehicles before or after such effective date.

2. For investments in passive investment vehicles formed after such date, the Department should add as a condition of section III(2), a new

paragraph 2(C), providing that the entity in question need not satisfy the insurance/protection against loss requirement of PTE 83–1 or the qualifying assets test of the applicable Underwriter Exemption.

3. In addition, the Department should consider providing that the same rules would apply to fixed investment vehicles that fail to qualify under the Underwriter Exemptions solely by reason of not being organized as trusts under applicable local law.

The Department notes that the relief contained in section III was proposed by the Department on its own motion based on specific information received subsequent to the filing of the ACLI exemption application. The commenter specifically focused on the impact of the *Harris Trust* decision on certain asset pool investment trusts that were previously the subject of exemptive relief by the Department. The Department's ability to propose exemptive relief under section III of the exemption was based, in part, upon the record developed during its prior consideration of PTE 83–1 and the Underwriter Exemptions. After reviewing the comments and suggestions submitted, the Department recognizes that there may be a need for additional exemptive relief for investment trusts not described in the proposed exemption. However, the Department does not believe that it has sufficient information regarding the structure and operation of such trusts and the assets contained therein to make the findings necessary to grant further exemptive relief. Accordingly, the Department has determined not to adopt the alternatives suggested by the commenters. Of course, the Department would be prepared to consider proposing additional relief upon proper demonstration that the findings can be made under section 408(a) with respect to other investment entities not described in the proposal. Lastly, the Department notes that the broad retroactive relief provided under section I of the exemption would include relief for purchases and sales of certificates in entities that are not described in PTE 83–1 or the Underwriter Exemptions.

On its own motion, the Department has determined to extend the relief provided in section II(a) of the exemption to persons who are deemed to be parties in interest (including fiduciaries) with respect to a plan as a result of providing services to a plan (or as a result of a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H), or (I) of the Code) solely because of the plan's ownership of certificates issued by a trust that satisfies the requirements described in section III(a) of the exemption. For purposes of clarity, the Department has added a new subsection III(b) to the final exemption in this regard.

D. Additional Transactions

In its exemption application, the ACLI requested relief for certain transactions that may be viewed as being prohibited under the Supreme Court's analysis in *Harris Trust* merely as a result of a plan's purchase of a participating general account contract. The significant participation test contained in the plan asset regulation (section 2510.3–101) is a ''safe harbor'' provision that provides that the assets of an entity will be considered to include plan assets only if equity participation by ''benefit plan investors'' is ''significant.'' The ACLI represented that, under regulation section 2510.3–101(f)(2), an insurance company investing general account assets in an entity could be viewed as a benefit plan investor for the purposes of calculating the 25 percent significant participation test. As a result, transactions between the entity and a party in interest to a plan with an interest in the general account could be prohibited under section 406 of ERISA.

The Department noted in the preamble to the proposed exemption (59 FR 43137) that it did not have sufficient information regarding the effect of the *Harris Trust* decision on entities that conducted their business operations in accordance with the significant participation exception contained in the plan asset regulation. Specifically, while the ACLI application generally identified the potential effect of the *Harris Trust* decision on such entities, the application provides no specific information, either from affected entities themselves or other independent sources concerning the makeup of such entities, a description of the transactions for which exemptive relief is necessary, or the standards and safeguards upon which exemptive relief for such transactions should be conditioned.

In this regard, the Department invited interested persons to submit written comments to be considered in deciding whether to propose additional exemptive relief. In response to that notice, two commenters provided general information regarding transactions engaged in the ordinary course of an insurance company's business that would not be covered by the proposed exemption or existing exemptions. The comments briefly described the entities involved but did not provide any specifics on the standards or safeguards upon which exemptive relief for such entities should be conditioned. One commenter described the hardships and costs that would result for plans if relief is not provided for these transactions. In addition, the comments previously discussed with respect to Part III of the proposed exemption regarding extending the relief proposed therein to entities not covered by PTE 83–1 or the Underwriter Exemptions, also failed to describe the nature of the protections afforded to plans investing in such entities.

After reviewing the comments submitted, the Department is persuaded that additional exemptive relief may be needed for certain transactions and entities which are not covered by the proposed class exemption. However, the record is insufficient for the Department to clearly define the types of investment trusts and other entities that would comprise the class covered by such relief. Moreover, in order to propose relief for the transactions and entities described, the Department must be able to make the requisite findings necessary under section 408(a) of ERISA. While the commenters have identified their need for exemptive relief, the Department does not believe that they have identified conditions that would adequately protect the employee benefit plan investors if further relief is granted. Accordingly, the Department urges interested persons to submit more detailed information in order to more fully develop a record for the Department's consideration.

E. Conditions

Section IV of the proposed exemption contained the following three conditions which are applicable to transactions described in Sections I and II:

(a) At the time the transaction is entered into, and at the time of any subsequent renewal thereof that requires the consent of the insurance company, the terms of the transaction are at least as favorable to the insurance company general account as the terms generally available in arm's length transactions between unrelated parties;

(b) The transaction is not part of an agreement, arrangement, or understanding designed to benefit a party in interest; and

(c) The party in interest is not the insurance company, any pooled separate account of the insurance company, or an affiliate of the insurance company.

In general, commenters stated that it is unfair to apply the conditions retroactively. Several commenters

specifically objected to the condition stated in section IV(b) and suggested that it should be deleted or clarified. The commenters asserted that this condition could be interpreted to preclude a party in interest from receiving any benefit from a transaction with a general account since virtually every agreement, arrangement, or understanding is designed to benefit all parties thereto. One commenter suggested that the Department clarify section IV(b) by noting that its purpose is to keep a party in interest from benefiting from a ''side deal.''

The Department agrees that under most circumstances parties will not enter into agreements in the normal course of business unless each gains or benefits from the arrangement. The intent of the condition in section IV(b) was not to deny direct benefits to the other parties to a transaction but, rather, to exclude relief for transactions that are part of a broader overall agreement, arrangement, or understanding designed to benefit parties in interest. The Department has determined not to delete this condition.

F. Definitions

1. Under the proposed exemption, an ''insurance company'' was defined under section V(d) as an insurance company authorized to do business under the laws of more than one state. One commenter suggested that this definition should be modified to include a company qualified to do business in one or more states so that smaller insurance companies that are authorized to do business in only one state will not be disadvantaged. The Department concurs with this suggestion and has modified the definition of an insurance company accordingly.

2. In response to a commenter's request that the Department modify the definition of affiliate in section V(a), the Department notes that the term affiliate is not referenced in section III of the exemption and, thus, no modification is necessary.

3. Since the date of publication of the proposal, three additional Underwriter Exemptions have been granted. The Department is adding PTEs 94–70, 94–73, and 94–84 to the definition of Underwriter Exemption contained in section V(h) of the final exemption.

G. Miscellaneous

1. Two commenters were generally opposed to providing any relief to the insurance industry with respect to the problems created by the *Harris Trust* decision. Several other commenters expressed support for the broad relief requested by the ACLI in its exemption application.

2. One commenter requested a hearing. However, the issues raised by the commenter appear to be outside the scope of the proposed exemption. Specifically, the issues identified by this commenter involve problems with guaranteed investment contracts, the insolvency of insurance companies, and nonpayments by state guaranty funds. The Department has determined that no issues were identified that would require the convening of a hearing and has determined not to hold a public hearing.

3. One commenter raised the question whether a fiduciary adviser can assist more than one client with respect to negotiating general account contracts involving the same insurance company general account. Specifically, the commenter was concerned that a fiduciary consultant helping one client to negotiate a general account contract with an insurance company could be viewed as engaging in a violation of section 406(b)(2) of ERISA under circumstances where the consultant previously assisted other clients in negotiating general account contracts with the same insurance company. The Department notes that this commenter raises issues that are beyond the scope of this exemption proceeding.

4. Another commenter requested that the Department clarify what portion of a general account will be considered to be plan assets when a general account invests in an entity. The commenter also urged the Department to fix the amount that will be so considered as of the date of the general account's investment, regardless of changes in the level of plan investment in the general account over the time of the general account's investment in an entity. In a footnote contained in the preamble to the proposed exemption, the Department noted that, for purposes of calculating the 25% threshold under the significant participation test (29 CFR section 2510.3–101(f)), only the proportion of an insurance company general account's equity investment in the entity that represents plan assets should be taken into account. In this regard, the commenter is concerned that, the 25% test may be satisfied at the time the general account makes its investment, but then failed by virtue of an increase in the general account's assets that constitute plan assets. In the Department's view, a change in the level of plan investment in a general account subsequent to the general account's purchase of an interest in an entity would not, by itself, trigger a determination of significant plan participation. However, it is the Department's further view that a purchase by the general account of an additional interest in the entity subsequent to its initial investment would trigger a determination of significant plan participation. In addition, a new acquisition in the entity by any other investor subsequent to the general account's initial investment would require a new determination of significant plan participation under 29 CFR § 2510.3–101(f).[3] Lastly, the commenter requests that the Department confirm that if, for example, a general account, 10% of whose assets constitute plan assets, makes a $10,000,000 investment in an entity, $1,000,000 of that investment will be considered plan assets. The Department concurs with the example set forth by the commenter.

5. The ACLI disagreed with the Department's characterization of the Supreme Court's holding in *Harris Trust* and requested that the Department modify the preamble to reflect what the ACLI believes to be the proper interpretation of the *Harris Trust* decision. The Department notes that the description of the *Harris Trust* decision in the preamble to the proposed exemption was part of a brief background explanation of what precipitated the ACLI's determination to seek exemptive relief from the Department. It was not the Department's intent to fully address the effect of the *Harris Trust* decision on insurance companies under title I of ERISA. The ACLI's comment raises issues beyond the scope of this exemption proceeding.

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 section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and 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 require, among other things, that a fiduciary discharge his duties respecting the plan solely in the interests 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

[3] In this regard, see Advisory Opinion 89–05 (April 5, 1989) in which the Department addressed other transactions that would constitute an acquisition triggering a determination of significant plan participation.

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) In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code, and based upon the entire record, the Department finds that the exemption is administratively feasible, in the interests of plans and of their participants and beneficiaries and protective of the rights of the participants and beneficiaries;

(3) The exemption is supplemental to, and not in derogation of, any other provisions of the Act and 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 exemption is applicable to a particular transaction only if the transaction satisfies the conditions specified in the class exemption.

Exemption

Accordingly, the following exemption is granted 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, August 10, 1990].

Section I—Basic Exemption. The restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the transactions described below if the applicable conditions set forth in section IV are met.

(a) General Exemption. Any transaction between a party in interest with respect to a plan and an insurance company general account in which the plan has an interest either as a contractholder or as the beneficial owner of a contract, or any acquisition, or holding by the general account of employer securities or employer real property, if at the time of the transaction, acquisition, or holding, the amount of reserves and liabilities for the general account contract(s) held by or on behalf of the plan, as defined by the annual statement for life insurance companies approved by the National Association of Insurance Commissioners (NAIC Annual Statement) together with the amount of the reserves and liabilities for the general account contracts held by or on behalf of any other plans maintained by the same employer (or affiliate thereof as defined in section V(a)(1)) or by the same employee organization, as defined by the NAIC Annual Statement in the general account do not exceed 10% of the total reserves and liabilities of the general account (exclusive of separate account liabilities) plus surplus as set forth in the NAIC Annual Statement filed with the state of domicile of the insurer. For purposes of determining the percentage limitation, the amount of reserves and liabilities for the general account contract(s) held by or on behalf of a plan shall be determined before reduction for credits on account of any reinsurance ceded on a coinsurance basis. Notwithstanding the foregoing, the 10% limitation is only applicable to transactions occurring on or after [insert date of publication of this exemption].

(b) Excess Holdings Exemption for Employee Benefit Plans. Any acquisition or holding of qualifying employer securities or qualifying employer real property by a plan (other than through an insurance company general account), if:

(1) The acquisition or holding contravenes the restrictions of section 406(a)(1)(E), 406(a)(2), and 407(a) of the Act solely by reason of being aggregated with employer securities or employer real property held by an insurance company general account in which the plan has an interest; and

(2) The percentage limitation of paragraph (a) of this section is met.

Section II—Specific Exemptions (a) Transactions with persons who are parties in interest to the plan solely by reason of being certain service providers or certain affiliates of service providers. The restrictions of section 406(a)(1)(A) through (D) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to any transaction to which the above restrictions or taxes would otherwise apply solely because a person is deemed to be a party in interest (including a fiduciary) with respect to a plan as a result of providing services to an insurance company general account in which the plan has an interest either as a contractholder or as the beneficial owner of a contract (or as a result of a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), if the applicable conditions set forth in section IV are met.

(b) Transactions involving place of public accommodation. The restrictions of sections 406(a)(1)(A) through (D), 406(b)(1) and (b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the furnishing of services, facilities, and any goods incidental to such services and facilities by a place of public accommodation owned by an insurance company general account to a party in interest with respect to a plan that has an interest as a contractholder or beneficial owner of a contract in the insurance company general account, if the services, facilities, and incidental goods are furnished on a comparable basis to the general public.

Section III—Specific Exemption for Operation of Asset Pool Investment Trusts. (a) The restrictions of sections 406(a), 406(b), and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c) of the Code shall not apply to transactions in connection with the servicing, management, and operation of a trust in which an insurance company general account has an interest as a result of its acquisition of certificates issued by the trust, provided:

(1) The trust is described in Prohibited Transaction Exemption 83–1 (48 FR 895, January 7, 1983) or in one of the Underwriter Exemptions (as defined in section V(h) below):

(2) The conditions of either PTE 83–1 or the relevant Underwriter Exemption are met, except for the requirements that:

(A) the rights and interests evidenced by the certificates acquired by the general account are not subordinated to the rights and interests evidenced by other certificates of the same trust; and

(B) the certificates acquired by the general account have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P), Moody's Investor's Service, Inc. (Moody's), Duff & Phelp's, Inc. (D&P), or Fitch Investors Service, Inc. (Fitch).

Notwithstanding the foregoing, the exemption shall apply to a transaction described in this section III if: (i) A plan acquired certificates in a transaction that was not prohibited, or otherwise satisfied the conditions of Part II or Part III of PTE 75–1 (40 FR 50845, October 31, 1975); (ii) the underlying assets of a trust include plan assets under section 2510.3–101(f) of the plan assets regulation with respect to the class of certificates acquired by the plan as a result of an insurance company general account investment in any class of certificates; and (iii) the requirements of this section III(a)(1) and (2) are met, except that the words ''acquired by the general account'' in section III(a)(2)(A) and (B) should be construed to mean ''acquired by the plan.''

(b) The restrictions of section 406(a)(1)(A) through (D) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to any transaction to which the above restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest (including a fiduciary) with respect to a plan as a result of providing services to a plan (or as a result of a relationship to such service provider described in section 3(14)(F), (G), (H), or (I) of the Act or section 4975(e)(2)(F), (G), (H), or (I) of the Code) solely because of the plan's ownership of certificates issued by a trust that satisfies the requirements described in section III(a) above.

Section IV—General Conditions. (a) At the time the transaction is entered into, and at the time of any subsequent renewal thereof that requires the consent of the insurance company, the terms of the transaction are at least as favorable to the insurance company general account as the terms generally available in arm's-length transactions between unrelated parties.

(b) The transaction is not part of an agreement, arrangement, or understanding designed to benefit a party in interest.

(c) The party in interest is not the insurance company, any pooled separate account of the insurance company, or an affiliate of the insurance company.

Section V—Definitions. For the purpose of this exemption:

(a) An ''affiliate'' of a person means—

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee (including, in the case of an insurance company, an insurance agent thereof, whether or not the agent is a common law employee of the insurance company), or 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.

(c) The term ''employer securities'' means ''employer securities'' as that term is defined in Act section 407(d)(1), and the term ''employer real property'' means ''employer real property'' as defined in Act section 407(d)(2).

(d) The term ''insurance company'' means an insurance company authorized to do business under the laws of one or more states.

(e) The term ''insurance company general account'' means all of the assets of an insurance company that are not legally segregated and allocated to separate accounts under applicable state law.

(f) The term ''party in interest'' means a person described in Act section 3(14) and includes a ''disqualified person'' as defined in Code section 4975(e)(2).

(g) The term ''relative'' means a ''relative'' as that term is defined in section 3(15) of the Act (or a ''member of the family'' as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or sister.

(h) The term ''Underwriter Exemption'' refers to the following individual Prohibited Transaction Exemptions (PTEs)—

PTE 89–88, 54 FR 42582 (October 17, 1989); PTE 89–89, 54 FR 42569 (October 17, 1989); PTE 89–90, 54 FR 42597 (October 17, 1989); PTE 90–22, 55 FR 20542 (May 17, 1990); PTE 90–23, 55 FR 20545 (May 17, 1990); PTE 90–24, 55 FR 20548 (May 17, 1990); PTE 90–28, 55 FR 21456 (May 24, 1990); PTE 90–29, 55 FR 21459 (May 24, 1990); PTE 90–30, 55 FR 21461 (May 24, 1990); PTE 90–31, 55 FR 23144 (June 6, 1990); PTE 90–32, 55 FR 23147 (June 6, 1990); PTE 90–33, 55 FR 23151 (June 6, 1990); PTE 90–36, 55 FR 25903 (June 25, 1990); PTE 90–39, 55 FR 27713 (July 5, 1990); PTE 90–59, 55 FR 36724 (September 6, 1990); PTE 90–83, 55 FR 50250 (December 5, 1990); PTE 90–84, 55 FR 50252 (December 5, 1990); PTE 90–88, 55 FR 52899 (December 24, 1990); PTE 91–14, 55 FR 48178 (February 22, 1991); PTE 91–22, 56 FR 03277 (April 18, 1991); PTE 91–23, 56 FR 15936 (April 18, 1991); PTE 91–30, 56 FR 22452 (May 15, 1991); PTE 91–39, 56 FR 33473 (July 22, 1991); PTE 91–62, 56 FR 51406 (October 11, 1991); PTE 93–6, 58 FR 07255 (February 5, 1993); PTE 93–31, 58 FR 28620 (May 5, 1993); PTE 93–32, 58 FR 28623 (May 14, 1993); PTE 94–29, 59 FR 14675 (March 29, 1994); PTE 94–64, 59 FR 42312 (August 17, 1994); PTE 94–70, 59 FR 50014 (September 30, 1994); PTE 94–73, 59 FR 51213 (October 7, 1994); PTE 94–84, 59 FR 65400 (December 19, 1994); and any other exemption providing similar relief to the extent that the Department expressly determines, as part of the proceeding to grant such exemption, to include the exemption within this definition.

(i) For purposes of this exemption, the time as of which any transaction, acquisition, or holding occurs is the date upon which the transaction is entered into, the acquisition is made, or the holding commences. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into, or acquisition made, on or after January 1, 1975, or any renewal that requires the consent of the insurance company occurs on or after January 1, 1975, and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, or at the time the acquisition is made, the requirements will continue to be satisfied thereafter with respect to the transaction or acquisition, and the exemption shall apply thereafter to the continued holding of the securities or property so acquired. This exemption also applies to any transaction or acquisition entered into or renewed, or holding commencing prior to January 1, 1975, if either the requirements of this exemption would have been satisfied on the date the transaction was entered into or acquisition was made (or on which the holding commenced), or the requirements would have been satisfied on January 1, 1975, if the transaction had been entered into, the acquisition was made, or the holding had commenced, on January 1, 1975. Notwithstanding the foregoing, this exemption shall cease to apply to a transaction or holding exempt by virtue of section I(a) or section I(b) at such time as the interest of the plan in the insurance company general account exceeds the percentage interest limitation contained in section I(a), unless no portion of such excess results from an increase in the assets allocated to the insurance company general account by the plan. For this purpose, assets allocated do not include the reinvestment of general account earnings. Nothing in this paragraph shall be construed as exempting a transaction entered into by an insurance company general account that becomes a transaction described in section 406 of the Act or section 4975 of the Code while the transaction is continuing, unless the conditions of the exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption.

VI. Effective date. The effective date of this exemption is January 1, 1975.

Signed at Washington, DC this 7th day of July, 1995.

Ivan L. Strasfeld,

Director, Office of Exemption Determinations, U.S. Department of Labor.

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[Prohibited Transaction Exemption 95–56; Exemption Application No. D–09724, et al.]

Grant of Individual Exemptions; Mellon Bank, N.A., and Its Affiliated (Collectively, Mellon), 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, DC. 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.

Mellon Bank, N.A., and Its Affiliates (Collectively, Mellon) Located in Pittsburgh, Pennsylvania

[Prohibited Transaction Exemption 95–56; Application No. D–09724]

Exemption

Section I—Exemption for Cross-Trading Between Certain Accounts

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 (1) the purchase and sale of securities (including the stock of Mellon Bank Corporation (MBC)) between Indexed Accounts, as defined in Section IV(a); and (2) the purchase and sale of securities, including the common stock of MBC, between Indexed Accounts and various large accounts (the Large Accounts) pursuant to portfolio restructuring programs of the Large Accounts; provided that the following conditions and the General Conditions of Section III are met:

(a) The Indexed Account is based on an index which represents the investment performance of a specific segment of the public market for equity or debt securities in the United States and/or foreign countries. The organization creating and maintaining the index must be (1) engaged in the business of providing financial information, evaluation, advice or securities brokerage services to institutional clients, (2) a publisher of financial news or information, or (3) a public stock exchange or association of securities dealers. The index must be created and maintained by an organization independent of Mellon and its affiliates. The index must be a generally accepted standardized index of securities which is not specifically tailored for the use of Mellon or its affiliates.

(b) The price for the securities is set at the current market value for the securities on the date of the transactions. For equity securities, the price shall be the closing price for the security on the day of trading; unless the security was added to or deleted from an index underlying an Indexed Account after the close of trading, in which case the price shall be the opening price for that security on the next business day after the announcement of the addition or deletion. For debt securities, the price shall be the fair market value determined as of the close of the day of trading pursuant to Rule 17a–7(b) issued by the Securities and Exchange Commission under the Investment Company Act of 1940.

(c) The transaction takes place within three business days of the ''triggering event'' giving rise to the cross-trade opportunity. A triggering event is defined as:

(1) A change in the composition or weighting of the index underlying an Indexed Account by the organization creating and maintaining the index;

(2) A change in the overall level of investment in an Indexed Account as a result of investments and withdrawals made on the Account's opening date, where the Indexed Account is a collective investment fund, or on any relevant date, where the Indexed Account is not a collective investment fund; provided, however, that Mellon does not change the level of investment in the Indexed Account through investments or withdrawals of assets of any employee benefit plan maintained by Mellon or its affiliates (the Mellon Plans) other than any Mellon Plan which is a defined contribution plan under which participants direct the investment of their accounts among various investment options, including Indexed Accounts; or

(3) A declaration by Mellon (recorded on Mellon's records) that a ''triggering event'' has occurred, which will be made upon an accumulation of cash in an Indexed Account attributable to interest or dividends on, and/or tender offers for, portfolio securities equal to not more than .5 percent of the Indexed Account's total value.

(d) With respect to any Indexed Account that is model-driven, no cross-trades are engaged in by the Account for 10 business days subsequent to any change made by Mellon to the model underlying the Account.

(e) In the event that the amount of a particular security which all of the Indexed Accounts or Large Accounts propose to sell on a given day is less than the amount of such security which all of the Indexed Accounts or Large Accounts propose to buy, or vice versa, the direct cross-trade opportunity must be allocated by Mellon among potential buyers or sellers of the security on a pro rata basis.

(f) An Indexed Account does not participate in a cross-trade if more than 10 percent of the assets of the Indexed Account at the time of the proposed cross-trade are comprised of assets of Mellon Plans for which Mellon exercises investment discretion.

(g) Prior to any proposed cross-trading by an Indexed Account or a Large Account, Mellon provides to each employee benefit plan invested in the Account information which describes the existence of the cross-trading program, the ''triggering events'' which will create cross-trade opportunities, the pricing mechanism that will be utilized for securities purchased or sold by the Accounts, and the allocation methods and other procedures which will be implemented by Mellon for its cross-trading practices. Any employee benefit plan which subsequently invests in the Indexed Account or Large Account shall be provided the same information prior to or immediately after the plan's initial investment in the Account.

(h) With respect to cross-trade transactions involving a Large Account:

(1) Total assets of the Large Account are in excess of $50 million.

(2) Fiduciaries or other appropriate decisionmakers of the Large Account who are independent of Mellon are, prior to any cross-trade transactions, fully informed of the cross-trade technique and provide advance written approval of the cross-trade transactions.

Such authorization shall be terminable at will by the Large Account upon receipt by Mellon of written notice of termination. A form expressly providing an election to terminate the authorization, with instructions on the use of the form, must be supplied to the authorizing Large Account fiduciary concurrent with the receipt of the written information describing the cross-trading program. The instructions for such form must include the following information:

(i) The authorization is terminable at will by the Large Account, without penalty to the Large Account, upon receipt by Mellon of written notice from the authorizing Large Account fiduciary; and

(ii) Failure to return the termination form will result in the continued authorization of Mellon to engage in cross-trade transactions on behalf of the Large Account.

(3) Within 45 days of the completion of the Large Account's portfolio restructuring program, the Large Account's fiduciaries shall be fully apprised in writing of the transaction results. However, if the program takes longer than three months to complete, interim reports of the transaction results will be made within 30 days of the end of each three month period.

(4) The Large Account transactions occur only in situations where Mellon has been authorized to restructure all or a portion of the Large Account's portfolio into an Indexed Account (including a separate account based on an index or computer model) or to act as a ''trading adviser'' in carrying out a Large Account-initiated liquidation or restructuring of its portfolio.

(i) Mellon receives no additional direct or indirect compensation as a result of any cross-trade transactions.

(j) Mellon does not purchase or sell any debt securities issued by Mellon or an affiliate for the Indexed Accounts.

Section II—Exemption for the Acquisition, Holding and Disposition of MBC Stock

The restrictions of sections 406(a)(1)(D), 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)(D) and (E) of the Code, shall not apply to the acquisition, holding or disposition of the common stock of MBC (the MBC Stock) by Indexed Accounts, if the following conditions and the General Conditions of Section III are met:

(a) The acquisition or disposition of the MBC stock is for the sole purpose of maintaining strict quantitative conformity with the relevant index upon which the Indexed Account is based.

(b) In the event that MBC Stock is added to an index on which an Indexed Account is based or is added to the portfolio of the Indexed Account which tracks an index that includes MBC Stock, all acquisitions necessary to bring the Indexed Account's holdings of MBC Stock to its capitalization weighting in the index, other than cross-trade transactions meeting the conditions of Section I, shall comply with Rule 10b-18 of the Securities and Exchange Commission (SEC) under the Securities Exchange Act of 1934, including the limitations regarding the price paid for such stock.

(c) Subsequent to acquisitions necessary to bring the Indexed Account's holdings of MBC Stock to its capitalization weighting in the index pursuant to the restrictions of SEC Rule 10b–18, all aggregate daily purchases of MBC stock, other than cross-trade purchases meeting the conditions of Section I, shall not constitute more than the greater of: (1) 15 percent of the stock's average daily trading volume for the previous five days; or (2) 15 percent of the stock's trading volume on the date of the transaction.

(d) If the necessary number of shares of MBC stock cannot be acquired within 10 business days from the date of the event which causes the particular Indexed Account to require MBC stock, Mellon shall appoint a fiduciary which is independent of Mellon and its affiliates to design acquisition procedures and monitor Mellon's compliance with such procedures.

(e) All purchases and sales of MBC stock, other than cross-trades meeting the conditions of Section I, shall be executed on the national exchange on which MBC stock is primarily traded.

(f) No transactions shall involve purchases from, or sales to, Mellon or any affiliate, officer, director or employee of Mellon or any party in interest with respect to a plan which has invested in an Indexed Account.[1] This requirement does not preclude purchases and sales of MBC stock in cross-trade transactions meeting the conditions of Section I, provided that the Indexed Accounts are not maintained by Mellon primarily for the investment of assets of Mellon or any affiliate, including officers, directors or employees of Mellon other than in connection with a Mellon Plan.

(g) No more than five (5) percent of the total amount of MBC stock issued and outstanding at any time shall be held in the aggregate by the Indexed Accounts which hold plan assets.

(h) MBC stock shall constitute no more than two (2) percent of the value of any independent third-party index on which the investments of an Indexed Account are based.

(i) A plan fiduciary independent of Mellon authorizes the investment of such plan's assets in an Indexed Account which purchases and/or holds MBC stock.

(j) A fiduciary independent of Mellon and its affiliates shall direct the voting of the MBC stock held by an Indexed Account on any matter in which shareholders of MBC stock are required or permitted to vote.

Section III—General Conditions

(a) Mellon maintains or causes to be maintained for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (b) of this Section to determine whether the conditions of the exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Mellon, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest other than Mellon shall be subject to the civil penalty that may be assessed under section 502(i) of the

[1] The Department notes that ''blind transactions'', in which the identity of the purchaser or seller is not known because the transaction is executed by an independent broker, acting as agent, on a national securities exchange, would not be subject to this requirement.

Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (b) below.

(b)(1) Except as provided in paragraph (b)(2) and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (a) of this Section are available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service,

(B) Any fiduciary of a plan participating in an Indexed Account who has authority to acquire or dispose of the interests of the plan, or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer with respect to any plan participating in an Indexed Account or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any plan participating in an Indexed Account, or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in paragraph (b)(1)(B) through (D) shall be authorized to examine trade secrets of Mellon, any of its affiliates, or commercial or financial information which is privileged or confidential.

Section IV—Definitions

(a) Indexed Account—Any Index Fund or Model-Driven Fund.

(b) Index Fund—Any investment fund, account or portfolio sponsored, maintained, trusteed, or managed by Mellon or an affiliate in which one or more investors invest that is designed to replicate the capitalization-weighted composition of an independently maintained securities index which satisfies the conditions of Section I(a) and Section II(h).

(c) Model-Driven Fund—Any investment fund, account or portfolio sponsored, maintained, trusteed, or managed by Mellon or an affiliate, in which one or more investors invest which is based on computer models using prescribed objective criteria to transform an independently maintained securities index which satisfies the conditions of Section I(a) and Section II(h).

(d) Opening date—The date on which investments in or withdrawals from an Indexed Account that is a collective investment fund may be made.

(e) Large Account—An account of an investor that is either: (1) an employee benefit plan within the meaning of section 3(3) of the Act that has $50 million or more in total assets; or (2) an institutional investor, other than an investment company registered under the Investment Company Act of 1940 (i.e. a mutual fund) advised or sponsored by Mellon, such as an insurance company separate account or general account, a governmental plan, a university endowment fund, a charitable foundation fund, or a trust or other fund which is exempt from taxation under section 501(a) of the Code, that has total assets in excess of $50 million. As noted in Section I(g)(4), a ''Large Account'' shall only be an account to which Mellon has been authorized to restructure all or a portion of the portfolio for such account into an Indexed Account or to which Mellon has been authorized to act as a ''trading adviser'' (as defined below) in connection with a specific liquidation or restructuring program for the account.

(f) Trading adviser—A person whose role is limited to arranging a Large Account-initiated liquidation or restructuring of an equity or debt portfolio within a stated period of time so as to minimize transaction costs. The person must not be a fiduciary with investment discretion for any underlying asset allocation, restructuring or liquidation decisions for the account in connection with such transactions.

(g) Affiliate—Any person, directly or indirectly through one or more intermediaries, controlling, controlled by, or is under common control with Mellon (except Mellon/McMahon Real Estate Advisors, Inc.).

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 17814.

WRITTEN COMMENTS AND MODIFICATIONS: The applicant submitted the following comments and requests for modifications regarding the notice of proposed exemption (the Proposal).

With respect to the heading used in the Proposal, the applicant states that the term ''Mellon'' refers specifically to Mellon Bank, N.A., but not to its affiliates. The applicant notes that in various places throughout the Proposal, the relevant provisions refer to ''Mellon and its affiliates''. However, in numerous other provisions of the Proposal the reference is simply to Mellon which, as designated in the heading, is too narrow since the affiliates should also be covered. The applicant requests that the reference to ''Mellon'' in the heading be changed to include both Mellon Bank, N.A. and its affiliates. The Department concurs with the applicant's requested clarification and has so modified the heading of the Proposal.

With respect to the definition of a ''triggering event'' in Section I(c) of the Proposal, the applicant states that subparagraph (2) limits investments and withdrawals from an Indexed Account to those occurring on a ''regularly scheduled opening date'' for the Indexed Account. The applicant represents that the concept of ''an opening date'', as defined in Section IV(d) of the Proposal, is not applicable to Indexed Accounts that are *not* collective investment funds, such as separate accounts for both employee benefit plans and other institutional clients. Since separate accounts would be encompassed within the definition of an Indexed Account under Section IV(a) of the Proposal, the applicant requests that an appropriate clarification be made. In addition, with respect to the concept of a ''regularly scheduled'' opening date, the applicant represents that the trend for collective investment funds is toward more frequent, and in many cases daily, opening dates. Thus, the applicant requests that the words ''regularly scheduled'' be deleted from Section I(c)(2) of the Proposal.

The Department concurs with the applicant's requested clarifications and has modified the language of Sections I(c)(2) and IV(d) of the Proposal. In this regard, Section I(c)(2) has been modified as follows:

* * * A change in the overall level of investment in an Indexed Account as a result of investments and withdrawals made on the Account's [regularly scheduled] opening date, *where the Indexed Account is a collective investment fund, or on any relevant date, where the Indexed Account is not a collective investment fund* * * *. (emphasis added)

In addition, Section IV(d) has been modified as follows:

* * * Opening date—The [regularly-scheduled] date on which investments in or withdrawals from an Indexed Account *that is a collective investment fund* may be made. (emphasis added)

With respect to the proviso in Section I(c)(2) of the Proposal relating to any Mellon Plans for which Mellon has investment discretion, the applicant states that its understanding of the intent of this proviso is to exclude from the definition of a ''triggering event'' those investments into or withdrawals from an Indexed Account which result from Mellon's exercise of its discretion

for a Mellon Plan. However, the applicant states that this proviso was not intended to cover changes in the level of investment in an Indexed Account which result from investment elections made by individual participants in a Mellon Plan (i.e. a defined contribution plan) that permits such participants to direct the investment of their accounts among various available investment options, including Indexed Accounts. Thus, the applicant maintains that the language of the proviso is too broad in that it would apply to any Mellon Plan as to which Mellon exercises any investment discretion, including discretion for the management of assets which have been allocated to an Indexed Account, even though participants have directed the investment of their assets to such Indexed Accounts. Therefore, the applicant suggests that this proviso be clarified by deleting the phrase ''* * * for which Mellon has investment discretion'' and substituting therefor the following:

* * * other than any Mellon Plan which is a defined contribution plan under which participants direct the investment of their accounts among various investment options, including Indexed Accounts.

The Department concurs with the applicant's requested clarification and has so modified the language of Section I(c)(2) of the Proposal.

With respect to Section II(f) of the Proposal, the applicant states that the first sentence sets forth a requirement that transactions by an Indexed Account involving MBC Stock not be with any affiliate, officer, director or employee of Mellon or any party in interest for any plan which has invested in the Indexed Account. The applicant requests that it be made clear that this limitation does not apply to any transaction on an exchange executed by an independent broker acting as agent, given that such transactions would be considered to be ''blind transactions'' for this purpose.

In this regard, the Department concurs with the applicant's requested clarification and has added a footnote at the end of the first sentence of Section II(f) stating that ''blind transactions'' executed on a national securities exchange by an independent broker will not be subject to the requirements of Section II(f).

Finally, with respect to the definition of ''Large Account'' in Section IV(e) of the Proposal, the applicant states that the definition excludes any investment company registered under the Investment Company Act of 1940 (i.e. any mutual fund). The applicant represents that Mellon had previously agreed to exclude only *affiliated* mutual funds (i.e. mutual funds advised or sponsored by Mellon or an affiliate) from the definition of ''Large Account''. The Department acknowledges this error in the Proposal and concurs with the applicant's clarification. Thus, the Department has modified the language of Section IV(e)(2) of the Proposal by inserting the phrase ''* * * advised or sponsored by Mellon'' following the reference to mutual funds in the definition of ''Large Account''.

No other comments, and no requests for a hearing, were received by the Department during the comment period.

Accordingly, based on the current exemption application file and record, the Department has determined to grant the proposed exemption as modified herein.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

T.J. Lambrecht Construction, Inc.; Employees' Profit Sharing Plan and Trust; Brown & Lambrecht Earthmovers, Inc.; Employees' Profit Sharing Plan and Trust (collectively, the Plans) Located in Joliet, Illinois

[Prohibited Transaction Exemption 95–57; Application Nos. D–09872 and D–09873]

Exemption

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 cash sale (the Sale) by each of the Plans of a 12.5% partnership interest in Prime Industries (the Partnership Interest) to Mr. Thomas J. Lambrecht, a party in interest with respect to the Plans; provided the following conditions are satisfied: (1) The Sale is a one-time transaction for cash; (2) the sale price for each Partnership Interest will be the higher of (a) the fair market value of the Partnership Interest as determined by a qualified independent appraiser at the time of the Sale or, (b) each Plan's total investment in the Partnership Interest ($300,000); and (3) the Plans do not suffer any loss nor incur any expenses in connection with the transaction.

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 May 10, 1995 at 60 FR 24899.

FOR FURTHER INFORMATION CONTACT: Virginia J. Miller of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

Guarantee Mutual Life Company (Guarantee Mutual) Located in Omaha, NE

[Prohibited Transaction Exemption 95–58; Exemption Application No. D–09941]

Exemption

Section I. Covered Transaction

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 the proposed receipt of common stock of The Guarantee Life Companies Inc., or the receipt of cash or policy credits by an eligible policyholder (the Eligible Policyholder) of Guarantee Mutual which is an employee benefit plan (the Plan), other than an Eligible Policyholder which is a plan sponsored by Guarantee Mutual for its own employees, in exchange for the termination of such Eligible Plan Policyholder's membership interest in Guarantee Mutual, in accordance with the terms of a plan of demutualization (the Plan of Conversion or the Conversion Plan) adopted by Guarantee Mutual and implemented pursuant to the Nebraska Insurers Demutualization Act, Nebraska Revised Statutes, Sections 44–6101 through 44–6120.

The exemption is subject to the general conditions set forth below in Section II.

Section II. General Conditions

(a) The Conversion Plan is implemented in accordance with procedural and substantive safeguards that are imposed under Nebraska law and is subject to the review and supervision by the Director of the Department of Insurance of the State of Nebraska (the Director).

(b) The Director reviews the terms of the options that are provided to Eligible Policyholders of Guarantee Mutual, as part of such Director's review of the Conversion Plan, and the Director only approves the Conversion Plan following a determination that such Conversion Plan is fair and equitable to all Eligible Policyholders.

(c) Each Eligible Policyholder has an opportunity to comment on the Conversion Plan and decide whether to vote to approve such Conversion Plan after full written disclosure is given such Eligible Policyholder by Guarantee Mutual, of the terms of the Conversion Plan.

(d) Any election by an Eligible Plan Policyholder to receive stock, cash or policy credits, pursuant to the terms of the Conversion Plan is made by one or more independent fiduciaries of such

Plan and neither Guarantee Mutual nor any of its affiliates exercises any discretion or provides investment advice with respect to such election.

(e) After each Eligible Policyholder entitled to receive stock is allocated at least 10 shares of common stock, additional consideration is allocated to Eligible Policyholders who own participating policies based on actuarial formulas that take into account each participating policy's contribution to the surplus of Guarantee Mutual which formulas have been approved by the Director.

(f) All Eligible Plan Policyholders participate in the transactions on the same basis within their class groupings as other Eligible Policyholders that are not Plans.

(g) No Eligible Policyholder pays any brokerage commissions or fees in connection with their receipt of stock or in connection with the implementation of the commission-free sales program.

(h) All of Guarantee Mutual's policyholder obligations remain in force and are not affected by the Conversion Plan.

Section III. Definitions

For purposes of this proposed exemption:

(a) The term ''Guarantee Mutual'' means Guarantee Mutual Insurance Company and any affiliate of Guarantee Mutual as defined in paragraph (b) of this Section III.

(b) An ''affiliate'' of Guarantee Mutual includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Guarantee Mutual. (For purposes of this paragraph, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(2) Any officer, director or partner in such person, and

(3) Any corporation or partnership of which such person is an officer, director or a 5 percent partner or owner.

(c) The term ''Eligible Policyholder'' means a policyholder who is eligible to vote and to receive consideration in a demutualization. Such policyholder is a policyholder of the mutual insurer on the day the plan of conversion is adopted by the board of directors of the insurer.

(d) The term ''policy credit'' means an increase in accumulation account value (to which no surrender or similar charges are applied) in the general account or an increase in a dividend accumulation on a policy.

Written Comments

The Department received three written comments with respect to the notice of proposed exemption. Two comments were submitted by Plan policyholders of Guarantee Mutual. Of the comments in this category, one was withdrawn. The third comment was submitted by Guarantee Mutual.

Following is a discussion of the Plan policyholder comment that was not withdrawn and the response made by Guarantee Mutual with respect to this comment. Also discussed is the comment that was submitted by Guarantee Mutual and the Department's response to that comment.

Plan Policyholder Comment

The commentator states that he is opposed to the conversion because he does not believe there are adequate safeguards to ensure that management of Guarantee Mutual will not use the demutualization process as an opportunity to further their personal interests. The commentator explains that owners of corporations are no better off than owners of a mutual company in terms of democratic rule over the company. The commentator further asserts that managers should not be permitted to convert or change organizational structures of companies until corporate democratic principles can be guaranteed. Therefore, the commentator does not recommend that the Department approve the proposed exemption.

In response, Guarantee Mutual states that the comment does not address the merits of the proposed transaction. Guarantee Mutual notes that before the Conversion Plan can proceed, it must be approved by the Director of the Nebraska Department of Insurance after a public hearing. According to Guarantee Mutual, the public hearing was held on April 13, 1995 and June 12, 1995 in Lincoln, Nebraska. Notice of the hearing was mailed to each Eligible Policyholder and published in the Omaha World-Herald, the Lincoln Journal-Star and the Omaha Daily Record.

Guarantee Mutual points out that the next step of the Conversion Plan is for the Director to approve such Plan and find that (a) the Conversion Plan is fair and equitable to policyholders, (b) the Conversion Plan does not deprive policyholders of property rights or due process of law and (c) the new stock insurer would meet the minimum requirements to be issued a certificate of authority by the Director to transact business in Nebraska and the continued operations of the new stock insurer would not be hazardous to future policyholders and the public. Guarantee Mutual notes that the Director will continue to monitor the demutualization through the effective date of the conversion and, with respect to other matters, after the effective date. In addition, Guarantee Mutual points out that Nebraska law requires that two-thirds of voting Eligible Policyholders vote for the adoption of the Conversion Plan before the demutualization can occur.

With respect to the commentator, Guarantee Mutual explains that he, along with other Eligible Policyholders, was mailed a notice of the public hearing and has been afforded the opportunity to express his views to the Director either in writing or at the public hearing. Guarantee Mutual also explains that the commentator will be given the opportunity to vote for or against the Conversion Plan. Accordingly, Guarantee Mutual believes that the commentator is being offered all of the procedural safeguards inherent in the Nebraska conversion statute and that the comment should not affect the Department's granting of the exemption.

Guarantee Mutual's Comment

Guarantee Mutual's comment is intended to clarify information contained in a footnote to the Summary of Facts and Representations of the proposed exemption. In this regard, Footnote 16 of the Notice states, in pertinent part, that prior to the public hearing, Guarantee Mutual

> * * * will provide each Eligible Policyholder with a summary of the Conversion Plan, a notice of the public hearing and a more detailed policyholder information statement.

Guarantee Mutual notes, however, that the Director will first conduct the public hearing, and later, if the Director makes an initial determination to approve Guarantee Mutual's application, a policyholder vote will take place. Guarantee Mutual explains that Eligible Policyholders will receive the more detailed policyholder statement before the vote, but not before the hearing. Therefore, Guarantee Mutual requests that Footnote 16 be modified to read as follows:

> Guarantee Mutual also represents that prior to the public hearing, it will provide each Eligible Policyholder with a summary of the Conversion Plan and a notice of the public hearing and that *prior to the policyholder meeting and vote*, it will provide each Eligible Policyholder with a more detailed policyholder information statement.

In addition, Guarantee Mutual requests certain modifications in

references to Guarantee Mutual and The Guarantee Life Companies Inc. In this regard, Guarantee Mutual notes that Representations 10 (c), (d) and (h) of the Summary of Facts and Representations refer to ''State Mutual'' but not to ''Guarantee Mutual.'' Therefore, Guarantee Mutual requests that these references be corrected. Further, Guarantee Mutual explains that the reference to ''The Guarantee Companies, Inc.'' in Section I of the proposed exemption should be modified by deleting the comma after the word ''Companies.''

Finally, it is noted that Guarantee Mutual did not comply with the notice to interested persons requirement within the time frame stated in the exemption application. By letter dated May 25, 1995, Guarantee Mutual certifies that it extended the comment period until June 5, 1995 by mailing postcards to the same group of Eligible Policyholders it had previously notified of the proposed exemption. Other than the two comments that were submitted by the Plan policyholders of Guarantee Mutual and the comment submitted by Guarantee Mutual, no additional comments were received by the Department.

The Department does not object to any of the clarifications or modifications to the proposed exemption. After giving full consideration to the entire record, including the written comments that were submitted, the Department has decided to grant the exemption as described and revised above. The comment letters have been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

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 14, 1995 at 60 FR 19096.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Rothschild, Incorporated (Rothschild) Located in New York, New York

[Prohibited Transaction Exemption 95–59; Exemption Application No. D–09993]

Exemption

I. Transactions

A. The restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A.(1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[2]

B. The restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) the plan is not an Excluded Plan;

(ii) solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) a plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[3] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1)(i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B.(1) or (2).

C. The restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, provided:

(1) such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) the pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.[4]

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[2] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3–21(c).

[3] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[4] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a ''qualified administrative fee'' as defined in section III.S.

D. The restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975(a) and (b) of the Code by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under Part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Inc. (D & P) or Fitch Investors Service, Inc. (Fitch);

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an ''accredited investor'' as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this exemption:

A. ''Certificate'' means:

(1) a certificate—

(a) that represents a beneficial ownership interest in the assets of a trust; and

(b) that entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) a certificate denominated as a debt instrument—

(a) that represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Internal Revenue Code of 1986; and

(b) that is issued by and is an obligation of a trust;

with respect to certificates defined in (1) and (2) above for which Rothschild or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent. For purposes of this exemption, references to ''certificates representing an interest in a trust'' include certificates denominated as debt which are issued by a trust.

B. ''Trust'' means an investment pool, the corpus of which is held in trust and consists solely of:

(1) either

(a) secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association);

(b) secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T);

(c) obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property (including obligations secured by leasehold interests on commercial real property);

(d) obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U);

(e) ''guaranteed governmental mortgage pool certificates,'' as defined in 29 CFR 2510.3–101(i)(2);

(f) fractional undivided interests in any of the obligations described in clauses (a)–(e) of this section B.(1);

(2) property which had secured any of the obligations described in subsection B.(1);

(3) undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to be made to certificateholders; and

(4) rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support

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Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

arrangements with respect to any obligations described in subsection B.(1).

Notwithstanding the foregoing, the term ''trust'' does not include any investment pool unless: (i) the investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's, D & P, or Fitch for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. ''Underwriter'' means:

(1) Rothschild;

(2) any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Rothschild; or

(3) any member of an underwriting syndicate or selling group of which Rothschild or a person described in (2) is a manager or co-manager with respect to the certificates.

D. ''Sponsor'' means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. ''Master Servicer'' means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. ''Subservicer'' means an entity which, under the supervision of and on behalf of the master servicer, services loans contained in the trust, but is not a party to the pooling and servicing agreement.

G. ''Servicer'' means any entity which services loans contained in the trust, including the master servicer and any subservicer.

H. ''Trustee'' means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. ''Insurer'' means the insurer or guarantor of, or provider of other credit support for, a trust. Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. ''Obligor'' means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, ''obligor'' shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. ''Excluded Plan'' means any plan with respect to which any member of the Restricted Group is a ''plan sponsor'' within the meaning of section 3(16)(B) of the Act.

L. ''Restricted Group'' with respect to a class of certificates means:

(1) each underwriter;

(2) each insurer;

(3) the sponsor;

(4) the trustee;

(5) each servicer;

(6) any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) any affiliate of a person described in (1)–(6) above.

M. ''Affiliate'' of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. ''Control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be ''independent'' of another person only if:

(1) such person is not an affiliate of that other person; and

(2) the other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. ''Sale'' includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. ''Forward delivery commitment'' means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. ''Reasonable compensation'' has the same meaning as that term is defined in 29 CFR 2550.408c-2.

S. ''Qualified Administrative Fee'' means a fee which meets the following criteria:

(1) the fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) the servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) the ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) the amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. ''Qualified Equipment Note Secured By A Lease'' means an equipment note:

(1) which is secured by equipment which is leased;

(2) which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(3) with respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as would be the case if the equipment note were secured only by the equipment and not the lease.

U. ''Qualified Motor Vehicle Lease'' means a lease of a motor vehicle where:

(1) the trust holds a security interest in the lease;

(2) the trust holds a security interest in the leased motor vehicle; and

(3) the trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as would be the case if the trust consisted of motor vehicle installment loan contracts.

V. ''Pooling and Servicing Agreement'' means the agreement or

agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, ''Pooling and Servicing Agreement'' also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

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 May 22, 1995 at 60 FR 27132.

The Department notes that this exemption is included within the meaning of the term ''Underwriter Exemption'' as it is defined in section V(h) of the grant of the Class Exemption for Certain Transactions Involving Insurance Company General Accounts, for which the notice of proposed exemption was published on August 22, 1994 at 59 FR 43134.

FOR FURTHER INFORMATION CONTACT: Gary Lefkowitz 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 are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, D.C., this 7th day of July, 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 95–17075 Filed 7–11–95; 8:45 am]

BILLING CODE 4510–29–P

[Application No. D–09824, et al.]

Proposed Exemptions; PMS Profit Sharing and Retirement Savings Plan and Trust (the Plan)

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

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing 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.

PMS Profit Sharing and Retirement Savings Plan and Trust (the Plan), Located in Cleveland, Ohio

[Exemption Application No. D–09824]

Proposed Exemption

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 32826, 32847, August 10, 1990). If the exemption is granted, the

restrictions of sections 406(a), 406(b) (1) and (2) 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 proposed sale (the Sale) of a certain parcel of improved real property (the Property) from the Plan to M. A. Hanna Company (Hanna), a party in interest with respect to the Plan provided that the following conditions are met:

(1) The fair market value of the Property is established by a qualified and independent real estate appraiser;

(2) Hanna pays the greater of $990,800 or the current fair market value of the Property;

(3) The Sale is a one time transaction for cash;

(4) The Plan pays no fees or commissions related to the Sale; and

(5) Hanna pays any excise taxes to the Internal Revenue Service owed pursuant to section 4975(a) of the Code resulting from Hanna's lease of the Property from the Plan through the date of publication in the **Federal Register** of the final grant of the exemption within 90 days of such date.

Summary of Facts and Representations

1. Hanna is a Delaware Corporation with its principal office and place of business in Cleveland, Ohio. In November 1987, Hanna acquired all of the outstanding capital stock of PMS Consolidated, Inc. The Hanna/PMS Consolidated, Inc. merger was effective April 1, 1993. PMS Consolidated is the original plan sponsor.

2. The Plan is a defined contribution pension plan. As of April 1, 1995, the Plan had 706 participants and total assets of $14,240,928. Wells Fargo Bank has served as Plan trustee since January 1, 1992. The PMS Committee for Employee Benefits Administration is the Plan fiduciary responsible for selecting the Plan's investments. Currently, only one individual serves on this committee. He is an employee and officer of the PMS Division of Hanna.

3. In November of 1968, the Plan acquired the Property as undeveloped land from PMS Consolidated for $10,050, and subsequently built the building for $550,887. The Plan has invested a total of $560,937 in the Property. The Property is located in Coral Springs, Florida. In July 1969, the Plan leased the Property to PMS Consolidated. (the Lease). The Lease was last renewed on January 1, 1989 for a five year period, and currently is on a month to month basis. All property taxes and insurance costs were paid by PMS Consolidated for the duration of the Lease. PMS Consolidated also has incurred $509,967 in leasehold improvements over the term of the lease.[1] At the time the Hanna/PMS Consolidated merger became effective, Hanna became aware of the Lease. Unsuccessful efforts were made to sell the Property to an unrelated third party. As a result the Plan proposes to sell the Property to Hanna.[2]

4. The Property was appraised by two independent qualified appraisers. Both appraisers utilized the market value approach which is defined as the most probable price which the appraised property will bring in a competitive market under all conditions requisite to a fair sale. On October 24, 1994, C.R. Johnson & Associates, Inc., certified MAI real estate appraisers determined the value of the Property to be $706,000. AMH Appraisal Consultants appraised the Property at $850,000 as of November 2, 1994.

The rental rate under the Lease was at fair market rental rates. The rental rate under the Lease was $5.78 per square foot. In developing a value for the Property, AMH considered four comparable properties which had rental rates ranging from $3.50 to $6.00 per square foot. C.R. Johnson considered six properties, noting that one property was the ''most comparable.'' The rental rate for this property was $5.75 per square foot.

5. The Plan proposes to sell the Property for $990,800. This purchase price, which reflects Hanna's internal valuation of the Property, is substantially in excess of appraisals referred to above. Hanna has agreed to pay $990,800 in order to ensure that Plan participants and beneficiaries are not disadvantaged by reason of the Plan's previous holding of the Property or the Sale of the Property. The Sale will be for cash, and the Plan will pay no fees or commissions with regard to the transaction.

6. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act because: (1) the Sale is a one-time transaction for cash, and no commissions will be paid upon the Sale; (2) the Plan will be receiving at least fair market value for the Property as determined by an independent qualified real estate appraiser; and (3) Hanna will pay all applicable excise taxes which are due by reason of the Lease within 90 days of the publication in the **Federal Register** of the exemption proposed herein.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Code including sections 401(a)(4), 404 and 415.

For Further Information Contact: Allison Padams of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

Apartment Laundries, Inc., Profit Sharing Plan (the Plan), Located in Tulsa, Oklahoma; Proposed Exemption

[Application No.: D–09835]

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 CAR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 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 lease (the Lease) of improved property (the Property) by the individual account of James L. Sharp (the Account) in the Plan to Apartment Laundries, a party in interest with respect to the Plan provided that the following conditions are met: (1) the terms of the Lease are and will remain at least as favorable as the Plan could obtain in an arm's length transaction with an unrelated party; (2) the fair market rental value has been and will continue to be determined on an annual basis by a qualified, independent appraiser; and (3) the fair market value of the Property, as determined by a qualified, independent appraiser, represents no more than 25% of value of the assets in the Account.

Summary of Facts of Representations

1. Apartment Laundries (the Employer) is an Oklahoma corporation

[1] The terms of the lease provides that leasehold improvements revert to the Plan upon the termination of the lease.

[2] The applicant recognizes that the lease by the Plan of the Property to Hanna constitutes a prohibited transaction under section 406(a) of the Act and section 4975 of the Code. Accordingly, Hanna has filed a form 5330 with the Internal Revenue Service and paid the Internal Revenue Service the excise taxes that are applicable under section 4975(a) of the Code through the date on which the application was filed. Further, Hanna represents that it will pay the additional excise taxes due through the date of the grant of final exemption within 90 days of its publication in the **Federal Register**.

engaged in the business of furnishing coin-operated laundry machines to apartment complexes. James L. Sharp is the sole shareholder of the Employer. The Plan is a profit sharing plan having 49 participants and assets valued at $658,839 as of October 31, 1994. The Plan's trustee is Mr. Sharp. As of October 31, 1994, the Account's balance equaled $251,243, but Mr. Sharp represents that he will roll over from his individual retirement account into the Account an amount so that the fair market value of the Property will not exceed 25% of the value of the Account's assets.

2. On July 1, 1991, the Account purchased the Property from an unrelated third party for $131,221. The Property consists of a warehouse building situated on .71 acres. The Property is contiguous to property which Mr. Sharp personally owns and presently leases to the Employer.[3] The Account proposes to lease the Property to the Employer. The proposed lease will be for one year with annual renewals. The Employer will pay monthly rent in the amount of $1310, and the Account shall have the right to terminate the Lease at any time on thirty days notice.

3. The Property was appraised by Gene Meazell, a certified general appraiser, of Appraisers Unlimited on October 2, 1993. Mr. Meazell determined that the fair market value of the Property was $140,000, and the fair market rental value of the Property is $1,070 per month. Mr. Meazell updated his appraisal on August 14, 1994 and determined that fair market value and fair market rental value remained unchanged. Naifef, Weikel and Rouse, independent certified public accountants calculated that the value of the Property to the Employer is enhanced by 20 to 25% because it is adjacent to the Employer's warehouse. Using this assumption, the fair market monthly rental rate for the Employer would be between $1,284 and $1,337. Thus, the proposed rental rate of $1,310 would be at fair market value.

4. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act because: (1) the terms of the Lease are and will remain at least as favorable as the Plan could obtain in an arm's length transaction with an unrelated party; (2) the fair market rental value has been and will continue to be determined on an annual basis by a qualified, independent appraiser; and (3) the fair market value of the Property, as determined by a qualified, independent appraiser, will represent no more than 25% of value of the assets in the Account.

Notice to Interested Persons: Because Mr. Sharp is the only participant in the Plan whose individual account will be affected by the proposed transaction, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Therefore, written comments and requests for a public hearing are due 30 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

For Further Information Contact: Allison Padams, of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

Adel E. Zaki Money Purchase Pension Plan (the Plan) Located in Los Angeles, California

[Exemption Application No. D–09883]

Proposed Exemption

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 section 406(a), 406(b)(1), 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) through (E) of the Code[4] shall not apply to the proposed cash sale of a parcel of improved real property (the Property) by the Plan to Adel E. Zaki, M.D. (Dr. Zaki), a party in interest with respect to the Plan; provided that (1) the sale will be a one-time transaction for cash; (2) as a result of the sale, the Plan receives in cash the *greater of* $710,000 or the fair market value of the Property, as determined by an independent, qualified appraiser, as of the date of the sale; (3) the Plan pays no commissions, fees, or other expenses as a result of the transaction; and (4) the terms of the sale are no less favorable to the Plan than those it would have received in similar circumstances when negotiated at arm's length with unrelated third parties.

Summary of Facts and Representations

1. The Plan is a tax-qualified defined contribution profit sharing plan sponsored by Adel E. Zaki M.D., A Professional Corporation (the Employer). As of October 24, 1994, there were four (4) participants and beneficiaries in the Plan, including Dr. Zaki. As of the same date, the assets of the Plan totaled approximately $1,745,500. It is represented that Dr. Zaki's account in the Plan consists of approximately 99 percent (99%) of the assets of the Plan with the remaining one percent (1%) allocated among the other three participants. The Plan's assets are invested in the Property and cash or cash equivalents, such as bank certificates of deposit. It is represented that, as of October 24, 1994, the Property constituted approximately 41 percent (41%) of the assets of the Plan. Dennis Mehringer serves as contract administrator for the Plan. Dr. Zaki serves as trustee and fiduciary for the Plan with discretion over the assets of the Plan affected by the proposed transaction and is an officer and the sole shareholder of the Employer. The Employer engages in the private medical practice in general surgery from an office located at 1233 North Vermont Avenue in Los Angeles, California.

2. On June 26, 1985, Dr. Zaki, acting as trustee, purchased the Property as an investment for the Plan from A.M.S. Partnership, an unrelated third party, at a purchase price of $1,200,000, plus escrow closing costs of $2,183. It is represented that most of the assets of the Plan, plus some or all of the rollover assets from a Keogh plan and a terminated defined benefit plan, were used to acquire the Property. Further, in 1995 through 1996, the Plan made additional improvements to the Property at a cost of $28,228. Since the acquisition of the Property by the Plan, Dr. Zaki has managed the Property and leased it to unrelated third party tenants. It is represented that the capital investment in the Property has been returned to the Plan. It is further represented that the value of the Property, as reported yearly on forms 5500–C/R, steadily increased to a high of $1,496,676 in 1991. However, in April of 1992, the riots in Los Angeles caused property damage in the neighborhood around the Property. While the Property did not suffer extensive damage, it is represented that the riots caused many merchants to leave the area, the rental rates to decrease, and the property values to decline. Consequently, the value of the Property dropped to $1,250,000 in 1992. In 1993, Los Angeles County Tax Assessor estimated the value of the Property to be $932,410. As of the end of 1993, the Plan had total assets of $1,937,410 of which the value of the

[3] The Department is expressing no opinion as to whether or not the acquisition of the Property violated section 404 of the Act.

[4] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

Property constituted approximately 48 percent (48%).[5]

3. The Property is described as one story L-shaped strip shopping center on a corner lot at the intersection of Vermont and Lexington Avenues in Los Angeles, California. The Property consists of 14,300 square feet of land improved by a retail center that contains 7,747 square feet of rentable space divided into seven units. The Property has fifteen (15) parking spaces which is represented to be an existing legal non-conforming use. The Property is located at 1183–1193 North Vermont Avenue and is situated across Lexington Avenue one half block from the Employer's office. Dr. Zaki represents that the Property is not contiguous with his medical office as the two are separated by Lexington Avenue and has no bearing on his practice. For this reason, Dr. Zaki maintains that no premium value is created by the proximity of the Property to his medical office.

4. This exemption is requested to permit the Plan to sell the Property to Dr. Zaki for the greater of $710,000 or the appraised fair market value of the Property on the date of sale.

Dr. Zaki represents that since 1992 he has attempted to sell the Property to unrelated third parties but has received no offers, because banks are reluctant to finance commercial properties in neighborhoods subject to crime and riots. Further, it is represented that the Property is in need of substantial improvements, especially in the area of tenant security. In Dr. Zaki's opinion it would be inappropriate for the Plan to expend additional capital for such improvements.

It is represented that the proposed transaction is feasible in that it involves a one-time sale of the Property for cash. In addition, the proposed transaction is in the interest of the Plan in that the price offered by Dr. Zaki could not be obtained otherwise. In this regard, Dr. Zaki maintains that his offer is a highly advantageous one for the Plan, as the Property continues to decline in value. Further, the Plan will be able to sell the Property without incurring the expense of searching for a buyer and without paying brokerage commission, fees, or other expenses as a result of the transfer. It is represented that the proportionate share of the proceeds from the sale of the Property will be allocated to the accounts of each of the participants in the Plan. Then once the Property is sold, it is represented that the Plan can invest such cash proceeds in a more conservative investment mix in the future.

In the opinion of Dr. Zaki, the proposed transaction is necessary to protect the participants and beneficiaries of the Plan from the deteriorating real estate market. It is represented that selling the Property to Dr. Zaki will put an end to the continued loss of benefits to participants in the Plan that result from the continuing decline in the value of the Property.

Further, in addition to purchasing the Property from the Plan, Dr. Zaki proposes to personally indemnify the accounts of the other participants of the Plan against past losses. Specifically, simultaneous with his purchase of the Property from the Plan, Dr. Zaki will make a one-time non-tax deductible personal payment to the Plan.[6] It is represented that a proportionate amount of such payment (approximately $4,086 in the aggregate) will be allocated to the accounts of each of the participants, other than Dr. Zaki, in order to restore the cumulative loss through December 31, 1994, of such participants' accounts in the Plan to their share of the highest appraised value of $1,496,676 for the Property, as reported on the forms 5500–C/R for the calendar year 1991, and to credit such participants' accounts with interest on such highest appraised value through December 31, 1994, at the average certificate of deposit rates of the Bank of America during the period from the highest appraisal date to December 31, 1994. It is further represented that such interest on the balance due to participants, other than Dr. Zaki, will continue to accrue at the same rate from December 31, 1994, through the actual date of the closing on the transactions. In this way only Dr. Zaki's account in the Plan will suffer the loss that results from the proposed transaction.

6. An appraisal of the Property was prepared by Donald P. Condit, Jr. (Mr. Condit) SRPA, SRA and Stuart D. Holtzmann of The Condit Appraisal Company, located in Santa Monica, California. It is represented that the appraisers have the appropriate knowledge and experience to complete the appraisal assignment competently, in that they are both California State certified general real estate appraisers, and in that Mr. Condit is a member of professional organizations. It is represented that the appraisers are independent in that they have no present or prospective interest in the Property and have no personal interest or bias with respect to the participants in the transaction. The appraisers represent that neither their employment nor compensation was conditioned upon the appraisal producing a specific value or a value within a given range. After physically inspecting the Property, and reconciling values for the Property established by the cost approach, income approach, and sales comparison approach, the appraisers determined that the fair market value of the leased fee interest in Property was $710,000, as of September 8, 1994.

7. In summary, Dr. Zaki represents that the proposed transaction meets the statutory criteria for an exemption under section 408(a) of the Act because:

(a) the sale of the Property will be a one-time transaction for cash; (b) as a result of the sale, the Plan will receive in cash the *greater of* $710,000 or the fair market value of the Property, as determined by an independent, qualified appraiser, as of the date of the sale; (c) the Plan will pay no commissions, fees, or other expenses as a result of the transaction; (d) the terms of the sale will be no less favorable to the Plan than those it would have received in similar circumstances when negotiated at arm's length with unrelated third parties; (e) the Plan will be able to invest the proceeds from the sale of the Property in more profitable assets; (f) the Plan will be able to dispose of the Property which continues to decline in value; and (g) with the exception of Dr. Zaki, the accounts of the participants in the Plan will be compensated for any losses which resulted from the decline in value of the Property.

For Further Information Contact: Angelena C. Le Blanc of the Department, telephone (202) 219–8883 (This is not a toll-free number.)

The Bank of New York (the Bank) Located in New York, New York

[Application No. D–10030]

Proposed Exemption

Section I—Exemption for the Acquisition, Holding and Disposition of BNY Stock

The restrictions of sections 406(a)(1)(D), 406 (b)(1) and (b)(2) of the Act, and the sanctions resulting from the application of section 4975 of the

[5] The Department notes that the decision of Dr. Zaki, acting as fiduciary on behalf of the Plan, in connection with the acquisition and holding of the Property are governed by the fiduciary responsibility requirements of part 4, subpart B, of Title I. The Department expresses no opinion herein, as to whether any of the relevant provisions of part 4, subpart B, of title I have been violated regarding the Plan's investment in and subsequent holding of the Property, and no exemption from such provisions is proposed herein.

[6] It is represented that note of the transactions will cause the participants to exceed their section 415 limitations. It is represented that the restoration of value will be done proportionately without discrimination and will not exceed the limits of contribution under section 415 of the Code.

Code by reason of section 4975(c)(1) (D) and (E) of the Code, shall not apply to the acquisition, holding or disposition of the common stock of the Bank's parent corporation, The Bank of New York Company, Inc. (BNY Stock), by Index or Model-Driven Funds, if the following conditions and the General Conditions of Section II are met:

(a) The Index or Model-Driven Fund is based on an index which represents the investment performance of a specific segment of the public market for equity securities in the United States and/or foreign countries. The organization creating and maintaining the index must be (1) engaged in the business of providing financial information, evaluation, advice or securities brokerage services to institutional clients, (2) a publisher of financial news or information, or (3) a public stock exchange or association of securities dealers. The index must be created and maintained by an organization independent of the Bank and its affiliates. The index must be a generally accepted standardized index of securities which is not specifically tailored for the use of the Bank or its affiliates.

(b) The acquisition or disposition of the BNY Stock is for the sole purpose of maintaining strict quantitative conformity with the relevant index upon which the Index or Model-Driven Fund is based.

(c) All acquisitions comply with Rule 10b–18 of the Securities and Exchange Commission, including the limitations regarding the price paid or received for such stock.

(d) Aggregate daily purchases of BNY Stock constitute no more than the greater of: (1) 10 percent of the stock's average daily trading volume for the previous five days; or (2) 10 percent of the stock's trading volume on the date of the transaction.

(e) If the necessary number of shares of BNY Stock cannot be acquired within 10 business days from the date of the event which causes the particular Index or Model-Driven Funds to require BNY Stock, the Bank appoints a fiduciary which is independent of the Bank and its affiliates to design acquisition procedures and monitor the Bank's compliance with such procedures.

(f) All purchases and sales of BNY Stock are executed on the national exchange on which BNY Stock is primarily traded.

(g) No transactions involve purchases from, or sales to, the Bank or any affiliate (including officers, directors and employees of the Bank, as defined in Section III(c) below), or any party in interest with respect to a plan which has invested in an Index or Model-Driven Fund.

(h) No more than five (5) percent of the total amount of BNY Stock issued and outstanding at any time is held in the aggregate by the Index and Model-Driven Funds.

(i) BNY Stock constitutes no more than two (2) percent of the value of any independent third-party index on which the investments of an Index or Model-Driven Fund are based.

(j) A plan fiduciary independent of the Bank and its affiliates authorizes the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds BNY Stock.

(k) A fiduciary independent of the Bank and its affiliates directs the voting of the BNY Stock held by an Index or Model-Driven Fund on any matter in which shareholders of BNY Stock are required or permitted to vote.

Section II—General Conditions

(a) The Bank maintains or causes to be maintained for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (b) of this Section to determine whether the conditions of the exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Bank, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest other than the Bank shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975 (a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (b) below.

(b)(1) Except as provided in paragraph (b)(2) and notwithstanding any provisions of section 504 (a)(2) and (b) of the Act, the records referred to in paragraph (a) of this Section are available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service,

(B) Any fiduciary of a plan participating in an Index or Model-Driven Fund who has authority to acquire or dispose of the interests of the plan, or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer with respect to any plan participating in an Index or Model-Driven Fund or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any plan participating in an Index or Model-Driven Fund, or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in paragraph (b)(1) (B) through (D) shall be authorized to examine trade secrets of the Bank, any of its affiliates, or commercial or financial information which is privileged or confidential.

Section III—Definitions

(a) Index Fund—Any investment fund, account or portfolio sponsored, maintained and/or trusteed by the Bank, or an affiliate of the Bank, in which one or more investors invest which is designed to replicate the capitalization-weighted composition of a stock index which satisfies the conditions of Section I (a) and (i).

(b) Model-Driven Fund—Any investment fund, account or portfolio sponsored, maintained and/or trusteed by the Bank, or an affiliate of the Bank, in which one or more investors invest which is based on computer models using prescribed objective criteria to transform an independent third-party stock index which satisfies the conditions of Section I(a) and (i).

(c) Affiliate—Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such person; any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or a sister of such person; and any corporation or partnership of which such person is an officer, director, or partner.

Summary of Facts and Representations

1. The Bank is the principal subsidiary of The Bank of New York Company, Inc., the 16th largest bank holding company in the United States, with total assets of approximately $49 billion at the end of 1994. The Bank is one of the largest commercial banks in the country, and with its sister bank and trust company subsidiaries is one of the largest providers of securities processing, money management and other administrative and management services to institutional investors, including employee benefit plans subject to the Act.

2. In furnishing investment management services, the Bank acts as a fiduciary to its employee benefit plan customers. A principal vehicle employed by the Bank in furnishing investment management services is its Collective Trust. The Collective Trust accepts investment from employee benefit plans subject to the Act as well

as governmental plans and governmental units not subject to the Act. The Collective Trust is exempt from federal income taxation pursuant to IRS Rev. Rul. 81–100.

The Collective Trust consists of a series of separate investment funds, each with a separate investment objective and portfolio of assets. It is possible for a plan to invest solely in one, or in several but less than all, of the investment funds, as selected and in such amounts as determined by the plan's named fiduciary. The value of a plan's investment in any given fund depends solely on the investment performance of that fund, unrelated to the investment performance of the other funds within the Collective Trust.

3. Among the new funds established within the Collective Trust early in 1994 is the Bank's Mid Cap Index Fund, whose objective is to replicate as closely as may be practicable the performance of the Standard & Poor's (S&P) MidCap 400 Index. The Bank initially requested an exemption to permit the acquisition, holding and disposition of BNY Stock by the Bank's Mid Cap Index Fund because the BNY Stock was included in the S&P MidCap 400 Index. However, effective March 30, 1995, the BNY Stock was added to the S&P 500 Index. Since the Bank also maintains within the Collective Trust a large S&P 500 Index Fund, the Bank now requests an exemption to permit the acquisition, holding and disposition of BNY Stock by the Bank's S&P 500 Index Fund.

4. The S&P 500 Index is an index of 500 stocks that are traded on the New York Stock Exchange (NYSE), the American Stock Exchange, and the NASDAQ National Market System. It is a market value-weighted index, multiplying shares outstanding times stock price, in which each company's influence on index performance is directly proportional to its market value. The 500 companies chosen by the S&P Index Committee for the index are not the 500 largest companies but, instead, are the companies that tend to be leaders in key industries within the U.S. economy, as determined by the Committee.

The Bank's S&P 500 Index Fund was established in 1989. Its objective is to track as closely as possible the total return of the S&P 500 Index. The Fund currently has total assets of approximately $554 million as of May 9, 1995 and approximately 16 employee benefit plan investors.

5. The Bank requests that the exemption cover the acquisition, holding and disposition of BNY Stock by any Index or Model-Driven Fund sponsored, maintained and/or trusteed by the Bank or an affiliate. The Bank represents that such Index Funds will include any investment fund, account or portfolio in which one or more investors invest which is designed to replicate the capitalization-weighted composition of an independent third-party stock index. In addition, the Bank represents that such Model-Driven Funds will include any investment fund, account or portfolio in which one or more investors invest which is based on computer models using prescribed objective criteria to transform an independent third-party stock index. All independent third-party stock indexes used by the Bank for an Index or Model-Driven Fund will represent the investment performance of a specific segment of the public market for equity securities in the United States and/or foreign countries. The organization creating and maintaining the index will be: (a) engaged in the business of providing financial information, evaluation, advice or securities brokerage services to institutional clients; (b) a publisher of financial news or information; or (c) a public stock exchange or association of securities dealers. The index will be created and maintained by an organization independent of the Bank and its affiliates. The index will be a generally accepted standardized index of securities which is not specifically tailored for the use of the Bank or its affiliates.

6. With respect to Model-Driven Funds, the Bank represents that the portfolio of such a Fund would be determined by the details of a computer model, which would examine structural aspects of the stock market, rather than the underlying stock values. An example of a Model-Driven would include a fund which ''transforms'' the S&P 500 Index, making investments according to a computer model which uses such data as the following: (a) earnings, dividends and price-earnings ratios for common stocks in the S&P 500 Index; (b) current yields on corporate bonds and money market instruments; and (c) historical standard deviations and correlations of and between asset classes. However, like Index Funds, the Model-Driven Funds would be passively managed, in that decisions of which stocks to buy or sell would not be the result of active evaluation of the investments by an investment manager, but would be determined in accordance with a predetermined computer model.

The Bank states that it does not currently maintain any Model-Driven Funds of the type described above, but is considering establishing such funds in the future. Prior to May 1, 1995, the Bank maintained a South Africa Constrained Index Fund, whose objective was to track the S&P 500 Index by excluding certain stocks of companies that had direct equity investment in the Republic of South Africa and were not signatories to a Statement of Principles for South Africa as of April 28, 1994. However, the South Africa Constrained Index Fund was discontinued by the Bank as of April 28, 1995.

7. With respect to the proposed purchase of BNY Stock by the Funds, the Bank states that all such acquisitions will comply with Rule 10b–18 of the Securities and Exchange Commission (SEC), including the limitations regarding the price paid or received for such stock. SEC Rule 10b–18 provides a ''safe harbor'' for issuers of securities from section 9(a)(2) of the Securities Exchange Act of 1934 and SEC Rule 10b–5 (which generally prohibits persons from manipulating the price of a security and engaging in fraud in connection with the purchase or sale of a security).

The Bank states that the conditions imposed by Rule 10b–18 for purchases of BNY Stock would be as follows: (a) all purchases would be made from or through only one broker on any single day; (b) no purchases would constitute the opening transaction in BNY Stock; (c) purchases would not occur within one-half hour before the scheduled close of trading on the NYSE; (d) the price would not be higher than the current independent bid quotation or the last independent sale price on the exchange, whichever is higher; and (e) if the purchases of BNY Stock are not block purchases as defined by Rule 10b–18(b)(4), the total amount of purchases on any one day would not exceed the higher of one round lot or the number of round lots closest to 25 percent of the trading volume for BNY Stock on that day.

However, notwithstanding the restrictions of Rule 10b–18, the Bank states that aggregate daily purchases of BNY Stock will constitute no more than the greater of: (a) 10 percent of the stock's average daily trading volume for the previous five days; or (b) 10 percent of the stock's trading volume on the date of the transaction.

8. The Bank states that all purchases and sales of BNY Stock will be executed on the national exchange on which BNY Stock is primarily traded. In addition, no transactions will involve purchases from, or sales to, the Bank or any affiliate (including officers, directors and employees of the Bank, as defined in Section III(c) above), or any party in interest with respect to a plan which has invested in an Index or Model-Driven

Fund. The Bank states further that no more than five (5) percent of the total amount of BNY Stock issued and outstanding at any time will be held in the aggregate by the Index and Model-Driven Funds. Finally, the Bank represents that it will ensure that BNY Stock does not constitute more than two (2) percent of the value of any independent third-party index on which the investments of an Index or Model-Driven Fund are based. In this regard, the weight currently assigned to BNY Stock in the S&P 500 Index is approximately 0.169 percent. Prior to the addition of the BNY Stock to the S&P 500 Index, the Bank states that the BNY Stock comprised approximately 1.27 percent of the S&P MidCap 400 Index.

9. The Bank states that if the necessary number of shares of BNY Stock cannot be acquired within 10 business days from the date of the event which causes the particular Index or Model-Driven Funds to require BNY Stock, the Bank will appoint a fiduciary which is independent of the Bank and its affiliates to design acquisition procedures and monitor the Bank's compliance with such procedures. In addition, the Bank states a fiduciary independent of the Bank and its affiliates will direct the voting of the BNY Stock held by an Index or Model-Driven Fund on any matter in which shareholders of BNY Stock are required or permitted to vote. Finally, the Bank represents that a plan fiduciary independent of the Bank and its affiliates will authorize the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds BNY Stock.

10. With respect to acquisitions of BNY Stock by the Funds, the independent fiduciary and its principals will be completely independent from the Bank and its affiliates and will be experienced in developing and operating investment strategies, including index funds. The independent fiduciary will be responsible for accurately representing that during the operation of any trading program based upon acquisition procedures developed by the fiduciary, no principal employee of the fiduciary nor the fiduciary itself will engage in any trading of any kind in BNY Stock. Furthermore, the independent fiduciary will not act as the broker for any purchases or sales of BNY Stock and will not receive any commissions as a result of the trading program.

In connection with the initial acquisition of BNY Stock by the Bank's S&P 500 Index Fund, the Bank calculates that the number of shares that would have to be bought by such Fund would not exceed 28,000. This estimate is based on the figures for the size of the Bank's S&P 500 Index Fund and the weight assigned to BNY Stock in the S&P 500 Index.

The Bank states that based on recent figures for the high, low and average daily trading volume for the BNY Stock on the NYSE, the initial requirements of the Bank's S&P 500 Index Fund could be met by the Bank placing a market-on-close order on the NYSE on a single business day—or at the most two successive business days. Under the established rules of the NYSE, the price on such an order would be set automatically, permitting no discretion on the part of the order placing party. The Bank represents that the impact of such purchases on the market for BNY Stock would be minimal, and that under such circumstances the full and proper protection of the interests of plan investors would not require or warrant the retention of an independent fiduciary to develop a trading program for the initial acquisitions of BNY Stock.

11. With respect to the voting of BNY Stock, the independent fiduciary chosen by the Bank will be a firm knowledgeable and experienced in corporate governance issues and proxy voting on behalf of public and private pension funds, banks, trust companies, money managers, insurance companies and other institutional investors with large equity portfolios. The independent fiduciary will develop, and supply to the Bank, written material dealing with corporate ownership, which will act as a guideline to the voting of proxies by institutional fiduciaries, and their current voting guidelines. The Bank will provide the independent fiduciary with all necessary information regarding the Funds that hold BNY Stock, the amount of BNY Stock held by such funds on the record date for shareholder meetings of The Bank of New York Company, Inc., and all proxy and consent materials for BNY Stock. The independent fiduciary will maintain records of its activities as an independent fiduciary on behalf of the Funds, including the number of shares of BNY Stock voted, the manner in which they were voted, and the rationale for the vote if it was not consistent with the independent fiduciary's corporate ownership material and current voting guidelines in effect at the time of the vote. The independent fiduciary will supply the Bank with the information after each shareholder meeting and will acknowledge that it will be acting as a fiduciary with respect to the plans that invest in the Funds which own BNY Stock, when voting such stock.

12. In summary, the applicant represents that the proposed transactions will satisfy the criteria of section 408(a) of the Act for the following reasons: (a) the acquisition, holding and disposition of BNY Stock will occur solely to maintain strict quantitative conformance by an Index or Model-Driven Fund to its underlying index or model; (b) all acquisitions and dispositions of BNY Stock will occur in the open market and will comply with SEC Rule 10b–18; (c) aggregate daily purchases of BNY Stock will constitute no more than the greater of either 10 percent of the stock's average daily trading volume for the previous five days, or 10 percent of the stock's trading volume on the date of the transaction; (d) no more than 5 percent of the total outstanding shares of BNY Stock will be held in the aggregate by the Funds; (e) BNY Stock will constitute no more than 2 percent of the value of any independent third-party index on which the investments of an Index or Model-Driven Fund are based; (f) if the necessary number of shares of BNY Stock cannot be acquired within 10 business days from the date of the event which causes the particular Index or Model-Driven Funds to require BNY Stock, the Bank will appoint a fiduciary which is independent of the Bank and its affiliates to design acquisition procedures and monitor the Bank's compliance with such procedures; (g) a fiduciary independent of the Bank and its affiliates will direct the voting of any BNY Stock held by the Funds; and (h) a plan fiduciary independent of the Bank and its affiliates will authorize the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds BNY Stock.

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 accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 7th day of July, 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 95–17074 Filed 7–11–95; 8:45 am]

BILLING CODE 4510–29–P

[Prohibited Transaction Exemption 95–47 Exemption Application No. D–09519, et al.]

Grant of Individual Exemptions; Westinghouse Pension Plan, et al.

AGENCY: Department of Labor, Pension and Welfare Benefits Administration.

ACTION: Notice of typographical corrections.

SUMMARY: This document contains a notice of typographical corrections of Prohibited Transaction Exemptions (PTE) 95–46 through PTE 95–54 (60 FR 32992–33010, June 26, 1995). As a result of typographical errors, the PTE numbers for nine (9) individual exemptions were incorrectly published. This document contains the corrections for those PTE numbers. In addition, the original heading also contained a typographical error which is corrected below.

Correction

In 60 FR published at page 32992 on June 26, 1995, in the second column, the fourth line in the original heading is hereby corrected to read as follows:

[Prohibited Transaction Exemption 95–47].

Westinghouse Pension Plan (the Plan) Located in Pittsburgh, Pennsylvania

[Prohibited Transaction Exemption 95–46; Application No. D–09519]

Correction

In 60 FR published at page 32992 on June 26, 1995, in the third column, the third line in the heading is hereby corrected to read as follows:

[Prohibited Transaction Exemption 95–47].

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

Mellon Bank, N.A. Located in Pittsburgh, Pennsylvania

[Prohibited Transaction Exemption 95–47; Application No. D–9523]

Correction

In 60 FR published at page 32995 on June 26, 1995, in the second column, the third line in the heading is hereby corrected to read as follows:

[Prohibited Transaction Exemption 95–48].

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

Norwest Bank Minnesota, N.A., Located in Minneapolis, MN

[Prohibited Transaction Exemption 95–48; Application No. D–09595]

Correction

In 60 FR published at page 33000 on June 26, 1995, in the first column, the third line in the heading is hereby corrected to read as follows:

[Prohibited Transaction Exemption 95–49]

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Paloma Securities L.P. (Paloma) and Boston Global Advisors, Inc. (BGA) Located in Boston, Massachusetts

[Prohibited Transaction Exemption 95–49; Application No. D–09660]

Correction

In 60 FR published at page 33003 on June 26, 1995, in the second column, the fourth line in the heading is hereby corrected to read as follows:

[Prohibited Transaction Exemption 95–50]

FOR FURTHER INFORMATION CONTACT: Louis Campagna of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

The First National Bank of Boston and Its Affiliates (Collectively, the Bank) Located in Boston, Massachusetts

[Prohibited Transaction Exemption 95–50; Application No. D–09682]

Correction

In 60 FR published at page 33004 on June 26, 1995, in the second column, the fourth line in the heading is hereby corrected to read as follows:

[Prohibited Transaction Exemption 95–51]

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

AT&T Corporation (AT&T), and AT&T Investment Corporation (ATTIMCO) Located in New York, New York

[Prohibited Transaction Exemption 95–51 Exemption Application Nos. D–09716 & D–09717]

Correction

In 60 FR published at page 33007 on June 26, 1995, in the first column, the fourth line in the heading is hereby corrected to read as follows:

[Prohibited Transaction Exemption 95–52].

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Toyota Motor Sales, U.S.A., Inc. Money Purchase Pension Plan for Bargaining Unit Employees (the Plan) Located in Torrance, California

[Exemption Application No. D–09875 Prohibited Transaction Exemption 95–53]

Correction

In 60 FR published at page 33008 on June 26, 1995, in the third column, the fifth line in the heading is hereby corrected to read as follows:

[Prohibited Transaction Exemption 95–53].

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department,

telephone (202) 219–8881. (This is not a toll-free number.)

Bob Murphy, Inc. Profit Sharing Plan (the Plan) Located in Boynton Beach, FL

[Prohibited Transaction Exemption 95–53; Exemption Application No. D–09949]

Correction

In 60 FR published at page 33009 on June 26, 1995, in the first column, the fourth line in the heading is hereby corrected to read as follows:

[Prohibited Transaction Exemption 95–54].

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Employees' Thrift Plan of Columbia Gas System (the Plan) Located in Wilmington, Delaware

[Exemption Application No. D–09959 Prohibited Transaction Exemption 95–54]

Correction

In 60 FR published at page 33009 on June 26, 1995, in the second column, the fifth line in the heading is hereby corrected to read as follows:

[Prohibited Transaction Exemption 95–55].

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Signed at Washington, DC, this 7th day of July 1995.

Ivan L. Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 95–17078 Filed 7–11–95; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL INSTITUTE FOR LITERACY

[CFDA No. 84–257H]

Adult Learning System Reform and Improvement Planning Grant Application for Planning Grant Awards to Launch a Collaborative, Grassroots Process of System Reform and Improvement for Adult Literacy and Basic Skills Instruction

AGENCY: The National Institute for Literacy.

ACTION: Notice.

SUMMARY: The National Institute for Literacy invites applications for grant awards to support a collaborative, grassroots planning process focused on the development of content standards that address what adults need to know and be able to do to fulfill their roles as parents, citizens, and workers. These planning grants are the first stage of a multi-year initiative whose ultimate goal is to reform and improve America's adult learning system in order to enhance progress toward National Education Goal 6.

DATE: Applications must be received by 4:30 PM, August 21, 1995.

NOTE TO APPLICANTS: This notice is a complete application package. Together with the NIFL document *Equipped for Change* and the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), this notice contains all the information, application forms, regulations, and instructions needed to apply for a grant under this competition.

FOR FURTHER INFORMATION CONTACT: Sondra Stein, National Institute for Literacy, 800 Connecticut Avenue, NW., Suite 200, Washington, DC 20006. Telephone: 202–632–1508; FAX: 202–632–1512.

SUPPLEMENTARY INFORMATION:

Definitions: For purposes of this announcement the following definitions apply:

''Literacy'' is an individual's ability to read, write, and speak in English, and compute and solve problems at levels of proficiency necessary to function on the job and in society, to achieve one's goals and develop one's knowledge and potential (as stated in the National Literacy Act of 1991).

''Adult Literacy System,'' or ''system,'' means all individuals, programs, and organizations that are involved, directly and indirectly, in the delivery of literacy and basic skills services to adults. This includes, but is not limited to, people and groups involved in literacy policymaking, research and development, technical assistance, and service delivery.

''Adult Roles'' mean the following three major arenas of adult life and the obligations that pertain to each:

- Parent/family member.
- Citizen.
- Worker.

''Constituencies'' are state or local programs or agencies that are part of the applicant's service delivery system.

''Content Standards'' are specific descriptions of the knowledge and skills that students should learn and be taught.

According to Shirley Malcom's *Promises to Keep*, Report to the National Education Goals Panel: November 15, 1993, content standards ''indicate the knowledge and skills—the ways of thinking, working, communicating, reasoning and investigating, and the most enduring ideas, concepts, issues, dilemmas and knowledge essential to the discipline—that should be taught and learned in school. They help develop the work and learning habits essential to success in the world outside school: the ability to study well, think logically, draw inferences, support assertions with evidence, and apply what is known to a new situation.''

''Curriculum Framework'' means a system, generally built on content and performance standards, that specifies the knowledge, skills, and understanding that students are to develop or acquire in a given subject area at a given grade or level of school.

''Performance Standards'' are benchmarks for determining whether a student meets content standards at acceptable levels.

Performance standards, indicate both the nature of the evidence required to demonstrate that the content standard has been met * * * and the quality of student performance that will be deemed acceptable * * * (Malcom, *Promises to Keep*).

''Purposes for Literacy,'' based on NIFL's survey of adult learners, mean the following four general purposes that literacy serves in helping adults fulfill their roles:

- Providing access to information so adults can orient themselves in the world.
- Enabling adults to give voice to their ideas and have an impact on the world around them.
- Enabling adults to make decisions and act independently, without needing to rely on others.
- Building a bridge to the future by laying a foundation for continued learning, so adults can keep up with the world as it changes.

''Stakeholders'' are individuals, organizations, and institutions that are not part of the applicant's service delivery system but that have a stake in literacy.

BACKGROUND: The National Institute for Literacy (NIFL), was created by the National Literacy Act of 1991 to provide a national focal point for literacy activities and to facilitate the pooling of ideas and expertise across a fragmented field. NIFL is authorized to carry out a wide range of activities that will improve and expand the system for delivery of literacy services nationwide.

All of NIFL's activities are intended to accelerate progress toward National Education Goal 6, the goal for adult literacy and lifelong learning. Goal 6 states that: By the year 2000 every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and

responsibilities of citizenship. A critical aspect of NIFL's work is to measure the nation's progress toward this Goal.

Over the past two years the NIFL has been involved in a joint effort with the National Education Goals Panel aimed at developing a functional definition of Goal 6 that can guide the improvement of literacy services as well as the measurement of success. As part of this joint effort, the NIFL turned to adult learners across the country, soliciting, collating, and analyzing responses to the question: ''What skills and knowledge do adults need to be literate, to compete in a global economy and to exercise the rights and responsibilities of citizenship?''

In their writings, respondents identified their roles as parents and family members as an important part of their roles as citizens and workers. In discussing the knowledge and skills necessary to be successful in these three primary roles, adults pointed us to four fundamental purposes literacy fulfills in their lives:

- Providing access to information so they can orient themselves in the world.
- Enabling them to give voice to their ideas and have an impact on the world around them.
- Enabling them to make decisions and act independently, without needing to rely on others.
- Laying a foundation for continued learning, so they can keep up with the world as it changes.

In essence, adults told us that in order to attain Goal 6, every adult needs the knowledge and skills to accomplish these four purposes in the context of their roles as parents, citizens and workers. (These four purposes are described more fully, with examples from adults' writings, in the NIFL publication *Equipped for the Future.*) If Goal 6 were rephrased to reflect these learner purposes it might read: By the year 2000 every adult will be literate and will possess the knowledge and skills necessary to orient themselves in a rapidly changing world, to voice their ideas and be heard, and to act independently as a parent, a citizen and a worker, for the good of family, community, and nation.

The National Institute for Literacy has determined to use this customer-driven definition of Goal 6 as a starting point for improving and enhancing the adult literacy system to accelerate progress toward this Goal. In shaping the course of this initiative, the Institute has taken into account the following related national initiatives focused on outcomes and accountability:

1. Several national efforts in the K–12 system, either underway or completed, identify content standards—criteria for what students should know and be able to do—in specific curriculum areas such as math, history, and geography. In addition, several states have established or are establishing curriculum frameworks that build on these national content standards and define more specifically what skills and knowledge students are expected to master.

2. Equally pertinent to this project, the Departments of Labor and Education are working with partnerships of business, labor, and other private organizations to develop ''skills standards''—criteria for skills that are necessary to perform effectively and productively in particular occupational fields, such as the electronics industry or the allied health field.

Every partnership engaged in defining the skill standards for an occupational field, or ''cluster,'' has confronted the same reality: there is no consensus on what basic skills, knowledge, and abilities constitute a foundation for more technical skills. In other words, there are no commonly accepted standards for adult literacy and basic skills and, consequently, no supplier system that can assure employers that their workers develop this foundation.

3. At the same time, there has been increasing interest at the state and national policy level in focusing adult literacy and basic skills education on ''real world'' outcomes—the changes that occur in adults' lives when they acquire the skills, knowledge and abilities they need to fulfill their roles and responsibilities as parents, citizens, and workers.

This emphasis on outcomes has already gained considerable support in family and workplace literacy programs, where instruction focuses explicitly on enabling adults to be more effective parents or more flexible workers. In addition, several states, some of them working within the framework of NIFL's state capacity-building initiatives, have begun to shift the focus of measurement and reporting for adult education from inputs (such as number of class hours attended) to outcomes related to broader state policy goals (such as decreased poverty, welfare dependence and unemployment; increased community involvement and citizen activism; and more children starting school ready to learn).

In proposals to improve the effectiveness of the national adult education and training system, both the Congress and the Administration have also focused on real world outcomes. Various legislative proposals introduced in the Congress to authorize adult education and literacy services require states to—

- Establish program goals related to work, family, and community outcomes,
- Set performance standards or benchmarks for such goals, and
- Use information generated in response to these standards to monitor and improve program outcomes.

These proposals reflect the growing influence of a broader movement in both public and private sectors toward continuous improvement, where organizations and work units are held accountable for achieving desired results and given greater flexibility in how they achieve those results.

Given this background, the NIFL proposes to support activities for reform and improvement of the adult literacy system that emphasize real-world outcomes, accountability for achieving those outcomes, and continuous improvement of programs and systems.

PURPOSE OF PROGRAM: The purpose of this planning grant program is to launch a multi-year initiative to strengthen the capacity of adult literacy programs to achieve and measure learner outcomes. This initiative will focus on: (a) defining what adults need to know and be able to do to fulfill their roles as parents, citizens and workers; (b) investigating the most effective ways to help adults attain those skills and knowledge; and (c) developing and refining approaches to learner assessment and program evaluation that are congruent with this focus on achieving real-world outcomes.

Grantees will use these one year planning grants to launch a collaborative, grass roots process of system reform and improvement, beginning with the development of content standards for adult literacy and basic skills. Content standards will be the first major step toward improving the effectiveness of the adult literacy system in helping adults fulfill their roles as parents, citizens, and workers. The entire initiative is intended to enhance our ability as a nation to achieve Goal 6 of the National Education Goals.

Grantees will have the opportunity to—

(1) work with the Institute, the National Education Goals Panel, and each other to develop a common framework for system reform and to facilitate broad sharing of information and results.

(2) compete for funding, as available, to continue the process of system reform in the next stage of NIFL's multi-year initiative. The NIFL expects to be able to fund no more than 3 or 4 system implementation grants in year 2.

Awards for these grants will be open to Year 1 grantees and other applicants who have undertaken a comparable planning process without NIFL funding.

The NIFL believes that the development of content standards based on the three primary adult roles and the four adult learner-defined purposes for literacy will lay the foundation for a nationwide effort to assure that our adult learning system enables adults to develop the skills, knowledge, and abilities they need to fulfill their roles as parents, citizens and workers. Once we can specify what adults need to know and be able to do to fulfill their roles, we can—

(1) reshape learning activities and literacy programs to facilitate development of those skills, knowledge and abilities;

(2) assess adult progress and achievement, and

(3) evaluate the strengths and weaknesses of programs in achieving these outcomes in a process of continuous improvement.

ELIGIBLE APPLICANTS: Applications will be accepted from—

1. Individual public and private not-for-profit organizations and agencies that represent key literacy consumer, practitioner, provider, administrator, and funder constituencies; and

2. Consortia of such organizations and agencies operating at a state, regional (multi-state), or national level. While such consortia may include for-profit corporations and institutions, especially those that represent employers of adults, no grant will be made for a for-profit organization.

Deadline for Transmittal of Applications: August 21, 1995.

Available Funds: $500,000.

Estimated Number of Awards: Up to 10.

Estimated Amount of Each Award: up to $50,000.

Project Period: 12 months.

DESCRIPTION OF PROGRAM:

a. An organization or consortium of organizations receiving a planning grant under this program shall launch a comprehensive, collaborative, grassroots process for system reform and improvement, beginning with the development of content standards for adult literacy and basics skills.

b. These planning grants will be the first stage of a multi-year initiative to reform and improve practices in the adult literacy system in order to enhance national progress toward Goal 6.

c. In applying for a planning grant, an applicant's collaborative planning process for system reform must begin with the development of content standards that—

1. Address one or more of the three critical adult roles—parent, citizen, and worker;

2. Use the four adult learner-defined purposes as a framework;

3. Focus on—

(a) either Adult Basic Education/ Adult Second Education or English as a Second Language; or

(b) a particular content area, such as math.

4. draw on knowledge of and establish linkages with already existing standards or curriculum frameworks from K–12 and school-to-work, and occupational skills standards, including SCANS, Dictionary of Occupational Titles (DOT), National Council of Teachers of Mathematics (NCTM)

f. During the grant period, which will run from October 1, 1995 to September 30, 1996, grantees will engage in the following activities—

1. Participate in a two-day national meeting to be held no later than November 22, 1995 to establish a common national framework for the program.

2. Conduct and document a minimum of five, day-long focus groups and other appropriate information-gathering events that engage representatives of grantee's constituencies and other literacy stakeholders in discussing the adult role(s) to be focused on in developing content standards and how to use the four purposes as a framework for specifying—

(a) What is taught and how it is taught,

(b) How to define and measure learner progress, and

(c) How to define and evaluate program quality.

3. Establish a broad-based Working Group, including at least one representative from each focus group and representatives of other key literacy stakeholders to develop a long-range plan for system reform that builds on focus group results and includes, at a minimum, strategies for—

(a) Developing, validating, and refining content standards for meeting the four customer-defined literacy purposes in one or more of the adult roles:

(1) Parent/family;

(2) Citizen/involvement in community;

(3) Worker/workforce mobility;

(b) developing and implementing valid and reliable methods for assessing *mastery* (level of acquisition sufficient to achieve desired real-world outcomes) of the skills, knowledge and abilities specified in the content standards. Assessment methods must—

(1) Involve multiple measures of student performance;

(2) Provide for participation of students with diverse learning needs;

(3) Be consistent with relevant, nationally recognized professional and technical standards for such assessments; and

(4) Be capable of providing coherent information about student performance relative to the proposed content standards;

(c) Determining the most effective ways to help adults develop or acquire the critical knowledge, skills, and abilities, including—

(1) Key learning tasks;

(2) The kind of teacher/student and student/student discourse to encourage; and

(3) The kinds of tools and materials to be developed.

(d) Developing performance standards that gauge a program's effectiveness in enabling adults to accomplish the four purposes and fulfill their roles, and

(e) Defining new quality standards for programs related to the performance standards.

4. By July 15, 1996, submit the following products to NIFL:

(a) Documentation of focus group results (see item 2 above); and

(b) the long-range plan for system reform (see item 3 above).

These products will be used to support the grantee's competitive application for a multi-year implementation grant.

5. In late April 1996, participate in a three-day meeting to share progress to date with other grantees and the NIFL, and to make recommendations for funding priorities for implementation grants.

6. Maintain regular e-mail and other contact with other grantees throughout the grant period, in order to maximize sharing of information and minimize duplication of effort.

Project Narrative

The applicant's project narrative must include detailed descriptions of—

(1) the applicant organziation(s) in terms of the experience and capabilities that qualify the applicant to—

(a) Lead a broad-based collaborative planning process for system reform and improvement that begins with the development of content standards;

(b) Lead a subsequent implementation process;

(c) Effect systemic change for literacy and basic skills.

(2) The constituencies and stakeholders to be involved in the project and how they will be involved;

(3) The applicant's purpose for participating in this project, including goals, objectives, and expected impact on the applicant's system.

(4) The applicant's overall project design, as outlined in the **DESCRIPTION OF PROGRAM** above.

(a) Explain how the design reflects unique features of the applicant's service delivery system(s) and

(b) Assure that all constituencies and other literacy stakeholders (including learners, other system customers, practitioners, administrators, funders, and policymakers) have opportunities to participate in a meaningful way in the process and are well-prepared to participate in the process, including having opportunities to read, discuss and reflect on the information presented in *Equipped for the Future;*

(50 The applicant's plan of operation, including:

(a) A description and timeline of activities to be conducted;

(b) A description of key personnel, qualifications, roles and affiliations;

(c) How the applicant will assure investment of all constituencies in the process and its products;

(d) How key decisions will be made throughout the course of the project to assure that the project has maximal impact on the quality of the adult literacy and basic skills system, including how constituencies and stakeholders will be involved in decision-making, and in validation of the Working Group's products;

(e) A description of how funds will be used to assure broad participation of all constituencies in development of the content standards and system improvement plan.

(6) Describe the process for documenting, monitoring and evaluating the project processes and results.

Selection Criteria: In evaluating applications for a grant under this competition, the Director uses the following selection criteria:

(1) Capability and Commitment (25 points): The Director reviews each application to determine the capability of the applicant to achieve the goals of this project, including:

(a) The applicant's ability to secure the commitment and full participation of constituencies and other literacy stakeholders in the project:

(b) The extent to which the applicant demonstrates knowledge of and linkages to previous and current national, regional, or state efforts to—

(i) Develop content standards in areas related to adult literacy and basic skills and

(ii) Improve the ability of adult literacy programs to meet the needs of adult learners.

(c) The extent to which the applicant demonstrates knowledge of and experience in successfully managing grassroots consensus building processes;

(d) The explicit and documented commitment of constituencies and other stakeholder organizations to participate in information-gathering events and the Working Group;

(e) The applicant's explicit and documented commitment to participate in two national meetings referenced above and any other national activities relating to the conduct of the grant.

(2) Plan of Operation (45 points): Quality of the plan for creating multi-year system improvement plan including:

(a) The extent to which the applicant states clear goals and objectives for the project in terms of impacts on the quality of the delivery system;

(b) The quality of the plan for assuring meaningful participation of key constituencies, including:

(i) Adult learners;

(ii) Full and part-time teachers and tutors, including volunteers;

(iii) Program administrators;

(iv) Representatives of public and private agencies that fund adult literacy;

(v) Members of organizations and institutions, including schools and employers, with a stake in the performance of adults as parents, citizens and workers;

(vi) Public officials;

(vii) Members of organizations involved in provision of staff development and technical assistance;

(c) Quality of the process for developing a system-improvement plan, including the extent to which plan provides for broad participation in standards development.

(3) Project Management Plan, Including Qualifications of Key Personnel (25 points): The Director reviews each application to determine the quality of the management plan, including:

(a) The soundness of the plan for forming and operating a Working Group to carry out the project, including provisions for membership; duties; responsibilities, term of service.

(b) The soundness of the timeline for undertaking key project tasks and accomplishing them by set dates;

(c) The quality of the qualifications and job description developed for the project director, including—

(i) The soundness of provisions for how the project director will relate to the Working Group;

(ii) If a candidate for project director has been selected, the quality of the candidate's resume,

(iii) If a candidate for project director has not been selected, the applicant's provisions for selecting and hiring a candidate within a month of receiving the grant award.

(d) The quality of provisions for documenting the systems improvement plan development process; and

(e) The soundness of provisions for monitoring the systems improvement plan development process in terms of—

(i) The inclusiveness of the process, and

(ii) The quality of the results;

(4) Budget and Cost effectiveness (5 points): The Director reviews each application to determine the extent to which:

(a) The budget is adequate to support grant activities;

(b) Costs are reasonable in relation to the objectives of the project;

(c) The budgets for any subcontracts are detailed and appropriate; and

(d) The budget details any resources, cash or in-kind, that the applicant or others will provide to the project in addition to grant funds.

Other Applications Requirements: The application shall include the following:

Project Summary: The proposal must contain a brief summary of the proposed project suitable for publication. It should not be an abstract of the application, but rather a self-contained description of the activities that would explain the proposal. The summary must include the following information:

a. Name of applicant organization

b. Description of literacy constituency represented by the applicant:

1. State:

2. Region:

3. Type of program:

c. Adult role(s) to be addressed in plan:

1. Parent/family.

2. Citizen.

3. Worker.

d. Type of instruction to be addressed in plan:

1. ABE.

2. ESL.

3. Other.

Project Description: This description should not exceed twenty (20) single-spaced pages, or forty (40) double-spaced pages. The description may be amplified by material in attachments and appendices, but the body should stand alone to give a complete picture of the project. Applications which exceed 20 single-spaced pages or 40 double-spaced pages will not be reviewed.

Summary Proposal Budget: The proposal must contain a budget for support requested. The budget format may be reproduced as needed. Facsimiles may be used, but do not make substitutions in prescribed budget categories. Additional pages for budget explanation and amplification should be attached and must be consistent with the data and categories on the form. All budget requests must be documented and justified.

Budget Proposal: The budget proposal should be BOUND IN A SEPARATE DOCUMENT. Personnel items should include the names (or position titles) of key staff, number of hours, and applicable hourly rates. Discussion of equipment, supplies, and travel should include both the cost and the purpose and justification. Budgets should include all applicant's costs and should identify contributed costs, and support from other sources, if any. Sources of support should be clearly identified in all instances. The financial aspects of any cost sharing and joint or cooperative funding by members of a consortium formed for purposes of the application should be shown in a detailed budget for each party. These budgets should reflect the arrangements among the parties, and should show exactly what cost-sharing is proposed for each budget item.

Disclosure of Prior Institute Support: If any subcontractor, partner, consortium member, or organization has received Institute funding in the past 2 years, the following information on the prior awards is required:

- Institute award number, amount and period of support;
- A summary of the results of the completed work; and
- A brief description of available materials and other related research products not described elsewhere.

If the applicant has received a prior award, the reviewers will be asked to comment on the quality of the prior work described in this section of the application.

Current and Pending Support: All current project support from whatever source (such as Federal, State, or local government agencies, private foundations, commercial organizations) must be listed. The list must include the proposed project and all other projects requiring a portion of time of the Project Director and other project personnel, even if they receive no salary support from the project(s). The number of person-months or percentage of effort to be devoted to the projects must be stated, regardless of source of support. Similar information must be provided for all proposals that are being considered by or will be submitted soon to other sponsors.

If the project now being submitted has been funded previously by another source, the information requested in the paragraph above should be furnished for the immediately preceding funding period. If the proposal is being submitted to other possible sponsors, all of them must be listed. Concurrent submission of a proposal to other organizations will not prejudice its review by the Institute.

Any fee proposed to be paid to a collaborating or ''partner'' for-profit entity should be indicated. (Fees will be negotiated by the Grants Officer.) Any copyright, patent or royalty agreements (proposed or in effect) must be described in detail, so that the rights and responsibilities of each party are made clear. If any part of the project is to be subcontracted, a budget and work plan prepared and duly signed by the subcontractor must be submitted as part of the overall application and addressed in the narrative.

Instructions for Transmittal of Applications:

(1) To apply for a standards planning grand—

(a) Mail the original and ten (10) copies of the application on or before deadline date of August 21, 1995, to: National Institute for Literacy, 800 Connecticut Avenue, NW, Suite 200, Washington, DC 20006, Attention: (CFDA #84.257H).

(b) Hand deliver the application by 4:30 p.m. (Washington, DC time) on the deadline date to the address above.

(2) An applicant must show one of the following as proof of mailing:

(a) A legibly dated US. Postal Service postmark.

(b) A legible mail receipt with the date of mailing stamped by the US. Postal Service.

(c) A dated shipping label, invoice, or receipt from a commercial carrier.

(3) If an application is mailed through the US. Postal Service, the Director does not accept either of the following as proof of mailing:

(a) A private metered postmark.

(b) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The National Institute for Literacy will mail a Grant Applicant Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the National Institute for Literacy at (202) 632–1500.

(3) The applicant must indicate on the envelope and in Item 10 of the application for Federal Assistance (Standard Form 424) the CFDA number of the competition under which the application is being submitted.

Application Forms: The appendix to this announcement is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

Additional Materials:

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification Regarding Lobbying; Debasement, Suspension, and other Responsibility Matters; and Drug-Free Workplace Requirements (ED 90–0013).

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions.

Note: ED 80–0014 is intended for the use of recipients and should not be transmitted to the National Institute for Literacy.

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a Photostat copy of the application and budget forms, the assurances and the certifications. However, the application form, the assurances, and certifications must each have an original signature. No award can be made unless a completed application has been received.

Grant Administration: The administration of the grant is governed by the conditions of the award letter. The Education Department General Administrative Regulations, (EDGAR) 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85 and 86 (July 1, 1993), set forth administrative and other requirements. This document is available through your public library and the National Institute for Literacy. It is recommended that appropriate administrative officials

become familiar with the policies and procedures in the EDGAR which are applicable to this award. If a proposal is recommended for an award, the Grants Officer will request certain organizational, management, and financial information.

The following information on grant administration dealing with questions such as General Requirements, Prior Approval Requirements, Transfer of Project Director, and Suspension or termination of Award, should be referred to the Grants Officer.

Reporting: In addition to working closely with the Institute, the applicant will be required to submit a quarterly report of activities, a documentation report and a system(s) reform or improvement plan as described in the DESCRIPTION OF PROGRAMS above. Both the documentation report and the improvement plan are due at the Institute on July 15, 1996.

Acknowledgment of Support and Disclaimer: An acknowledgment of Institute support and a disclaimer must appear in publications of any material, whether copyrighted or not, based on or developed under NIFL-supported projects:

''This material is based upon work supported by the National Institute for Literacy under Grant No. (Grantee should enter NIFL grant number).''

Except for articles of papers published in professional journals, the following disclaimer should be included:

''Any opinion, findings, and conclusions or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of the National Institute for Literacy.''

Instructions for Estimated Public Reporting Burden: Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing the Act, the National Institute for Literacy invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 40 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and disseminating the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the National Institute for Literacy, and the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

(Information collection approved under OMB control number 3200–0031, Expiration date: July 1998).

Program Authority: 20 U.S.C. 1213c

Dated: July 7, 1996.

Andrew J. Hartman,

Director, National Institute for Literacy.

Program Timetable

The NIFL has developed the following timetable for the project:

August 21, 1995	Applications submitted.
September 30, 1995	NIFL awards 10 grants to state, regional or national organizations or consortia to participate in the standards project.
November 1995	Grantees meet in Washington to establish a common framework for the project.
Oct. 1995–Sept. 30, 1996 ..	Grant recipients carry out grant activities.
April 1996	Grant recipients meet with National Policy Board to share progress to date and to set priorities for next steps.
July 15, 1996	Grant recipients submit documentation reports and long term improvement plan for competitive funding.
Aug.–Sept. 1996	Interested representatives of planning grant projects meet to shape national framework based on year 1 results.
September 15, 1996	Implementation grants awarded.
November 1996	NIFL publishes results of year one projects for broad comment and review.

BILLING CODE 6055–01–M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

	2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

		—							

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: | | | = | | | |

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BILLING CODE 6055–01–C

Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—''New'' means a new assistance award.

—''Continuation'' means an extension for an additional funding/budget period for a project with a projected completion date.

—''Revision'' means any change in the Federal Government's financial obligation or contingent liability for an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 6055–01–M

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
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BILLING CODE 6055-01-C

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
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Instructions for the SF–424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary

Lines 1–4, Columns (a) and (b)

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number of each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g).

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1–4, Columns (c) through (g) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Line 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers,

or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction of rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

_____

Signature of authorized certifying official

_____

Title

_____

Applicant organization

_____

Date submitted

Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR part 82, ''New Restrictions on Lobbying,'' and 34 CFR part 85, ''Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).'' The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. Lobbying

As required by section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR part 82, sections 82.105 and 82.110, the application certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form—LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subwards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. Debarment, Suspension, and Other Responsibility Matters

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR part 85, for prospective participants in primary covered transactions, as defined at 34 CFR part 85, sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. Drug-Free Workplace (Grantees Other Than Individuals)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR part 85, subpart F, for grantees, as defined at 34 CFR part 85, sections 85.605 and 85.610—

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, SW, (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202–4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

Drug-Free Workplace (Grantees Who Are Individuals)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR part 85, subpart F, for grantees, as defined at 34 CFR part 85, sections 85.605 and 85.610—

A. As condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, to: Director, Grants and Contract Services, U.S. Department of Education, 400 Maryland Avenue, SW, (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202–4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

_____

Name of applicant

_____

PR/Award number and/or project name

_____

Printed name and title of authorized representative

_____

Signature

_____

Date

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing, Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 95.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its cerficiation was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms ''covered transaction,'' ''debarred,'' ''suspended,'' ''ineligible,'' ''lower tier covered transaction,'' ''participant,'' ''person,'' ''primary covered transaction,'' ''principal,'' and ''voluntarily excluded,'' as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled ''Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions,'' without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remdies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The proposective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

_____

Name of applicant

_____

PR/Award number and/or project name

_____

Printed name and title of authorized representative

_____

Signature

_____

Date

BILLING CODE 6055–01M

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter ____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier ____, *if known*: **Congressional District**, *if known*:	 **Congressional District**, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	**9. Award Amount**, *if known*: $
10. a. Name and Address of Lobbying Entity (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment (*check all that apply*):	13. Type of Payment (*check all that apply*):
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment (*check all that apply*): ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16.	
Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	**Signature:** _____ **Print Name:** _____ **Title:** _____ **Telephone No.:** _____ **Date:** _____

Federal Use Only: Authorized for Local Reproduction
Standard Form - LLL

[FR Doc. 95–17072 Filed 7–11–95; 8:45 am]
BILLING CODE 6055–01–C

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection:

NRC Form 327—Special Nuclear Material (SNM) Physical Inventory Summary Report, and

NUREG/BR–0096—Instructions and Guidance for Completing Physical Inventory Summary Reports

3. The form number if applicable: NRC Form 327.

4. How often the collection is required: The frequency of reporting corresponds to the frequency of required inventories, which depends essentially on the strategic significance of the SNM covered by the particular license. Certain licenses possessing strategic SNM are required to report inventories every two months. Licensees possessing SNM of moderate strategic significance must report every six months. Licensees possessing SNM of low strategic significance must report annually.

5. Who will be required or asked to report: Fuel facility licensees possessing special nuclear material.

6. An estimate of the number of annual responses: 21.

7. An estimate of the total number of hours needed annually to complete the requirement or request: 89 (an average of approximately 4.25 hours per response).

8. An indication of whether Section 3504(h), Pub. L. 96–511 applies: Not applicable.

9. Abstract: NRC Form 327 is submitted by fuel facility licensees to account for special nuclear material. The data is used by NRC to assess licensee material control and accounting programs and to confirm the absence of (or detect the occurrence of) special nuclear material theft or diversion. NUREG/BR–0096 provides specific guidance and instructions for completing the form in accordance with the requirements of the particular regulation a licensee is subject to. The revised estimate of burden reflects a slight net decrease because of a net decrease in the number of licensees reporting.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street NW., (Lower Level), Washington, DC.

Comments and questions may be directed by mail to the OMB reviewer: Troy Hillier, Office of Information and Regulatory Affairs (3150–0139), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395–3084.

The NRC Clearance officer is Brenda Jo Shelton, (301) 415–7233.

Dated at Bethesda, Maryland, this 28th day of June 1995.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 95–17024 Filed 7–11–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–424 and 50–425]

Vogtle Electric Generating Plant, 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 certain requirements of its regulations to Facility Operating License Nos. NPF–68 and NPF–81. These licenses are issued to Georgia Power Company, et al. (GPC, or the licensee) for operation of the Vogtle Electric Generating Plant, Units 1 and 2, located in Burke County, Georgia.

Environmental Assessment

Identification of Proposed Action

The proposed action is in accordance with the licensee's application dated February 14, 1995, 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 biometrics system to control site access at Vogtle so that photo identification badges may be taken offsite by individuals not employed by the licensee who have been granted unescorted access into protected and vital areas.

The Need for the Proposed Action

Pursuant to 10 CFR 73.55, paragraph (a), GPC shall establish and maintain an onsite physical protection system and security organization. Regulation 10 CFR 73.55(d), ''Access Requirements,'' paragraph (1), specifies that the ''licensee shall control all points of personnel and vehicle access into a protected area.'' Regulation 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.'' Regulation 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, unescorted access into protected areas at the Vogtle plant is controlled through the use of a photograph on a badge/keycard (hereafter referred to as a ''badge''), which is stored at the access point when not in use. The security officers at each entrance station use the photograph on the badge to visually identify the individual requesting access. The badges for GPC employees and contractor personnel who have been granted unescorted access are given to the individuals at the entrance location upon entry and are returned upon exit. In accordance with 10 CFR 73.55(d)(5), the badges are not allowed to be taken offsite.

The licensee proposes to implement an alternate unescorted access control system that would eliminate the need to issue and retrieve badges at the entry point and would allow all individuals with unescorted access to keep their badges 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.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the licensee's application. Under the proposed system, each individual who is authorized unescorted access 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 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 badges when departing the site.

Based on the Sandia report, ''A Performance Evaluation of Biometric Identification Devices,'' SAND91–0276•UC–906, Unlimited Release, June 1991, that concluded hand geometry equipment possesses strong performance and high detection characteristics, and on its own experience with the current photo-identification system, the licensee determined that the proposed hand geometry system would provide the same level of assurance as the current system that access is only granted to authorized individuals. Since both the badge and hand geometry would be necessary for access into the protected areas, the proposed system would provide a positive verification process. Potential loss of a badge by an individual, as a result of taking the badge offsite, would not enable unauthorized entry into protected areas. The licensee has stated it will implement a process for periodically testing the proposed system to ensure continued overall level of performance equivalent to that specified in the regulation. The Physical Security Plan 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 licensee has determined that the proposed hand geometry access control process for identifying personnel will provide the same high assurance objective regarding onsite physical protection as provided by the photo-identification process now in use.

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 areas.

Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impacts. With regard to potential non-radiological impacts, the proposed action does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed action.

Alternative to the Proposed Action

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 did not involve the use of any resources not previously considered in the Final Environmental Statement related to operation of the Vogtle Electric Generating Plant, Units 1 and 2, dated March 1985.

Agencies and Persons Consulted

In accordance with its stated policy on June 13, 1995, the staff consulted with the Georgia State official, Mr. James Setser of the Environmental Protection Division, Georgia Department of Natural Resources, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the foregoing environmental assessment, the Commission has concluded that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated February 14, 1995, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC at the local public document room located at the Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia.

Dated at Rockville, Maryland, this 6th day of July 1995.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–17025 Filed 7–11–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–397]

Washington Public Power Supply System; WPPSS Nuclear Project No. 2 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–21, issued to Washington Public Power Supply System (WPPSS, or the licensee) for operation of the WPPSS Nuclear Project No. 2, located in Benton County, Washington.

Environmental Assessment

Identification of the Proposed Action

The exemption would allow implementation of a hand geometry biometric system of site access control so that photograph identification badges can be taken offsite by personnel badged at the site but not employed by the Supply System.

The proposed action is in accordance with the licensee's application, dated March 1, 1995, 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 Need for the Proposed Action

Pursuant to 10 CFR 73.55(a), the licensee is required to establish and maintain an onsite physical protection system and security organization. Section 73.55(d)(1) of Title 10 of the Code of Federal Regulations, ''Access Requirements,'' specifies that ''the licensee shall control all points of personnel and vehicle access into a protected area.'' Section 73.55(d)(5) further specifies that ''a numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort.'' This paragraph also states that an individual not employed by the licensee, but who requires frequent and extended access to protected and vital areas, may be authorized access to such areas without escort provided that he 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 the WNP–2 site is controlled through use of a photograph on a badge with a keycard attached (hereafter, these are referred to as the badge). The security officers at the entrance station use the photograph on the badge to visually identify the individual requesting access. The

individual is then given the badge to allow access. Another security officer collects the badges upon exit from the protected area. The badges are then placed in a badge rack located at the badge issue station and stored at the entrance station until the individual again needs access into the protected area.

The licensee proposes to implement an alternative unescorted access control system which would eliminate the need to issue and retrieve badges at the 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 allow contractors to take their badges offsite instead of returning them when exiting the site.

Environmental Impacts of the Proposed Action

The staff has completed its evaluation of the licensee's application. Under the proposed system, individuals who are authorized for unescorted entry into the protected area would have the physical characteristics of their hand (hand geometry) registered with their badge number in the access control system. When an individual presents his badge to the card reader and places their hand on the measuring surface, the system compares the hand geometry to that registered for the badge number to verify authorization for entry. This system provides a positive means of assuring that a stolen or lost badge could not be used to gain access. Individuals, including licensee employees and personnel not employed by the licensee (e.g., contractors), would be allowed to keep their badge with them when they depart the site. This would reduce the need for security personnel to issue and retrieve badges at the access point. The access process will continue to be under the observation of security personnel located within a hardened cubicle who have final control over release of the entrance station turnstiles.

Based on Sandia Report, SAND91–0276 UC–906 (unlimited release), printed June 1991, ''A Performance Evaluation of Biometric Identification Devices,'' and on the licensee's experience with the current photo identification system, the licensee has demonstrated that the proposed hand geometry will maintain the same high level of assurance that access will be granted to the protected area to only authorized individuals. Since both the badge and hand geometry are necessary for access into the protected area, the proposed system provides a positive verification process. Potential loss of a badge by an individual that takes a badge offsite would not enable unauthorized entry into the protected area. Badges will continue to be displayed by all individuals while inside the protected area. 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 for WNP–2.

Agencies and Persons Consulted

In accordance with its stated policy, on June 19, 1995, the staff consulted with the Washington State official, Mr. R.R. Cowley of the Department of Health, State of Washington Energy Facility Site Evaluation Council, 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 March 1, 1995, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Richland Public Library, 955 Northgate Street, Richland, Washington 99352.

Dated at Rockville, Maryland, this 3rd day of July 1995.

For the Nuclear Regulatory Commission.

Eileen M. McKenna,

Acting Director, Project Directorate IV–2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–17026 Filed 7–11–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 99900271]

Rosemount Nuclear Instruments, Inc.; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation (NRR), has taken action with regard to a Petition for action under Part 21 of Title 10 of the *Code of Federal Regulations* (10 CFR Part 21) received from Paul M. Blanch. The Petitioner requested that (1) Rosemount Nuclear Instruments, Incorporated (Rosemount) immediately inform all users of safety-related transmitters in accordance with the requirements of 10 CFR Part 21 of the shelf-life limitations of its pressure transmitter sensor cell fill-oil and that its pressure transmitter sensor cell fill-oil may crystallize if the transmitters are ever exposed to temperatures of less than 70 degrees Fahrenheit, and provide all available information to each licensee for evaluation as it applies to each licensed facility; (2) the U.S. Nuclear Regulatory Commission (NRC) take ''prompt and vigorous'' enforcement action against Rosemount for knowingly and consciously failing to provide notification as required by 10 CFR Part 21 of the shelf-life limitations of the fill-oil and its potential to crystallize, and that a ''separate violation must be issued'' for each defect and each day of failure to provide the required notice; and (3) the NRC consider escalated enforcement action due to the repetitive nature of the alleged violations.

The Director of NRR has denied this Petition. The reasons for the Director's actions are set forth in the ''Director's Decision under 10 CFR 2.206'' (DD–95–13), which is available for public inspection in the Commission's Public Document Room, Gelman Building, 2120 L Street, N.W., Washington, D.C. 20037. A copy of the Director's Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided by that regulation, the decision will constitute the final action of the Commission 25 days after the date of issuance of the decision unless the Commission, on its own motion, institutes a review of the decision within that time.

Dated at Rockville, Maryland, this 5th day of July 1995.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

In the matter of Rosemount Nuclear Instruments, Incorporated, Eden Prairie, Minnesota, Docket No. 99900271 (10 CFR § 2.206), July 5, 1995.

I. Introduction

On November 21, 1994, Mr. Paul M. Blanch (the Petitioner) filed a Petition with the Executive Director for Operations, pursuant to Section 2.206 of Title 10 of the *Code of Federal Regulations* (10 CFR § 2.206), in which he requested that (1) Rosemount Nuclear Instruments, Incorporated (Rosemount), immediately inform all users of safety-related transmitters in accordance with the requirements of 10 CFR Part 21 of the shelf-life limitations of its pressure transmitter sensor cell fill-oil, and that its pressure transmitter sensor cell fill-oil may crystallize if the transmitters are ever exposed to temperatures of less than 70 degrees Fahrenheit (°F), and provide all available information to each licensee for evaluation as it applies to each licensed facility; (2) the U.S. Nuclear Regulatory Commission (NRC) take ''prompt and vigorous'' enforcement action against Rosemount for knowingly and consciously failing to provide notification as required by 10 CFR Part 21 of the shelf-life limitations of the fill-oil and its potential to crystallize, and that a ''separate violation must be issued'' for each defect and each day of failure to provide the required notice; and (3) the NRC consider escalated enforcement action due to the repetitive nature of the alleged violations.

The Petitioner's letter has been referred to me pursuant to 10 CFR § 2.206 of the Commission's regulations. By letter dated December 22, 1994, I acknowledged receipt of the Petition. As described in that letter, the Petitioner's request that Rosemount ''immediately'' inform all users of safety-related transmitters of the shelf-life limitations of the fill-oil and the potential for crystallization was denied. With regard to the Petitioner's request that the NRC take ''prompt and vigorous'' enforcement action and consider escalated enforcement action against Rosemount for its alleged reporting failures, I informed the Petitioner that the staff was evaluating this matter and would take appropriate enforcement action after completion of its evaluation, should it be warranted.

II. Discussion

As set forth in 10 CFR § 21.1, the regulations in Part 21 establish procedures and requirements for implementation of Section 206 of the Energy Reorganization Act of 1974, which requires notification to the Commission of any basic component supplied to a licensed facility that has defects which could create a substantial safety hazard. Under 10 CFR § 21.21(a), each entity subject to the regulations in Part 21 must evaluate ''deviations'' and ''failures to comply'' in order to identify a defect or failure to comply that could create a substantial safety hazard, were it to remain uncorrected.[1] In accordance with 10 CFR § 21.21(b), if the deviation is discovered by the supplier and the supplier determines that it does not have the capability to perform the evaluation to determine if a defect exists, then the supplier must inform the purchasers or affected licensees within five working days so that the purchaser or licensee may evaluate the deviation.

The Petitioner asserts that Rosemount became aware of a defect that may have created substantial safety hazard and failed to report this defect to the affected licensees within five working days for evaluation. The Petitioner also asserts that neither the NRC nor Rosemount possess the technical areas of expertise to conduct this evaluation, and that the ultimate responsiblity for evaluation is with the licensees.

A. Shelf-Life Limitations

The Petitioner's first request was that Rosemount must immediately inform all users of its safety-related transmitters of the shelf-life limitations of its pressure transmitter sensor cell fill-oil and that the pressure transmitter sensor cell fill-oil may crystallize if the transmitters are ever exposed to temperatures of less than 70° F. The Petitioner further requested that Rosemount must provide all available information to each licensee for evaluation as it applies to each licensed facility.

The shelf life issue was first identified and discussed in NRC Inspection Report No. 99900271/93–01 which documented the results of an inspection conducted on February 1 through 4, and March 8 through 12, 1993 of the Rosemount Eden Prairie, Minnesota facility. The NRC inspection team review of the viscosity test date recorded on a container of Dow Corning (DC) 704 silicone oil used for Rosemount safety-related transmitter Models 1153 and 1154 sensor cells, located in the nuclear production sensor cell oil fill area, indicated that the contents were beyond the manufacturer's certified shelf life. The team noted that, upon receipt of this material, Rosemount Receipt Inspection verified its viscosity value and wrote that value and the date of test on the outside of each container. The applicable Dow Corning product specification data sheet stated, ''when stored in the original, sealed container, at or below 77 degrees F, DC 704 oil has a shelf life of 12 months from the date of shipment, although no inherent limitations on the useful life of this product are known to exist.'' The team discussed this issue with Rosemount engineers, who stated that, as a result of product liability concerns, Dow Corning, in 1992, changed the certified shelf life of the oil listed on their product data sheet from ''indefinite'' to 12 months. Rosemount, however, still considered the shelf life to be indefinite and issued an engineering change notice in September 1992 to modify its procurement drawings to reflect this position. A letter dated April 14, 1992, from Dow Corning to Rosemount stated, in part, that ''Dow Corning certifies that DC 704 will meet the sales specification requirements for 12 months from date of shipment when properly stored in the original unopened container . . . . Because the sensor is completely sealed and free from contaminates and air it shouldn't change chemically over a long period of time.'' Another letter from Dow Corning to Rosemount, dated August 31, 1992, regarding the usable life of DC 704 stated that no inherent limitations on useful life of the product are known to exist and that it is the responsibility of Rosemount to test and evaluate Dow Corning products in their specific applications to determine compatibility. During the February and March 1993 inspection, the NRC inspectors observed that Rosemount had established a test and evaluation program which encompassed its sensor cell application in the safety-related transmitters. The inspectors observed that Rosemount has been performing functional testing of its transmitters

[1] 10 CFR § 21.3 defines a *deviation* as a departure from the technical requirements included in a procurement document. A *defect* is defined, in part, as a deviation in a basic component delivered to a purchaser for use in a facility or an activity subject to the regulations in Part 21 if, on the basis of an evaluation, the deviation could create a substantial safety hazard; the installation, use or operation of a basic component containing a defect; or a condition or circumstance involving a basic component that could contribute to the exceeding of a safety limit. A *failure to comply* is defined as an activity or basic component that fails to comply with the Atomic Energy Act of 1954, as amended, or any applicable rule, regulation, order, or license of the Commission relating to a substantial safety hazard * * * (See 10 CFR § 21.21(a)(3)(i).)

which includes testing at pressure and within the operational limits. Based upon the inspectors' observations and their review of Rosemount correspondence with Dow Corning, the NRC concludes that the shelf life of the oil does not constitute a safety issue.

The Petitioner filed an earlier Petition on March 28, 1994, in which he requested that the NRC inform all users of Rosemount 1150-series pressure transmitters and series 510 and 710 DU trip devices of ''significant safety problems identified in NRC Inspection Report 99900271/93–01.'' By letter dated May 2, 1994, the Petitioner repeated this request. I responded to this request by letter dated June 3, 1994. In my response, I summarized some of the above discussion and stated that the staff did not consider the shelf life of the DC 704 fill oil to be significant.[2]

The Commission's regulations in 10 CFR Part 21 require that notification be provided of any basic component supplied to a licensed facility that contains defects which could create a substantial safety hazard. However, the staff determined that Rosemount was not required to notify the NRC nor to inform its customers under the provisions of 10 CFR Part 21 because a defect or deviation as defined in 10 CFR § 21.3 was not identified.

B. Sensor-Cell Fill-Oil Crystallization

An NRC staff concern regarding potential crystallization of DC 704 silicone oil that is used in Rosemount Models 1153 and 1154 safety-related transmitters' sensor-cells was formally transmitted to Rosemount by an NRC letter dated June 2, 1994. That letter identified the staff's concern regarding an apparent disparity between the fill oil manufacturer's precautionary note on temperature limitations and the Rosemount product data sheet. The June 2, 1994, letter also noted that Rosemount believed it had adequately addressed the concern in tests conducted in 1980, but that it was pursuing the matter further with the fill oil manufacturer. Rosemount's letter of September 28, 1994, provided an analysis and response to these concerns. Rosemount's analysis concluded that preconditioning of the fill oil during the transmitter manufacturing process, coupled with initial and periodic testing of the transmitters in service at plants, provide adequate assurance that proper transmitter performance is maintained. The analysis also noted that Rosemount was aware of the fill oil's potential for crystallization and addressed its concerns in a 1980 report which concluded that crystallization was not a concern as long as certain conditions were met. These conditions are assured by Rosemount's manufacturing processes and its transmitter's specified range of operation. Rosemount informed the staff in a September 1994 submittal that it found no evidence of fill oil crystallization at licensee facilities. In addition, an NRC staff review of industry data did not identify any instances of Rosemount Model 1153 or 1154 transmitter sensor-cell oil crystallization. The NRC staff conducted an inspection at the Rosemount facility in January 1995 (Inspection report 99900271/95–01), specifically to review the crystallization issue. Based on the team's review of the Rosemount procedures, manufacturing process and personal interviews with the Rosemount manufacturing and engineering staff, the NRC staff concluded that Rosemount's actions in 1980 regarding the DC 704 cautionary note adequately addressed its 10 CFR Part 21 responsibilities and the validity of its engineering basis for its Model 1153 and 1154 low temperature designed application. Additionally, the team determined that, although not required by 10 CFR Part 21, Rosemount had provided its customers a summary of its engineering analysis in a letter of December 1, 1994, and that Rosemount had appropriately implemented its applicable manufacturing process controls. The team also concluded that Rosemount's conditioning of the DC 704 oil before its use should remove any existing seeds which could cause crystallization. Based on a review of the information provided by Dow Corning, observations of Rosemount testing, and industry historical data that indicates no instances of crystallization, the staff concludes that the concern regarding crystallization of DC 704 oil is adequately addressed by the transmitter manufacturing process and performance testing by the licensees.

In summary, the staff found that Rosemount identified, evaluated and took appropriate actions regarding the manufacturer's cautionary note concerning the transmitter fill-oil temperature limitations in 1980. Since Rosemount's manufacturing and testing processes are sufficient to assure a low probability of crystallization of the fill oil, the staff has determined that Dow Corning's cautionary note regarding crystallization did not constitute a deviation from the Rosemount product data sheet. Therefore, Rosemount was not required to inform its customers of the issue under the provisions of 10 CFR Part 21.

The aspect of the Petitioner's request regarding shelf life limitations and crystallization of the fill oil is denied. The self-life issue was evaluated by the staff and, as discussed in my December 22, 1994, letter to the Petitioner, found not to be a significant safety issue. As discussed in the NRC's December 9, 1994, letter to Rosemount and NRC Inspection Report No. 99900271/95–01, the crystallization issue was determined by NRC staff to have been adequately addressed by Rosemount in regard to its engineering and 10 CFR Part 21 responsibilities. Rosemount was not required under Part 21 to inform affected purchasers of these conditions, therefore, no violation of 10 CFR Part 21 was identified. Since the remainder of the Petitioner's request relates to enforcement action which is predicated on a violation of NRC regulations, the remainder of the Petitioner's request is also denied.

III. Conclusion

As explained above, following its review of the Petitioner's request and supporting argument, the NRC staff concludes that Rosemount did not violate 10 CFR Part 21 with respect to the issues raised in this Petition. Accordingly, the Petition is hereby denied.

A copy of this Decision will be filed with the Secretary of the Commission for the Commission to review as provided in 10 CFR § 2.206(c). The Decision will become the final action of the Commission 25 days after issuance unless the Commission, on its own motion, institutes a review of the Decision in that time.

Dated at Rockville, Maryland, this 5th day of July 1995.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 95–17027 Filed 7–11–95; 8:45 am]

BILLING CODE 7590–01–M

[2] A Director's Decision responding to the other issues raised in the Petitioner's December 31, 1992, and March 28, 1994, Petitions (DD–94–12) was issued on December 15, 1994. 40 NRC 370.

[Docket No. 50–272]

Public Service Electric and Gas Co., (Salem Nuclear Generating Station, Unit 1; Exemption)

I

The Public Service Electric and Gas Company (the licensee) is the holder of Facility Operating License No. DPR–70, which authorizes operation of the Salem Nuclear Generating Station, Unit 1 (the facility). The license provides, among

other things, that Salem, Unit 1 is subject to all rules, regulations, and Orders of the U.S. Nuclear Regulatory Commission (the Commission or NRC) now or thereafter in effect.

The facility is a pressurized water reactor, located at the licensee's site in Salem, New Jersey.

II

Section III.D.1.(a) of Appendix J to 10 CFR Part 50 requires the performance of three Type A containment integrated leakage rate tests (CILRTs), at approximately equal intervals during each 10-year service period. The third test of each set shall be conducted when the plant is shutdown for the 10-year plant inservice inspection.

III

By letter dated April 4, 1995, the licensee requested relief from the requirement to perform a set of three Type A tests at approximately equal intervals during each 10-year service period. The requested exemption would permit an interval extension for the second Type A test and defer this test from the twelfth refueling outage, scheduled to begin September 1995, to the thirteenth refueling outage, scheduled to begin February 1997 and end no later than June 1997.

The licensee's request cites the special circumstances of 10 CFR 50.12, paragraph (a)(2)(ii), as the basis for the exemption. The underlying purpose of the requirement to perform three Type A CILRTs, at approximately equal intervals during each 10-year service period, is to assure that any potential leakage pathways through the primary reactor containment are identified within a time span that prevents significant degradation from continuing or becoming unknown. The licensee has stated that the existing Type B and C local leak rate test (LLRT) programs are not being modified by this request, and will continue to effectively detect containment leakage caused by the degradation of active containment isolation components as well as containment penetrations. It has been the consistent and uniform experience at Salem during the four Type A tests conducted from 1979 to date that any significant containment leakage paths are detected by the Type B and C testing. The Type A test results have only been confirmatory of the results of the Type B and C test results. Therefore, consistent with 10 CFR 50.12, paragraph (a)(2)(ii), application of the regulation in this particular circumstance is not necessary to achieve the underlying purpose of the rule.

IV

Section III.D.1.(a) of Appendix J to 10 CFR Part 50 states that a set of three Type A leakage rate tests shall be performed at approximately equal intervals during each 10-year service period.

The licensee proposes an exemption to this section which would provide an interval extension for the next Type A test. The Commission has determined that pursuant to 10 CFR 50.12(a)(1) this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(ii), are present justifying the exemption; namely, that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule.

The NRC staff has reviewed the basis and supporting information provided by the licensee in the exemption request. The NRC staff has noted that the licensee has a good record of ensuring a leak-tight containment. All Type A tests were within the acceptance limits. The only penetrations with a history of unacceptable, as found, leakage have been the containment air lock shaft seals, and during the eleventh refueling outage a new type shaft seal was installed. The licensee has noted that the results of the Type A testing have been confirmatory of the Type B and C tests, which will continue to be performed. The licensee has stated to the NRC Project Manager that they will perform the general containment inspection although it is only required by Appendix J (Section V.A) to be performed in conjunction with Type A tests. The NRC staff considers that these inspections and system enhancements, though limited in scope, provide an important added level of confidence in the continued integrity of the containment boundary.

The NRC staff has also made use of the information in a draft staff report, NUREG–1493, which provides the technical justification for the present Appendix J rulemaking effort which also includes a 10-year test interval for Type A tests. The integrated leakage rate test, or Type A test, measures overall containment leakage. However, operating experience with all types of containments used in this country demonstrates that essentially all containment leakage can be detected by local leakage rate tests (Type B and C). According to results given in NUREG–1493, out of 180 ILRT reports covering 110 individual reactors and approximately 770 years of operating history, only about 3% of leakage that exceeds current requirements is detectable only by CILRTs, and those few failures were only marginally above prescribed limits. This study agrees well with previous NRC staff studies which show that Type B and C testing can detect a very large percentage of containment leaks. The Salem experience has also been consistent with these results.

The Nuclear Management and Resources Council (NUMARC), now the Nuclear Energy Institute (NEI), collected and provided the NRC staff with summaries of data to assist in the Appendix J rulemaking effort. NUMARC collected results of 144 ILRTs from 33 units; 23 ILRTs exceeded $1.0L_a$. Of these, only nine were not due to Type B or C leakage penalties. The NEI data also added another perspective. The NEI data show that in about one-third of the cases exceeding allowable leakage, the as-found leakage was less than $2L_a$; in one case the as-found leakage was less than $3L_a$; one case approached $10L_a$; and in one case the leakage was found to be approximately $21L_a$. For about half of the failed ILRTs the as-found leakage was not quantified. These data show that, for those ILRTs for which the leakage was quantified, the leakage values are small in comparison to the leakage value at which the risk to the public starts to increase over the value of risk corresponding to L_a (approximately $200L_a$, as discussed in NUREG–1493). Therefore, based on these considerations, it is unlikely that an extension of one cycle for the performance of the Appendix J, Type A test at Salem would result in a significant degradation of the overall containment integrity. As a result, the application of the regulation in these particular circumstances is not necessary to achieve the underlying purpose of the rule.

Based on generic and plant specific data, the NRC staff finds the basis for the licensee's proposed exemption to allow a one-time exemption to permit a schedular extension of one cycle for the performance of the Appendix J Type A test, provided that the general containment inspection is performed, to be acceptable.

Pursuant to 10 CFR 51.32, the Commission has determined that granting this Exemption will not have a significant impact on the quality of the human environment (60 FR 34560).

This Exemption is effective upon issuance and shall expire at the completion of the thirteenth refueling outage.

Dated at Rockville, Maryland this 5th day of July 1995.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–17028 Filed 7–11–95; 8:45 am]

BILLING CODE 7590–01–M

POSTAL RATE COMMISSION

[Docket No. A95–15; Order No. 1066]

In the Matter of: Maryneal, Texas 79535 (Virginia Muncy, Petitioner); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued July 6, 1995.

Docket Number: A95–15.

Name of Affected Post Office: Maryneal, Texas 79535.

Name(s) of Petitioner(s): Virginia Muncy.

Type of Determination: Closing.

Date of Filing of Appeal Papers: June 27, 1995.

Categories of Issues Apparently Raised:

1. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

2. Effect on the community [39 U.S.C. 404(b)(2)(A)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. 404 (b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission Orders

(a) The Postal Service shall file the record in this appeal by July 12, 1995.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Margaret P. Crenshaw,

Secretary.

Appendix

June 27, 1995	Filing of Appeal letter.
July 6, 1995	Commission Notice and Order of Filing of Appeal.
July 24, 1995	Last day of filing of petitions to intervene [*see* 39 CFR 3001.111(b)].
August 1, 1995	Petitioner's Participant Statement or Initial Brief [*see* 39 CFR 3001.115(a) and (b)].
August 21, 1995	Postal Service's Answering Brief [*see* 39 CFR 3001.115(c)].
September 5, 1995	Petitioner's Reply Brief should Petitioner choose to file one [*see* 39 CFR 3001.115(d)].
September 12, 1995	Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 CFR 3001.116].
October 25, 1995	Expiration of the Commission's 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

[FR Doc. 95–16980 Filed 7–11–95; 8:45 am]

BILLING CODE 7710–FW–P

[Docket No. A95–14; Order No. 1065]

In the Matter of: Sargentville, Maine 04673 (John R. Algeo, et al., Petitioners); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued July 6, 1995.

Docket Number: A95–14.

Name of Affected Post Office: Sargentville, Maine 04673.

Name(s) of Petitioner(s): John R. Algeo, *et al.*

Type of Determination: Closing.

Date of Filing of Appeal Papers: June 26, 1995.

Categories of Issues Apparently Raised:

1. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

2. Effect on the community [39 U.S.C. 404(b)(2)(A)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. 404 (b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission orders

(a) The Postal Service shall file the record in this appeal by July 11, 1995.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Margaret P. Crenshaw,

Secretary.

Appendix

June 26, 1995	Filing of Appeal letter.
July 6, 1995	Commission Notice and Order of Filing of Appeal.
July 21, 1995	Last day of filing of petitions to intervene [*see* 39 CFR 3001.111(b)].
July 31, 1995	Petitioners' Participant Statement or Initial Brief [*see* 39 CFR 3001.115 (a) and (b)].

August 21, 1995	Postal Service's Answering Brief [*see* 39 CFR 3001.115(c)].
September 5, 1995	Petitioners' Reply Brief should Petitioner choose to file one [*see* 39 CFR 3001.115(d)].
September 12, 1995	Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 CFR 3001.116].
October 24, 1995	Expiration of the Commission's 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

[FR Doc. 95–16979 Filed 7–11–95; 8:45 am]
BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–7193; 34–35938; File No. 265–20]

Advisory Committee on the Capital Formation and Regulatory Processes

AGENCY: Securities and Exchange Commission.

ACTION: Notice of meeting.

SUMMARY: This is to give notice that the Securities and Exchange Commission Advisory Committee on the Capital Formation and Regulatory Processes will meet on July 26, 1995 in room 1C30 at the Commission's main offices, 450 Fifth Street, N.W., Washington, D.C., beginning at 10:00 a.m. The meeting will be open to the public, and the public is invited to submit written comments to the Committee.

ADDRESSES: Written comments should be submitted in triplicate and should refer to File No. 265–20. Comments should be submitted to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: David A. Sirignano, Committee Staff Director, at 202–942–2870; Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 10a, notice is hereby given that the Committee will meet on July 26, 1995 in room 1C30 at the Commission's main offices, 450 Fifth Street, NW., Washington, D.C., beginning at 10:00 a.m. The meeting will be open to the public.

The Committee was formed in February 1995, and its responsibilities include advising the Commission regarding the informational needs of investors and the regulatory costs imposed on the U.S. securities markets.

The purpose of this meeting will be to discuss the progress of the Committee's work, to continue the discussion of possible alternative approaches to the capital formation and regulatory processes, as well as to discuss general organizational matters.

Dated: July 6, 1995.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–16995 Filed 7–11–95; 8:45 am]
BILLING CODE 8010–01–M

[Release No. 34–35930; International Series Release No. 824, File No. SR–CBOE–95–20]

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 Chicago Board Options Exchange, Inc., Relating to the Listing of Options and Long-Term Options on the CBOE Latin 15 Index and Long-Term Options on a Reduced-Value CBOE Latin 15 Index

June 30, 1995.

I. Introduction

On March 20, 1995, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to provide for the listing and trading of index options on the CBOE Latin 15 Index (''Latin 15'' or ''Index''). Notice of the proposal appeared in the **Federal Register** on April 13, 1995.[3] No comment letters were received on the proposed rule change. The Exchange subsequently filed Amendment No. 1 to the proposed rule change on June 6, 1995,[4] and Amendment No. 2 on June 13, 1995.[5] This order approves the Exchange's proposal, as amended.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] *See* Securities Exchange Act Release No. 35573 (April 6, 1995), 60 FR 18862.

[4] In Amendment No. 1, as discussed more fully herein, the Exchange proposed certain maintenance standards for the Latin 15 Index. *See* Letter from Eileen Smith, Director, Product Development, Research Department, CBOE, to Brad Ritter, Senior Counsel, Office of Market Supervision (''OMS''), Division of Market Regulation (''Division''), Commission, dated June 7, 1995 (''Amendment No. 1'').

[5] In Amendment No. 2, the Exchange extends the proposed trading hours for options on the Index from 3:10 p.m., Chicago time, to 3:15 p.m., Chicago time. *See* Letter from Eileen Smith, Director, Product Development, Research Department, CBOE, to Brad Ritter, Senior Counsel, OMS, Division, Commission, dated June 13, 1995 (''Amendment No. 2'').

II. Description of Proposal

A. General

The CBOE proposes to list for trading options on the Latin 15 Index, a new securities index developed by the CBOE. The Latin 15 Index consists of fifteen components, including American Depositary Receipts (''ADRs''), American Depositary Shares (''ADSs''), and closed-end country funds from four Latin American countries: Argentina, Brazil, Chile, and Mexico.[6] The CBOE also proposes to list either long-term options on the full-value Index or long-term options on a reduced-value Index that will be computed at one-tenth of the value of the Latin 15 Index (''Latin 15 LEAPS'' or ''Index LEAPS'').[7] Latin 15 leaps will trade independent of and in addition to regular Index options traded on the Exchange,[8] however, as discussed below, for purposes of position and exercise limits, positions in Index LEAPS and regular Index options will be aggregated.

B. Composition of the Index

The Index was designed by the Exchange and is based on a combination of 12 ADRs and ADSs overlying Latin American securities, and the shares of three closed-end country funds that invest in Latin American securities. The shares of each of the components contained in the Index currently traded in the U.S. on the New York Stock Exchange (''NYSE'').

[6] The components of the Index are: Argentina Fund Inc.; Telefonica de Argentina S.A.; YPF Sociedad Anonima S.A.; Aracruz Celulose S.A.; Brazil Fund, Inc.; Brazilian Equity Fund, Inc.; Banco Osorno Y La Union; Compania de Telefonos de Chile; Empresa Nacional Electricidad S.A.; Empresas La Moderna S.A. de C.V.; Grupo Tribasa S.A. de C.V.; Coca Cola Femsa S.A.; Telefonos de Mexico S.A.; Grupo Televisa S.A.; and Vitro Sociedad Anonima.

[7] LEAPS is an acronym for Long-Term Equity Anticipation Securities. LEAPS are long-term index option series that expire from 12 to 60 months from their date of issuance. *See* CBOE Rule 24.9(b)(1).

[8] According to the CBOE, the Latin 15 Index represents a segment of the U.S. equity market that is not currently represented in the derivative markets and as such, the CBOE concludes, should offer investors a low-cost means of achieving diversification of their portfolios toward or away from Latin American market securities.

As of the close of trading on June 1, 1995, the Index was valued at 131.92. As of the close of trading on March 14, 1995, the market capitalizations of the components comprising the Index ranged in capitalization from a low of $77.17 million to a high of $10.58 billion. The total capitalization on that date was $38.77 billion; the mean capitalization was $2.58 billion; and the median capitalization was $812.50 million. The largest component accounted for 11.67% of the total weight of the Index, and the five largest components accounted for 46.67% of the total weight of the Index. On that same date, the smallest component accounted for 5.00% of the total weight of the Index. The average trading volume of the components of the Index, for the period from September 1, 1994, through February 28, 1995, ranged from a high of 5.78 million shares per day to a low of 52,579 shares per day.

C. Maintenance

The Index will be maintained by the CBOE. The CBOE may change the composition of the Index at any time, subject to compliance with the maintenance criteria discussed below, to reflect the conditions in the Latin American securities markets. If it becomes necessary to replace a component of the Index, the Exchange represents that every effort will be made to add only replacement securities (*i.e.*, ADRs, ADSs, and closed-end country funds) that preserve the character of the Index. Moreover, replacement securities must be listed on either the American Stock Exchange (''Amex'') or the NYSE, or must be Nasdaq National Market (''Nasdaq/NM'') securities.[9] In considering securities to be added to the Index, the CBOE will take into account the capitalization, liquidity, volatility, and the name recognition of the particular securities. Further, a component of the Index may be replaced in the event of certain events, such as a merger, consolidation, dissolution, or liquidation, or a change in the investment objectives of a country fund component.

The Exchange will most likely maintain 15 components in the Index.[10] In addition, in choosing securities as replacements for or additions to the Index, the CBOE will not make a composition change that would result in less than 85% of the weight of the Index or 80% of the number of components in the Index satisfying the listing criteria for standardized options trading set forth in CBOE Rule 5.3[11] (for securities that are not then the subject of standardized options trading) and CBOE Rule 5.4[12] (for securities that are then the subject of standardized options trading).[13] Additionally, at least twice each year, the CBOE will review the Index and apply these same standards to ensure that not less than 85% of the weight of the Index and 80% of the number of securities represented in the Index continue to satisfy the criteria for standardized options trading set forth in CBOE Rule 5.3 (for securities that are not then the subject of standardized options trading) and CBOE Rule 5.4 (for securities that are then the subject of standardized options trading).[14]

Moreover, at least twice each year, based on the most recent Commission filings by the closed-end funds represented in the Index, the CBOE will review the holdings of each of the closed-end funds to determine whether: (1) Any security that is not eligible for standardized options trading and that is held by one or more closed-end funds represented in the Index accounts, in aggregate, for more than 5% of the weight of the Index; or (2) securities from any one country that are not eligible for standardized options trading and that are held by one or more closed-end funds represented in the Index account, in aggregate, for more than 25% of the weight of the Index.

The CBOE will promptly notify the Commission staff at any time that the CBOE determines that the Index fails to satisfy any of the above maintenance criteria. Further, in such an event, the Exchange will not open for trading any additional series of Index options or Index LEAPS unless the Exchange determines that such failure is not significant, and the Commission staff affirmatively concurs in that determination, or unless the Commission specifically approves the continued listing of the class of Index options or Index LEAPS pursuant to a proposal filed in accordance with Section 19(b)(2) of the Act.[15]

D. Applicability of CBOE Rules Regarding Index Options

Except as modified by this order, the rules in Chapter XXIV of the CBOE Rules will be applicable to Index options and full-value and reduced-value Index LEAPS. In accordance with Chapter XXIV of CBOE's rules, the Index will be treated as a narrow-based index for purposes of applicable position and exercise limits, policies regarding trading halts and suspensions, and margin treatment.[16]

E. Calculation of the Index

The value of the CBOE Latin 15 Index is calculated using a ''modified equal-dollar-weighted'' formula, meaning that each of the components (fund shares or individual stocks) from each of the four countries is represented in approximately equal dollar amounts in relation to the other shares from that country. The countries in the index are then weighted, at the beginning of each quarter, as follows: Argentina—17.5%, Brazil—35%, Chile—17.5%, and Mexico—30%. The Exchange believes this methodology will present a fairer representation of the respective economies. The ''modified'' description refers to the fact that the dollar-weighting is performed on a country by country basis and not between shares of different countries.

The number of shares of each component security in the Index will remain fixed between quarterly reviews except in the event of certain types of corporate actions, such as the payment

[9] The Commission notes that the CBOE will be required to ensure that each component in the Index is a ''reported security'' as defined in Rule 11Aa3–1 of the Act.

[10] In no event will the CBOE decrease the number of components in the Index to less than 10. The Commission notes that if the CBOE determines to increase the number of components to greater than 20, the Exchange will be required to submit a rule filing pursuant to Section 19(b) of the Act.

[11] *See* Amendment No. 1, *supra* note 4. The CBOE's options listing standards, which are uniform among the options exchanges, provide that a security underlying an option must, among other things, meet the following requirements: (1) the public float must be at least 7,000,000 shares; (2) there must be a minimum of 2,000 stockholders; (3) trading volume in the U.S. must have been at least 2.4 million over the preceding twelve months; and (4) the U.S. market price must have been at least $7.50 for a majority of the business days during the preceding three calendar months. *See* CBOE Rule 5.3, Interpretation and Policy .01.

[12] *See* Amendment No. 1, *supra* note 4. The CBOE's options maintenance standards, which are uniform among the options exchanges, provide that a security underlying an option must, among other things, meet the following requirements: (1) the public float must be at least 6,300,000 shares; (2) there must be a minimum of 1,600 stockholders; (3) trading volume in the U.S. must have been at least 1.8 million over the preceding twelve months; and (4) the U.S. market price must have been at least $5.00 for a majority of the business days during the preceding six calendar months. *See* CBOE Rule 5.3, Interpretation and Policy .01.

[13] For these purposes, the closed-end fund components of the Index will be deemed to satisfy the listing criteria for standardized options trading if they satisfy the numerical requirements in CBOE Rule 5.3, Interpretation and Policy .01 (for closed-end country fund shares that are not then the subject of standardized options trading) and CBOE Rule 5.4, Interpretation and Policy .01 (for securities that are then the subject of standardized options trading). It is currently the case, therefore, that closed-end fund components of the Index that are not eligible for standardized options trading pursuant to the Commission's Country Fund Approval Order (*see infra* note 36) are counted as being options eligible for purposes of this 85%/80% requirement.

[14] *Id.*

[15] *See* Amendment No. 1, *supra* note 4.

[16] *See infra* Section II.H.

of a dividend (other than an ordinary cash dividend), stock distributions, stock splits, reverse stock splits, rights offerings, or a distribution, reorganization, recapitalization, or some such similar event with respect to an Index component. When the Index is adjusted between quarterly reviews, the number of shares of the relevant component in the portfolio will be adjusted, to the nearest whole share, to maintain the component's relative weight in the Index at the level immediately prior to the corporate action. In the event of a replacement, the average dollar value of the remaining portfolio components will be calculated and that amount invested in the new component stock, to the nearest whole share. In both cases, the divisor will be adjusted, if necessary, to ensure continuity in the value of the Index.[17]

The value of the Index will be calculated continuously and will be disseminated to the Options Price Reporting Authority (''OPRA'') every fifteen seconds by the CBOE, based on the last-sale prices of the securities comprising the Index.[18] OPRA, in turn, will disseminate the Index value to other financial vendors such as Reuters, Telerate, and Quotron.

The Index value for purposes of settling outstanding regular Index options and full-value and reduced-value Index LEAPS contracts upon expiration will be calculated based upon the regular way opening sale prices for each of the securities comprising the Index in their primary market on the last trading day prior to expiration.[19] In the event that a security traded as a Nasdaq/NM security is added to the Index, the first reported sale price for those shares will be used for determining a settlement value. Once the shares of all of the component securities represented in the Index have opened for trading, the value of the Index will be determined and that value will be used as the final settlement value for expiring Index options contracts, including full-value and reduced-value Index LEAPS. If any of the components of the Index do not open for trading on the last trading day before expiration, then the prior trading day's (*i.e.*, normally Thursday's) last sale price will be used in the Index value calculation. In this regard, before deciding to use Thursday's closing value for a security contained in the Index for purposes of determining the settlement value of the Index, the CBOE will wait until the end of the trading day on Expiration Friday (as defined herein).

F. Contract Specifications

The proposed options on the Index will be cash-settled, European-style options.[20] Standard options trading hours (8:30 a.m. to 3:15 p.m., Chicago time)[21] will apply to the contracts. The Index multiplier will be $100. The strike price interval will be $5.00 for full-value Index options with a duration of one year or less to expiration.[22] In addition, pursuant to CBOE Rule 24.9, there may be up to six expiration months outstanding at any given time. Specifically, there may be up to three expiration months from the March, June, September, and December cycle plus up to three additional near-term months so that the two nearest term months will always be available. As described in more detail below, the Exchange also intends to list several Index LEAPS series that expire from 12 to 60 months from the date of issuance.

Lastly, the options on the Index will expire on the Saturday following the third Friday of the expiration month (''Expiration Friday''). Accordingly, because options on the Index will settle based upon opening prices of the securities comprising the Index on the last trading day before expiration (normally Expiration Friday), the last trading day for an expiring Index option series will normally be the second to the last business day before expiration (normally a Thursday).

G. Listing of Long-Term Options on the Full-Value or Reduced-Value Latin 15 Index

The proposal provides that the Exchange may list long-term Index options that expire from 12 to 60 months from listing based on the full-value Index or a reduced-value Index that will be computed at one-tenth of the full-value Latin 15 Index. Existing Exchange requirements applicable to full-value Index options will apply to full-value and reduced-value Index LEAPS.[23] The current and closing Index value for reduced-value Latin 15 LEAPS will be computed by dividing the value of the full-value Index by 10 and rounding the resulting figure to the nearest one-hundredth. For example, an Index value of 125.46 would be 12.55 for the reduced-value Index LEAPS and an Index value of 125.44 would be 12.54 for the reduced-value Index LEAPS. The reduced-valued Index LEAPS will also be European-style and will be subject to the same rules that govern the trading of Index options, including sales practice rules, margin requirements and floor trading procedures. Pursuant to CBOE Rule 24.9, the strike price interval for the reduced-value Index LEAPS will be no less than $2.50 instead of $5.00.

H. Position and Exercise Limits, Margin Requirements, and Trading Halts

Exchange rules governing margin requirements,[24] position and exercise limits,[25] and trading halt procedures[26] that are applicable to the trading of narrow-based index options will apply to options traded on the Index. The proposal further provides that, for purposes of determining whether given positions in full-value and reduced-value Index LEAPS comply with applicable position and exercise limits, positions in full-value and reduced-value Index LEAPS will be aggregated with positions in the regular Index options. For these purposes, ten reduced-value contracts will equal one full-value contract.

I. Surveillance

Surveillance procedures currently used to monitor trading in each of the Exchange's other index options will also be used to monitor trading in regular Index options and in full-value and reduced-value Index LEAPS. These procedures include complete access to trading activity in the shares of the securities comprising the Index.

[17] Telephone conversation between Eileen Smith, Director, Product Development, Research Department, CBOE, and Brad Ritter, Senior Counsel, OMS, Division, Commission, on June 12, 1995.

[18] For purposes of dissemination of the Index value, if the shares of an ADR, ADS, or closed-end country fund included in the Index have not opened for trading, the CBOE will use the closing value of those shares on the prior trading day when calculating the value of the Index, until those shares open for trading.

[19] As noted above, each of the component securities currently trade on the NYSE. Moreover, the NYSE is the primary market for an overwhelming majority of the securities contained in the Index.

[20] A European-style option can be exercised only during a specified period before the option expires.

[21] *See* Amendment No. 2, *supra* note 5.

[22] For a description of the strike price intervals for reduced-value Index options and long-term Index options, *See infra*, Section II.G.

[23] *See* CBOE Rule 24.9(b).

[24] Pursuant to CBOE Rule 24.11, the margin requirements for the Index options will be: (1) for short options positions, 100% of the current market value of the options contract plus 20% of the underlying aggregate Index value, less any out-of-the-money amount, with a minimum requirement of the options premium plus 10% of the underlying Index value; and (2) for long options positions, 100% of the options premium paid.

[25] Pursuant to CBOE Rules 24.4A and 24.5, respectively, the position and exercise limits for the Index options will be 10,500 contracts, unless the Exchange determines, pursuant to such rules, that a lower limit is warranted.

[26] Pursuant to CBOE Rule 24.7, the trading on the CBOE of index options and Index LEAPS may be halted or suspended whenever trading in component securities whose weighted value represents more than 20% of the Index value are halted or suspended.

Further, the Intermarket Surveillance Group Agreement will be applicable to the trading of options on the Index.[27]

III. Findings 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 and, in particular, the requirements of Section 6(b)(5).[28] Specifically, the Commission finds that the trading of Latin 15 Index options, including full-value and reduced-value Index LEAPS, will serve to promote the public interest and help to remove impediments to a free and open securities market by providing investors with a means of hedging exposure to market risk associated with emerging Latin American market securities.[29]

The trading of options on the Latin 15 Index, including full-value and reduced-value Index LEAPS, however, raises several issues related to index design, customer protection, surveillance, and market impact. The Commission believes, for the reasons discussed below, that the CBOE has adequately addressed these issues.

A. Index Design and Structure

In light of the number of component stocks and overall capitalization of the Latin 15 Index, the Commission finds that it is appropriate to treat the Latin 15 Index as a narrow-based index under CBOE rules for purposes of applicable position and exercise limits, trading halt and suspension procedures, and margin treatment.[30]

The commission also finds that the large capitalizations, liquid markets, and relative weightings of the individual securities comprising the Index minimize the potential for manipulation of the Index. First, the securities comprising the Index are actively traded, with an average daily trading volume for all components for the period from September 1, 1994 through February 28, 1995, of approximately 629,412 shares per day. Second, the market capitalizations of the components of the Index are large, ranging from a high of $10.58 billion to a low of $77.17 million as of March 14, 1995, with the mean and median being $2.58 billion and $812.50 million, respectively. Third, although the Index is composed of only 15 securities, no particular component security or group of securities dominates the Index. Specifically, as of March 14, 1995, no component security contained in the Index accounted for more than 11.67% of the Index's total value and the five highest weighted securities in the Index accounted for 46.67% of the Index's value.

Fourth, the proposed maintenance criteria will serve to ensure that: (1) the Index remains composed substantially of liquid, highly capitalized securities; and (2) the Index is not dominated by any one security that does not satisfy the Exchange's options listing criteria, any non-options eligible security held by one or more of the country funds represented in the Index, or non-options eligible securities from any one country held by one or more of the country funds represented in the Index. Specifically, in considering changes to the composition of the Index, 85% of the weight of the Index and 80% of the number of components in the Index must comply with the listing criteria for standardized options trading set forth in CBOE Rule 5.3 (for securities that are not then the subject of standardized options trading) and CBOE Rule 5.4 (for securities that are then the subject of standardized options trading).[31] Additionally, the CBOE is required to review the composition of the Index at least semiannually to ensure that the Index continues to meet this 85%/80% criterion.

Moreover, at least twice each year, based on the most recent Commission filings by the closed-end funds represented in the Index, the CBOE will review the holdings of each of the closed-end funds to determine whether: (1) Any security that is not eligible for standardized options trading and that is held by one or more country funds represented in the Index accounts, in aggregate, for more than 5% of the weight of the Index; or (2) securities from any one country that are not eligible for standardized options trading and that are held by one or more country funds represented in the Index account, in aggregate, for more than 25% of the weight of the Index. These maintenance standards will ensure that a non-options eligible security or group of such securities from a foreign country where the CBOE does not have a comprehensive surveillance sharing agreement will not account for a significant percentage of the weight of the Index.

The CBOE will promptly notify the Commission staff at any time that the CBOE determines that the Index fails to satisfy any of the above maintenance criteria. Further, in such an event, the Exchange will not open for trading any additional series of Index options or Index LEAPS unless the Exchange determines that such failure is not significant, and the Commission staff affirmatively concurs in that determination, or unless the Commission specifically approves the continued listing of that class of Index options or Index LEAPS pursuant to a proposal filed in accordance with Section 19(b) of the Act.[32]

For the above reasons, the Commission believes that these criteria minimize the potential for manipulation of the Index and eliminate domination concerns.

B. Customer Protection

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated

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[27] The Intermarket Surveillance Group ("ISG") was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. *See* Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. *See* Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990. The members of the ISG are: the Amex; the Boston Stock Exchange, Inc.; the CBOE; the Chicago Stock Exchange, Inc.; the National Association of Securities Dealers, Inc. ("NASD"); the NYSE; the Pacific Stock Exchange, Inc.; and the Philadelphia Stock Exchange, Inc. Because of potential opportunities for trading abuses involving stock index futures, stock options, and the underlying stock and the need for greater sharing of surveillance information for these potential intermarket trading abuses, the major stock index futures exchanges (*e.g.*, the Chicago Mercantile Exchange and the Chicago Board of Trade) joined the ISG as affiliate members in 1990.

[28] 15 U.S.C. § 78f(b)(5) (1988).

[29] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new option proposal upon a finding that the introduction of such new derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. In this regard, the trading of listed Index options and full-value and reduced-value Index LEAPS will provide investors with a hedging vehicle that should reflect the overall movement of Latin American market securities.

[30] The reduced-value Latin 15 Index, which consists of the same component mutual fund components as the Index and is calculated by dividing the Index value by ten, is identical to the Latin 15 Index.

[31] *See supra* note 13. Additionally, the securities contained in the Index must be "reported" securities and must be traded on the Amex or the NYSE or must be Nasdaq/NM securities. The CBOE is also limited in its ability to change the number of components in the Index without having to obtain Commission approval. *See supra* notes 9 and 10.

[32] *See* Amendment No. 1, *supra* note 4.

financial instruments, such as Latin 15 Index options, including full-value and reduced-value Latin 15 LEAPS, can commence on a national securities exchange. The Commission notes that the trading of standardized exchange-traded options occurs in an environment that is designed to ensure, among other things, that: (1) the special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risks of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because the Index options and Index LEAPS will be subject to the same regulatory regime as the other standardized index options currently traded on the CBOE, the Commission believes that adequate safeguards are in place to ensure the protection of investors in Latin 15 Index options and full-value and reduced-value Latin 15 Index LEAPS.

C. Surveillance

The Commission believes that a surveillance sharing agreement between an exchange proposing to list a stock index derivative product and the exchange(s) trading the stocks underlying the derivative product is an important measure for surveillance of the derivative and underlying securities markets. Such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the stock index product less readily susceptible to manipulation.[33] In this regard, the Commission notes that the NYSE, which currently is the primary market for the vast majority of the Index's component securities, is a member of the ISG.[34] The Commission believes that this arrangement ensures the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the Index options and full-value and reduced-value Index LEAPS less readily susceptible to manipulation.[35]

The Commission notes that the shares of the three closed-end country funds contained in the Index are not eligible for standardized options trading predominantly as a result of the lack of relevant market information sharing agreements between the CBOE and the home markets of the securities held by the funds.[36] For several reasons, however, the Commission believes that including these closed-end country funds in the Index is appropriate. First, the NYSE is the primary market for each of the closed-end fund components in the Index. As a result, as noted above, the CBOE can obtain information regarding the trading of the closed-end fund securities through the ISG.[37] Second, the maintenance criteria discussed above ensure, among other things, (1) that the Index will not become a surrogate for trading options on either the closed-end country funds represented in the Index or individual Latin American market securities held by those component country funds for which standardized options could not otherwise be traded, and (2) minimize the potential for manipulation of the value of the Index.[38] The Commission also notes that these maintenance criteria ensure that if additional closed-end funds are added to the Index, the Index will be subject to the same standards that the Commission approved for the Exchange's Emerging Markets Index and the Emerging Asian Markets Index, both of which are composed solely of closed-end funds.[39]

Finally, in contrast to other foreign securities products, international closed-end country funds hold portfolios of securities chosen by portfolio managers.[40] Although the composition of the portfolio of each country fund represented in the Index is published on a semiannual basis, the securities held by each country fund represented in the Index can be changed at any time at the discretion of the portfolio managers, as long as their investment decisions are consistent with the stated investment objectives and policies of the particular closed-end fund. For these reasons, the Commission believes that it generally would be difficult for someone to use options on the Index to attempt a manipulation of the market for any particular closed-end country fund represented in the Index or to attempt a manipulation of the Index through a manipulation of the shares of one or more of the closed-end country funds contained in the Index.

The Commission notes that generally the only people who could attempt such a manipulation would be people who have access to ''inside'' information about the composition of the portfolio of a closed-end fund and the trading activities of the country fund's portfolio manager.[41] The Investment Advisers Act of 1940 (''Advisers Act''),[42] and the rules promulgated thereunder, contain provisions designed to detect and deter certain advisory employees and affiliates from trading in any securities based on ''inside'' information about the investment decisions of a closed-end fund. Rule 204–2(a)(12) under the Advisers Act requires an investment adviser to make and keep accurate records of every transaction in a security in which the investment advisor or any advisory representative has a beneficial interest. Accordingly, the Commission believes that the Advisers Act gives it the authority to review the trading activities of anyone who is likely to have access to the information necessary to use options on the Index to attempt a manipulation of the relevant markets.

D. Market Impact

The Commission believes that the listing and trading on the CBOE of Latin 15 Index options, including full-value and reduced-value Index LEAPS, will not adversely impact the markets for the securities contained in the Index.[43] First, because of the ''modified equal-dollar-weighting'' formula described above, no one security or group of securities represented in the Index will dominate the weight of the Index immediately following a quarterly rebalancing. Second, the maintenance criteria for the Index ensure that: (1) The Index will be substantially comprised of securities that satisfy the Exchange's

[33] *See* Securities Exchange Act Release No. 31243 (September 28, 1992), 57 FR 45849 (October 5, 1992).

[34] *See supra* note 27.

[34] *See, e.g.*, Securities Exchange Act Release No. 31243 (September 28, 1992), 57 FR 45849 (October 5, 1992) (order approving the listing of index options and index LEAPS on the CBOE Biotech Index).

[36] Options on the securities issued by international funds are eligible for standardized options trading where those securities meet or exceed the Exchange's established uniform options listing standards (*see supra* notes 10 and 11) and (1) the Exchange has a market information sharing agreement with the primary home exchange on which each of the foreign securities comprising the fund's portfolio trade, (2) the fund is classified as a diversified fund, as that term is defined by Section 5(b) of the Investment Company Act, 15 U.S.C. § 80a–5(b), and the fund's portfolio is composed of securities from five or more countries, or (3) the listing of a particular international fund option is specifically approved by the Commission. *See* Securities Exchange Act Release No. 33068 (October 19, 1993), 58 FR 55093 (October 25, 1993) (''Country Fund Approval Order'').

[37] *See supra* note 27.

[38] *See supra* Section III.A.

[39] *See* Securities Exchange Act Release Nos. 35303 (January 31, 1995), 60 FR 7607, (February 8, 1995) (approval of CBOE Emerging Markets Index), and 35304 (January 31, 1995), 60 FR 7601, (February 8, 1995) (approval of CBOE Emerging Asian Markets Index).

[40] *See* Country Fund Approval Order, *supra* note 36.

[41] *Id.*

[42] 15 U.S.C. 80b–1 *et. seq.* (1988).

[43] In addition, the CBOE has represented that the CBOE and the OPRA have the necessary systems capacity to support those new series of index options that would result from the introduction of Index options and Index LEAPS. *See* Memorandum from Joe Corrigan, Executive Director, OPRA, to Eileen Smith, Director, Product Development, Research Department, CBOE, dated March 17, 1995.

listing standards for standardized options trading; and (2) individual securities that are not options eligible that are held by one or more of the country funds represented in the Index and non-options eligible securities from individual countries represented by those holdings will not dominate the Index.[44] Third, because the securities comprising the Index must be ''reported securities'' as defined in Rule 11Aa3–1 of the Act, the components of the Index generally will be actively-traded and highly-capitalized. Fourth, the 10,500 contract position and exercise limits applicable to Index options and Index LEAPS will serve to minimize potential manipulation and market impact concerns.

Lastly, the Commission believes that settling expiring Latin 15 Index options, including full-value and reduced-value Index LEAPS, based on the opening prices of the component securities is consistent with the Act. As noted in other contexts, valuing options for exercise settlement on expiration based on opening prices rather than closing prices may help reduce adverse effects on markets for the closed-end fund securities underlying options on the Index.[45]

The Commission finds good cause for approving Amendment Nos. 1 and 2 to the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 1 provides objective maintenance criteria which, for the reasons stated above, minimize the potential for manipulation of the Index and the securities comprising the Index. Further, as discussed above, the Commission believes that these maintenance criteria significantly strengthen the customer protection and surveillance aspects of the proposal, as originally proposed.[46]

Amendment No. 2 merely extends the proposed trading hours for options on the Index by five minutes (*i.e.*, until 3:15 p.m., Chicago time). The Commission notes that this is consistent with CBOE Rule 24.6 whereby trading until 3:10 p.m. is the exception to the general rule that index options traded at the CBOE trade until 3:15 p.m., Chicago time.

[44] *See supra* Section III.A.

[45] *See* Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992). The Commission notes that prior to listing Index options or Index LEAPS (or any other product based on the Index), the CBOE will be required to review the Index and its components based on the then most recent semiannual reports filed with the Commission by each of the closed-end funds represented in the Index to ensure that the listing criteria discussed above are satisfied.

[46] *See supra* note III.A.

Based on the above, the Commission finds good cause for approving Amendment Nos. 1 and 2 to the proposed rule change on an accelerated basis and believes that the proposal, as amended, is consistent with Sections 6(b)(5) and 19(b)(2) of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 1 and 2. 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 CBOE. All submissions should refer to the File Number SR–CBOE–95–20 and should be submitted by August 2, 1995.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[47] that the proposed rule change (SR–CBOE–95–20), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[48]

Jonathan G. Katz,

Secretary.

[FR Doc. 95–16996 Filed 7–11–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35939; File No. SR–MSRB–95–10]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to an Interpretation of Board rule G–11, on Sales of New Issue Municipal Securities During the Underwriting Period

July 5, 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 June 14, 1995, the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change (File No. SR–MSRB–95–10). The proposed rule change is described in Items, I, II, and III below, which Items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[47] 15 U.S.C. 78s(b)(2) (1988).

[48] 17 CFR 200.30–3(a)(12) (1994).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing an interpretation of Board rule G–11, on sales of new issue municipal securities (hereafter referred to as ''the proposed rule change'').

II. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In its filing with the Commission, the Board 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 Board 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 Board received an inquiry concerning situations where senior syndicate managers charge bookrunning expenses or management fees to syndicate members on a per-bond basis. The Board believes that discretionary fees for clearance costs and management fees may be expressed as a per bond charge. Under rule G–11, however, these expenses must be disclosed to members prior to the submission of a bid or prior to the extension of a purchase contract with the issuer; for example, in the Agreement Among Underwriters. The rule also provides that the senior syndicate manager must provide an itemized statement to syndicate members at or before final settlement of the syndicate account setting forth a detailed breakdown of actual expenses incurred on behalf of the syndicate, such as advertising, printing, legal, computer services, etc. The Board believes a per-bond fee creates the appearance that it is not an actual expense related to and incurred on behalf of the syndicate. The interpretation urges senior syndicate

managers to exercise care in accounting for syndicate funds, and states that any charge that has not been disclosed to members prior to the submission of a bid or prior to the execution of a purchase contract may be charged to syndicate members only if it is an actual expense incurred on behalf of the syndicate.

The Board believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, which requires, in pertinent part, that the Board's rules: be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition 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

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder because the proposed rule change is an interpretation of an existing MSRB rule. At any time within 60 days of filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, 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 Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–95–10 and should be submitted by August 2, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[1]

Jonathan G. Katz,

Secretary.

[FR Doc. 95–17050 Filed 7–11–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35934; File No. SR–NASD–95–19]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Limited Partnership Rollup Transactions

July 3, 1995.

On May 4, 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 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder.[2] The proposed rule change amends the NASD's rule regulating rollups (''Rollup Rule'') by adding new paragraph 7 to Subsection (b)(2)(B)(vii)d of Article III, Section 34 of the Rules of Fair Practice and new paragraph (vii) to Subsection (14)(D) to Part I of Schedule D to the By-Laws to exclude investment companies and business development companies from the definition of ''limited partnership rollup transaction.''

Notice of the proposed rule change, together with the substance of the proposal, was given by Commission release (Securities Exchange Act Release No. 35761, May 24, 1995) and by publication in the **Federal Register** (60 FR 28639, June 1, 1995). One comment letter was received. The Commission is approving the proposed rule change.

I. Background

Federal legislation regulating limited partnership rollups (''Rollup Reform Act'') was signed into law on December 17, 1993, and contained a mandate for the NASD to adopt its own rollup rule. On August 15, 1994,[3] the SEC approved the Rollup Rule which amended Article III, Section 34 of the NASD Rules of Fair Practice to prohibit NASD members and associated persons from participating in a ''limited partnership rollup transaction'' unless the transaction includes specified provisions to protect the rights of limited partners. The Rollup Rule further amended Part III of Schedule D to the By-Laws to prohibit the authorization for quotation on the Nasdaq National Market of any security resulting from a ''limited partnership rollup transaction'' unless the transaction is conducted in accordance with certain specified procedures designed to protect the rights of limited partners. The NASD Rollup Rule was designed to conform to the federal rollup legislation.

Subsequent to approving the NASD's Rollup Rule, the SEC adopted Rule 3b–11 to exclude from the definition of ''limited partnership rollup transaction,'' among other things, transactions involving entities registered under the Investment Company Act of 1940 (''1940 Act'') or any Business Development Company as defined in Section 2(a)(48) of the 1940 Act.[4] The SEC requested that the NASD amend the Rollup Rule to conform the NASD's definition of ''limited partnership rollup transaction'' to the definition adopted by the SEC.

II. The Terms of Substance of the Proposed Rule Change

The proposed rule change adds new paragraph 7 to Subsection (b)(2)(B)(vii)d of Article III, Section 34 of the Rules of Fair Practice and new paragraph (vii) to Subsection (14)(D) to Part I of Schedule D to the By-Laws to exclude investment companies and business development companies from the definition of ''limited partnership rollup transaction.'' The specific text of the rule change would apply to ''a transaction involving only entities registered under the Investment Company Act of 1940 or any Business Development Company as defined in Section 2(a)(48) of that Act.''

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[1] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 34533 (August 15, 1994); 59 FR 43147 (August 22, 1994.)

[4] Securities Act Release No. 7113; Securities Exchange Act Release No. 35036 (December 2, 1994); 59 FR 63676 (December 8, 1994).

III. Comment Letters

As mentioned above, the Commission received one comment letter.[5] The ICI strongly supported and urged the Commission to adopt the proposed rule change. The ICI believed that an explicit exclusion of registered investment companies from the definition of ''limited partnership rollup transaction'' under NASD rules is entirely appropriate because investment companies are already subject to extensive regulation and have not been perceived as entities connected with the types of abusive limited partnership rollup transactions for which the investor protection provisions of the rollup rules were sought.

IV. Discussion

The Commission believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[6] 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 provides for regulatory consistency of the NASD's definition with the SEC's definition of ''limited partnership rollup transaction'' and appropriately excludes investment companies and business development companies from unnecessary, and potentially burdensome, additional regulation. Investment Companies and Business Development Companies are already subject to extensive regulation under the 1940 Act and the concerns associated with abusive limited partnership rollup transactions (e.g., significant conflicts of interest, adverse changes and differing effects for partnership investors) for which the investor protection provisions of the rollup rules were sought have not been apparent in these areas.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR–NASD–95–19 be, and hereby is, approved.

[5] Letter from Frances M. Stadler, Esq., Associate Counsel, Investment Company Institute (''ICI''), to Jonathan Katz, Secretary, Securities and Exchange Commission, dated June 22, 1995.

[6] 15 U.S.C. 78*o*–3.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,

Secretary.

[FR Doc. 95–16998 Filed 7–11–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35928; International Series Release No. 823 File No. SR–Phlx–95–43]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Customized Foreign Currency Options Transaction Size

June 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 June 21, 1995, the Philadelphia Stock Exchange, Inc. (''Phlx'' 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 Phlx. 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 Phlx proposes to amend Exchange Rule 1069(a) to revise the minimum transaction size for customized foreign currency options (''Customized FCOs'') from 200 to 100 contracts. The text of the proposed rule change is available at the Office of the Secretary, the 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 Phlx 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 Phlx has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

On November 1, 1994, the Commission approved the Exchange's proposal to trade Customized FCOs.[1] Customized FCOs provide users of the Exchange's foreign currency options (''FCOs'') markets with the ability to customize the strike price and quotation method and to choose any underlying and base currency combination out of all Exchange-listed currencies, including the U.S. dollar, for their FCO transactions. The Phlx represents that Customized FCOs were introduced to attract institutional customers who enjoy the flexibility and variety offered in the over-the-counter foreign currency market but who prefer the benefits attributed to an exchange auction market for hedging their exchange rate risks.

The Exchange originally imposed a 300 contract minimum opening transaction size pursuant to Rule 1069(a)(6). The Exchange represents that a number of mid-sized corporations and institutions subsequently told the Phlx that a 300 contract minimum was too large for their purposes. The Exchange represents that these corporations and institutions believed that Customized FCOs would fill a market need for them but that the opening transaction size was prohibitive. As a result, the Exchange states that it determined to reduce the minimum opening transaction size in stages. As a first step, earlier this year, the Exchange reduced the minimum size of opening transactions in Customized FCOs to 200 contracts.[2] The Exchange believes, however, that 200 contracts is still too large for a significant segment of mid-sized corporations (*i.e.*, $1–10 billion in market capitalization) that wish to hedge their currency risk in a cost-effective manner using an exchange-traded Customized FCO. The Exchange, therefore, now proposes to reduce the minimum opening transaction size for Customized FCOs to 100 contracts, which would still provide for an average minimum opening transaction value of almost $5 million, as shown below:

[1] *See* Securities Exchange Act Release No. 34925 (November 1, 1994), 59 FR 55720 (November 8, 1994).

[2] *See* Securities Exchange Act Release No. 35464 (March 9, 1995), 60 FR 14043 (March 15, 1995.

Underlying currency	Exchange rate [3]	Underlying contract size	Value of 200 contracts	Value of 100 contracts
Australian dollar	$0.7285000	50,000	$7,285,000	$3,642,500
Canadian dollar	0.7379000	50,000	7,379,000	3,689,500
Swiss franc	0.8295000	62,500	10,368,750	5,184,375
German mark	0.6925000	62,500	8,656,250	4,328,125
French franc	0.1959800	250,000	9,799,000	4,899,500
British pound	1.5640000	31,250	9,775,000	4,887,500
Japanese yen	0.0115410	6,250,000	14,426,250	7,213,125
ECU	1.2841000	62,500	16,051,250	8,025,625
Italian lira [4]	0.0006066	50,000,000	6,066,000	3,033,000
Spanish peseta [5]	0.0080220	5,000,000	8,022,000	4,011,000
Averages	.....	.....	9,782,850	4,891,425

By reducing the minimum size of a Customized FCO opening transaction to 100 contracts, now both opening and closing transactions, regardless of open interest, would have the same minimum size.[6] Further, assigned registered options traders (''ROTs'') would no longer have more stringent quote obligations than non-assigned ROTs because the minimum size for any responsive quote would be at least 100 contracts. The Exchange notes that the beneficial parity and priority provisions in Phlx Rule 1069(b) that were adopted as a quid pro quo for assigned ROTs in exchange for this heightened quotation size responsibility is the subject of another rule change that has been filed with the Commission.[7]

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act, in general, and with Section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest by opening up the Customized FCO market to smaller institutional and corporate FCO users who are currently priced out of the market while keeping the entry requirements high enough to discourage smaller, less sophisticated FCO users.

(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 solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 in 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 Phlx. All submissions should refer to File No. SR–Phlx–95–43 and should be submitted by August 2, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. 95–16994 Filed 7–11–95; 8:45 am]

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[3] As of May 16, 1995, assuming that the U.S. dollar is the base currency.

[4] The Exchange has requested approval to trade Customized FCOs on the Italian lira. *See* Securities Exchange Act Release No. 35678 (May 4, 1995), 60 FR 24945 (May 10, 1995) (notice of File No. SR–Phlx–95–20).

[5] The Exchange has requested approval to trade Customized FCOs on the Spanish peseta. *See* Securities Exchange Act Release No. 35677 (May 4, 1995), 60 FR 24941 (May 10, 1995) (notice of File No. SR–Phlx–95–21).

[6] Pursuant to Rule 1069(a)(6), the minimum closing transaction size is the lesser of 100 contracts or the remaining number of contracts.

[7] In that proposal, the Exchange proposes to eliminate the response period applicable to Customized FCOs which would also eliminate the parity/priority benefits currently available to assigned ROTs. *See* Securities Exchange Act Release No. 35615 (April 17, 1995), 60 FR 20133 (April 24, 1995) (notice of File No. SR–Phlx–95–05).

[Rel. No. IC–21183; Filed No. 812–9384]

American Skandia Trust, et al.

July 3, 1995.

AGENCY: U.S. Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: American Skandia Trust (the ''Trust'') and American Skandia Investment Services, Incorporated (''ASISI'').

RELEVANT ACT SECTIONS: Order requested under Section 6(c) for exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the Act and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order rescinding and replacing an order that granted exemptions from the Act (the ''Original Order'').[1] The

[8] 17 CFR 200.30–3(a)(12) (1994).

[1] Investment Company Act Release Nos. 17607 (July 19, 1990) (Order) and 17548 (June 22, 1990) (Notice).

proposed order would grant exemptions to the extent necessary to permit shares of any current or future series of the Trust and shares of any other investment company that is designed to fund insurance products and for which ASISI, or any of its affiliates may in the future serve as investment adviser, administrator, manager, principal underwriter or sponsor (the Trust and such other investment company are hereinafter referred to collectively as the ''Funds'') to be sold to and held by (i) variable annuity and variable life insurance company separate accounts of both affiliated and unaffiliated life insurance companies (''Participating Insurance Companies'') and (ii) qualified pension and retirement plans outside the separate account context (''Plans'').

FILING DATE: The Application was filed on December 23, 1994 and amended on March 29, 1995 and June 28, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 28, 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 writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: SEC, Secretary, 450 Fifth Street NW., Washington, D.C. 20549. Applicants, American Skandia Trust, c/o Mary Ellen O'Leary, Corporate Secretary, One Corporate Drive, Shelton, CT 06484.

FOR FURTHER INFORMATION CONTACT: Edward P. Macdonald, Staff Attorney, 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 may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust was organized in October 1988 as a Massachusetts business trust. The Trust is an open-end management investment company and is registered with the SEC under the Act. Prior to 1992, the Trust was known as Henderson International Growth Fund and consisted of only one series. The Trust currently consists of nineteen separately managed series to which additional series may be added in the future.

2. ASISI serves as investment manager for each of the Trust's series. ASISI is wholly-owned by American Skandia Investment Holding Corporation which is an indirect wholly-owned subsidiary of Skandia Insurance Company Ltd., a Swedish corporation. ASISI is registered under the Investment Advisers Act of 1940. Prior to 1992, the Trust's investment adviser was Henderson International, Inc.

3. Currently the Trust only offers its shares to variable annuity separate accounts established by American Skandia Life Assurance Company (''ASLAC''). The Funds propose to offer shares of one or more of their series to insurance company separate accounts that fund variable annuity and variable life insurance contracts, established by insurance companies that are not affiliated with ASLAC, as well as separate accounts established by ASLAC itself or its affiliated insurance companies.

4. The Funds also intend to offer shares of each series directly to Plans outside of the separate account context. The Plans may choose from one of several series of any of the Funds as the sole investment under the Plan or as one of several investments. Plan participants may or may not be given the right to select among Funds, depending on the Plans. Plan participants include not only those participants of qualified pension or retirement plans as set forth in Treasury Regulation 1.817–5(f)(3)(iii) and Revenue Ruling 94–62, but also include the holders of annuity contracts described in Sections 403(b) of the Code, including Section 403(b)(7); holders of individual retirement accounts described in Section 408(b) of the Code; and holders of any other trust, account, contract or annuity that is determined to be within the scope of Regulation 1.817–5(f)(3)(iii).

5. Applicants seek to rescind and replace the Original Order because ASISI has replaced Henderson International, Inc. as the investment adviser to the Trust and ASISI was not a party to the application for the Original Order. Applicants also seek to permit shares of the Funds to be offered to Plans.

Applicants' Legal Analysis

1. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the Act as a unit investment trust (''UIT''), Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the Act. The relief provided by Rule 6e–2 is available to a separate account's investment adviser, principal underwriter, and sponsor or depositor. The exemptions granted by Rule 6e–2(b)(15) are available only where the management investment company underlying the UIT offers its shares ''exclusively to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company.'' The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of a single insurance company (or of two or more affiliated insurance companies) is referred to as ''mixed funding.'' The use of a common management investment company as the underlying investment medium for variable annuity and variable life insurance separate accounts of unaffiliated insurance companies is referred to as ''shared funding.'' Mixed and shared funding'' denotes the use of a common management investment company to fund the variable annuity and variable life insurance separate accounts of affiliated and unaffiliated insurance companies. The relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that offers its shares to a variable annuity separate account of the same company or of any other affiliated or unaffiliated life insurance company. Therefore, Rule 6e–2(b)(15) precludes mixed funding as well as shared funding.

2. Applicants state that because the relief under Rule 6e–2(b)(15) is available only where shares are offered exclusively to separate accounts of insurance companies, additional exemptive relief is necessary if shares of the Funds also are to be sold to Plans.

3. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the Act as a unit investment trust (''UIT''), Rule 6e–3(T)(b)(15) provide partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the Act. The exemptions granted to a separate account by Rule 6e–3(T)(b)(15) are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares ''exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled or flexible

contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company.'' Thus, Rule 6e–3(T) permits mixed funding, but does not permit shared funding.

4. Applicants state that because the relief under Rule 6e–3(T) is available only where shares are offered exclusively to separate accounts, additional relief is necessary if shares of the Funds also are to be sold to Plans.

5. Applicants state that changes in the tax law have created the opportunity for the Funds to increase their asset base through the sale of Fund shares to the Plans. Applicants state that Section 817(h) of the Internal Revenue Code of 1986, as amended (the ''Code''), imposes certain diversification requirements on the underlying assets of the Contracts held in the Funds. The Code provides that such Contracts shall not be treated as an annuity contract or life insurance contract for any period in which the underlying assets are not, in accordance with regulations prescribed by the Treasury Department, adequately diversified. On March 2, 1989, the Treasury Department issued regulations which established diversification requirements for the investment portfolios underlying variable contracts. Treas. Reg. § 1.817–5 (1989). The regulations provide that, to meet the diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. The regulations do, however, contain certain exceptions to this requirement, one of which allows shares in an investment company to be held by the trustee of a qualified pension or retirement plan without adversely affecting the ability of shares in the same investment company to also be held by the separate accounts of insurance companies in connection with their variable contracts. Treas. Reg. § 1.817–5(f)(3)(iii).

6. Applicants state that the promulgation of Rules 6e–2 and 6e–3(T) under the Act preceded the issuance of these Treasury regulations. Applicants assert that, given the then current tax law, the sale of shares of the same investment company to both separate accounts and Plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

7. Applicants therefore request relief from Sections 9(a), 13(a), 15(a) and 15(b) of the Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shares of the Funds to be offered and sold in connection with both mixed and shared funding.

8. Section 9(a) of the Act provides that it is unlawful for any company to serve as an investment adviser to or principal underwriter for any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Section 9(a)(1) or (2). Rules 6e–2(b)(15) and 6e–3(T)(b)(15) provide exemptions from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. The relief provided by Rules 6e–2(b)(15)(i) and 6e–3(T)(b)(15)(i) permits a person disqualified under Section 9(a) to serve as an officer, director, or employee of the life insurer, or any of its affiliates, so long as that person does not participate directly in the management or administration of the underlying fund. The relief provided by Rules 6e–2(b)(15)(ii) and 6e–3(T)(b)(15)(ii) permits the life insurer to serve as the underlying fund's investment adviser or principal underwriter, provided that none of the insurer's personnel who are ineligible pursuant to Section 9(a) participate in the management or administration of the fund.

9. Applicants state that the partial relief from Section 9(a) found in Rules 6e–2(b)(15) and 6e–3(T)(b)(15), in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of that Section. Applicants state that those rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the Act to apply the provisions of Section 9(a) to the many individuals employed by the Participating Insurance Companies, most of whom will have no involvement in matters pertaining to investment companies within that organization. Applicants note that the Participant Insurance Companies are not expected to play any role in the management or administration of the Funds. Therefore, Applicants assert, applying the restrictions of Section 9(a) serves no regulatory purpose. Applicants state that the relief requested should not be affected by the proposed sale of shares of the Funds to the Plans because the Plans are not investment companies and are not, therefore, subject to Section 9(a).

10. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the Act assume the existence of a pass-through voting requirement with respect to management investment company shares held by a separate account. The application states that the Participating Insurance Companies will provide mass-through voting privileges to all Contract owners so long as the Commission interprets the Act to require such privileges.

11. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the Act provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming observance of the limitations on mixed and shares funding imposed by the Act and the rules thereunder.

Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard the voting instructions of its Contract owners with respect to the investments of an underling fund, or any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority.

Rules 6e3–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(B) provide that the insurance company may disregard voting instructions of its Contract owners if the Contract owners initiate any change in the investment company's investment policies, principal underwriter, or any investment adviser, provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(15)(ii) and (b)(7)(ii)(B) and (C) of each rule.

12. Applicants further state that shares of the Funds sold to Plans will be held by the trustees of such Plans as required by Section 403(a) of ERISA. Section 403(a) also provides that the trustees must have exclusive authority and discretion to manage and control the Plan with two exceptions: (a) when the Plan expressly provides that the trustees are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the two exceptions stated in Section 403(a) applies, Plan trustees have the exclusive authority and responsibility for voting proxies. Where a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or to the named fiduciary. In any event, there is no pass-through voting to the participants in such Plans. Accordingly, Applicants note that, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with

respect to voting is not present with Plans.

13. Applicants state that no increased conflicts of interest would be present by the granting of the requested relief. Applicants assert that shared funding does not present any issues that do not already exist where a single insurance company is licensed to do business in several states. Applicants note that where different Participating Insurance Companies are domiciled in different states, it is possible that the state insurance regulatory body in a state in which one Participating Insurance Company is domiciled could require action that is inconsistent with the requirements of insurance regulators in one or more other states in which other Participating Insurance Companies are domiciled. Applicants submit that this possibility is no different or greater than exists where a single insurer and its affiliates offer their insurance products in several states.

14. Applicants further submit that affiliation does not reduce the potential for differences in state regulatory requirements. In any event, the conditions (adapted from the conditions included in Rule 6e–3(T)(b)(15) discussed below) are designed to safeguard against any adverse effects that these differences may produce. If a particular state insurance regulator's decision conflicts with the majority of other state regulators, the affected insurer may be required to withdraw its separate account's investment in the relevant Funds.

15. Applicants also argue that affiliation does not eliminate the potential, if any exists, for divergent judgments as to when a Participating Insurance Company could disregard Contract owner voting instructions. Potential disagreement is limited by the requirement that the Participating Insurance Company's disregard of voting instructions be both reasonable and based on specified good faith determinations. However, if a Participating Insurance Company's decision to disregard Contract owner instructions represents a minority position or would preclude a majority vote approving a particular change, such Participating Insurance Company may be required, at the election of the relevant Fund, to withdraw its separate account's investment in that fund. No charge or penalty will be imposed as a result of such a withdrawal.

16. Applicants submit that there is no reason why the investment policies of a Fund with mixed funding would, or should, be materially different from what those policies would, or should, be if such investment company or series thereof funded only variable annuity or variable life insurance contracts. Applicants therefore argue that there is no reason to believe that conflicts of interest would result from mixed funding. Moreover, Applicants represent that the Funds will not be managed to favor or disfavor any particular insurer or type of Contract.

17. Section 817(h) of the Code imposes certain diversification requirements on the underlying assets of variable annuity and variable life insurance contracts held in the portfolios of management investment companies. Treasury Regulation 1.817–5(f)(3)(iii), which established diversification requirements for such portfolios, specifically permits ''qualified pension or retirement plans'' and separate accounts to share the same underlying management investment company. Therefore, Applicants have concluded that neither the Code, the Treasury regulations, nor the revenue rulings thereunder present any inherent conflicts of interest if Plans, variable annuity and variable life insurance separate accounts all invest in the same management investment company.

18. Applicants note that while there are differences in the manner in which distributions are taxed for variable annuity contracts, variable life insurance contracts and Plans, Applicants state that these tax consequences do not raise any conflicts of interest. When distributions are to be made, and the separate account or the Plan is unable to net purchase payments to make the distributions, the separate account or the Plan will redeem shares of the Funds at their respective net asset value. The Plan will then make distributions in accordance with the terms of the Plan. The life insurance company will make distributions in accordance with the terms of the variable contract.

19. Applicants argue that the ability of the Funds to sell their respective shares directly to Plans does not create a ''senior security,'' as such term is defined under Section 18(g) of the Act, with respect to any Contract owner as opposed to a participant under a Plan. Regardless of the rights and benefits of participants and Contract owners under the respective Plans and Contracts, the Plans and the separate accounts have rights only with respect to their shares of the Funds. Such shares may be redeemed only at net asset value. No shareholder of any of the Funds has any preference over any other shareholder with respect to distributions of assets or payment of dividends.

20. Finally, applicants state that there are no conflicts of interest between Contract owners and participants under the Plans with respect to the state insurance commissioners' veto powers over investment objectives. The state insurance commissioners have been given the veto power to prevent insurance companies indiscriminately redeeming their separate accounts out of one fund and investing those monies in another fund. Generally, to accomplish such redemptions and transfers, complex and time consuming transactions must be undertaken. Conversely, trustees of Plans or the participants in participant-directed Plans can make the decision quickly and implement redemption of shares from a Fund and reinvest the monies in another funding vehicle without the same regulatory impediments or, as is the case with most Plans, even hold cash pending a suitable investment. Based on the foregoing, Applicants represent that even should there arise issues where the interests of Contract owners and the interests of Plans and Plan participants conflict, the issues can be almost immediately resolved in that trustees of the Plans can, independently, redeem shares out of the Funds.

21. Applicants state that various factors have kept certain insurance companies from offering variable annuity and variable life insurance contracts. According to Applicants, these factors include: the cost of organizing and operating an investment funding medium; the lack of expertise with respect to investment managers (principally with respect to stock and money market investments); and the lack of public name recognition as investment experts. Specifically, Applicants state that smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the Contract business on their own. Applicants argue the use of the Funds as common investment media for the Contracts would ease these concerns. Participating Insurance Companies would benefit not only from the investment and administrative expertise of ASISI, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Applicants state that making the Funds available for mixed and shared funding may encourage more insurance companies to offer variable contracts such as the Contracts which may then increase competition with respect to both the design and the pricing of variable contracts. Applicants submit that this can be expected to result in greater product variation and lower charges. Thus, Applicants argue that

Contract owners would benefit because mixed and shared funding will eliminate a significant portion of the costs of establishing and administering separate funds. Moreover, Applicants assert that sales of shares of the Funds to Plans should increase the amount of assets available for investment by such Funds. This should, in turn, promote economies of scale, permit increased safety of investments through greater diversification, and make the addition of new portfolios more feasible.

22. Applicants believe that there is no significant legal impediment to permitting mixed and shared funding. Additionally, Applicants note the previous issuance of orders permitting mixed and shared funding where shares of a fund were sold directly to qualified plans such as the Plans.

Applicants' Conditions

Applicants have consented to the following conditions if the order requested in the application is granted:

1. A majority of the Trustees or Board of Directors (each a ''Board'') of each Fund will consist of persons who are not ''interested persons'' thereof, as defined by Section 2(a)(19) of the Act and the Rules thereunder and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of death, disqualification, or bona fide resignation of any trustee or director, then the operation of this condition shall be suspended: (a) for a period of 45 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. The Boards will monitor their respective Funds for the existence of any material irreconcilable conflict between the interests of Contract owners of all of separate accounts investing in the Funds. An irreconcilable material conflict may arise for a variety of reasons, which may include: (a) an action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the Funds are being managed; (e) a difference in voting instructions given by variable annuity and variable life insurance Contract owners; (f) a decision by a Participating Insurance Company to disregard the voting instructions of Contract owners; and (g) if applicable, a decision by a Plan to disregard the voting instructions of Plans participants.

3. The Investment Manager (or any other investment adviser of a Fund), any Participating Insurance Company, and any Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of a Fund (such Plans referred hereafter as ''Participating Plans'') will report any potential or existing conflicts to the Board of any relevant Fund. The Investment Manager, Participating Insurance Companies and Participating Plans will be responsible for assisting the appropriate Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by the Investment Manager and a Participating Insurance Company to inform the Board whenever it has determined to disregard Contract owner voting instructions and, if pass-through voting is applicable, an obligation by the Investment Manager and a Participating Plan to inform the Board whenever it has determined to disregard Plans participant voting instructions. The responsibility to report such information and conflicts and to assist the Boards will be contractual obligations of the Investment Manager and all Participating Insurance Companies and Participating Plans investing in Funds under their agreements governing participation in the Funds, and such agreements shall provide that these responsibilities will be carried out with a view only to the interests of Contract owners and if applicable, Plans participants.

4. If a majority of the Board of a Fund, or a majority of its disinterested trustees or directors, determine that a material irreconcilable conflict exists, the Investment Manager and relevant Participating Insurance Companies and Participating Plans, at their expense and to the extent reasonably practical (as determined by a majority of the disinterested trustees or directors), will take whatever steps are necessary to remedy or eliminate the irreconcilable material conflict. Such steps could include: (a) Withdrawing the assets allocable to some or all of the separate accounts from the Fund or any series and reinvesting such assets in a different investment medium, which may include another series of a Fund or another Fund; (b) submitting the question of whether such segregation should be implemented to a vote of all affected Contract owners and, as appropriate, segregating the assets of any appropriate group (i.e., variable annuity or variable life insurance Contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected Contract owners the option of making such a change; and (c) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a Participating Insurance Company's decision to disregard Contract owner voting instructions and that decision represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at the election of the Fund, to withdraw its separate account's investment in such Fund, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Participating Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Participating Plan may be required, at the election of the Fund, to withdraw its investment in such Fund, and no charge or penalty will be imposed as a result of such withdrawal. To the extent permitted by applicable law, the responsibility of taking remedial action in the event of a Board determination of an irreconcilable material conflict and bearing the cost of such remedial action will be a contractual obligation of the Investment Manager and all Participating Insurance Companies and Participating Plans under their agreements governing participating in the Funds and these responsibilities will be carried out with a view only to the interests of Contract owners and Plans participants, as applicable.

5. For purposes of this Condition Five, a majority of the disinterested members of the applicable Board will determine whether or not any proposed action adequately remedies any irreconcilable material conflict, but in no event will the Fund or ASISI (or any other investment adviser of the Funds) be required to establish a new funding medium for any Contract. No Participating Insurance Company shall be required by this Condition Five to establish a new funding medium for any Contract if a majority of Contract owners materially and adversely affected by the irreconcilable material conflict, vote to decline such offer. No Participating Plan shall be required by this Condition Five to establish a new funding medium for such plan if (a) a majority of Plan

participants materially and adversely affected by the material irreconcilable material conflict vote to decline such offer, or (b) pursuant to governing plan documents and applicable law, the Participating Plan makes such decision without Plans participant vote.

6. The Investment Manager, all Participating Insurance Companies, and Participating Plan will be promptly informed of any Board's determination that an irreconcilable material conflict exists, and its implications.

7. Participating Insurance Companies will provide pass-through voting privileges to all Contract owners so long as the SEC interprets the Act to require pass-through voting privileges for Contract owners. Accordingly, the Participating Insurance Companies will vote shares of a Fund held in their separate accounts in a manner consistent with voting instructions received from Contract owners. Participating Insurance Companies will be responsible for assuring that each of their separate accounts calculates voting privileges in a manner consistent with all other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other separate accounts investing in the Fund will be a contractual obligation of all Participating Insurance Companies under the agreements governing participation in the Fund. Each Participating Insurance Company will vote shares for which it has not received voting instructions as well as shares attributable to it in the same proportion Gas it votes shares for which it has received instructions. Each Participating Plan will vote as required by applicable law and governing plan documents.

8. All reports of potential or existing conflicts of interest received by a Board, and all Board action with regard to determining the existence of a conflict, notifying the Investment Manager, Participating Insurance Companies and Participating Plans of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the appropriate Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

9. Each Fund will notify all Participating Insurance Companies that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Fund will disclose in its prospectus that: (a) shares of the Fund may be offered to insurance company separate accounts of both annuity and life insurance variable contracts, and to Plans; (b) due to differences of tax treatment and other considerations, the interests of various contract owners participating in the funds and the interests of Plans investing in the Funds may conflict; and (c) the Board will monitor the Funds for any material conflicts of interest and determine what action, if any, should be taken.

10. Each Fund will comply with all the provisions of the Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in the shares of the Funds) and in particular, each such Fund will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the Act not to require such meetings) or comply with Section 16(c) of the Act (although the Funds are not within the trusts described in Section 16(c) of the Act) as well as Section 16(a) and if applicable Section 16(b) of the Act. Further, each Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors and with whatever rules the Commission may promulgate with respect thereto.

11. If and to the extent that Rules 6e–2 and 6e–3(T) are amended (or if Rule 6e–3 under the Act is adopted) to provide exemptive relief from any provisions of the Act or the rules thereunder with respect to mixed and shared funding on terms and conditions materially different from any exemptions granted in the order requested by Applicants, then the Funds and the Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent applicable.

12. No less than annually, the Investment Manager, the Participating Insurance Companies and Participating Plans, shall submit to the Boards such reports, materials, or data as such Boards may reasonably request so that the Boards may carry out fully the obligations imposed upon them by the conditions contained in the Application. Such reports, materials and data shall be submitted more frequently if deemed appropriate by the applicable Boards. The obligations of the Investment Manager, Participating Insurance Companies and Participating Plans to provide these reports, materials and data to the Boards shall be a contractual obligation of the Investment Manager, all Participating Insurance Companies and Participating Plans under the agreements governing their participation in the Funds.

13. If a Plan or Plan participant shareholder should become an owner of 10% or more of the assets of a Fund, such Plan or Plan participant shareholder will execute a participation agreement with such Fund including the conditions set forth herein to the extent applicable. A Plan or Plan participant shareholder will execute an application containing an acknowledgement of this condition at the time of its initial purchase of shares of the Fund.

Conclusion

For the reasons set forth above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–16997 Filed 7–11–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21186; File No. 812–9596–01]

CIGNA Life Insurance Company, et al.

July 5, 1995.

AGENCY: Securities and Exchange Commission (''SEC'' or the ''Commission'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''1940 Act'').

APPLICANTS: CIGNA Life Insurance Company (''CIGNA Life''), CIGNA Variable Annuity Separate Account I (the ''Account''), certain separate accounts that may be established by CIGNA Life in the future to support certain variable annuity contracts issued by CIGNA Life (the ''Other Accounts'', collectively, with the Account, the ''Accounts'') and Cigna Financial Advisors, Inc. (''Cigna'').

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act for exemptions from Sections 2(a)(32), 26 (a)(2)(C), 27(c)(1) and 27(c)(2) of the 1940 Act and Rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order permitting CIGNA Life to deduct from the assets of the Accounts the mortality and expense risk charge imposed under certain variable annuity contracts issued by CIGNA Life (the ''Existing Contracts'') and under any other variable annuity contracts issued by CIGNA Life which are substantially

similar in all material respects to the Existing Contracts and are offered through any of the Accounts (the ''Other Contracts'', together, with the Existing Contracts, the ''Contracts''). Additionally, where the Contract owner has selected an optional death benefit, the order would permit Applicants to deduct from the value of the Contract an age and gender based charge for the benefits selected. The charge would be deducted upon the occurrence of one of the following events: Upon the Contract anniversary; upon annuitization of the Contract; upon surrender of the Contract; or upon payment of the death benefit.

FILING DATE: The application was filed on May 10, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on July 31, 1995 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, by certificate of service. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: Robert A. Picarello, Esq., S–321, Connecticut General Life Insurance Company, 900 Cottage Grove Road, Hartford, Connecticut 06152.

FOR FURTHER INFORMATION CONTACT: Barbara J. Whisler, Senior Counsel, or Wendy Friedlander, Deputy Chief, both at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application, the complete application is available for a fee from the Public Reference Branch of the SEC.

Applicants' Representations

1. CIGNA Life, a stock life insurance company domiciled in Connecticut, is a wholly owned subsidiary of Connecticut General Life Insurance Company, which is, in turn, wholly owned by CIGNA Holdings Inc. CIGNA Holdings Inc. is wholly owned by CIGNA Corporation. The Account, established July 6, 1994 under Connecticut law, is registered with the Commission as a unit investment trust. The Account will fund the Existing Contracts issued by CIGNA Life. Applicants represent that the Other Accounts will be organized as unit investment trusts and will file registration statements under the 1940 Act and the Securities Act of 1933.

2. Cigna will serve as the distributor of and the principal underwriter for the Existing Contracts. The application states that Cigna is also expected to serve as the distributor of and the principal underwriter for the Other Contracts. Cigna is a wholly owned subsidiary of Connecticut General Corporation which, in turn, is a wholly owned subsidiary of CIGNA Corporation. Cigna is a broker dealer registered under the Securities Exchange Act of 1934, an investment advisor registered under the Investment Advisers Act of 1940, and a member of the National Association of Securities Dealers, Inc.

3. The Accounts are comprised of subaccounts (the ''Subaccounts''). The assets of each Subaccount of an Account will be invested in a corresponding portfolio of one of five investment companies (the ''Funds''). Currently, the Funds have seventeen portfolios available for investment. Applicants state that each of the Funds is a diversified, open-end management investment company. Applicants also state that the number and identity of available Funds and investment portfolios may change.

4. The Existing Contracts are combination fixed and variable annuity contracts issued on an individual basis. The Existing Contracts may be purchased on a nonqualified basis or with the proceeds from certain plans qualifying for favorable tax treatment under the Internal Revenue Code of 1986, as amended (the ''Code''). The minimum initial premium is $2,500 and the minimum for subsequent premiums is $100. A minimum initial premium of $2,000 will be permitted for an Individual Retirement Annuity under Section 408 of the Code.

5. The Existing Contracts provide for certain guaranteed death benefits at no charge if an optional death benefit is not selected. The guaranteed death benefit is the value of the Account plus the value of the fixed account as of the date CIGNA Life receives due proof of death and a payment election. If the owner of a Contract dies prior to the annuity date, the death benefit will be paid to the beneficiary.

6. CIGNA Life imposes an annual administrative fee of $35 on Contracts having a Contract value of less than $100,000. Until the earlier of the annuity date or a surrender of the Contract, the fee will be deducted pro rata from all of the Subaccounts of the Account in which the owner of the Contract invests. Where a variable payout has been selected after the annuity date, the fee will be deducted proportionately and in installments from the annuity payments. Applicants state that the annual administrative fee partially compensates CIGNA Life for administrative services associated with the Contracts and the Account.

7. CIGNA Life also deducts a daily administrative expense charge equal annually to .10% of the average daily net asset value of the Account. Applicants represent that CIGNA Life does not anticipate a profit from either the annual administrative charge or from the daily administrative charge. Applicants also state that the charges are guaranteed not to increase for a Contract once that Contract has been issued. Finally, Applicants state that CIGNA Life will rely upon and comply with Rule 26a–1 under the 1940 Act in deducting both administrative charges.

8. A contingent deferred sales charge (the ''Sales Charge'') of up to 7% may be assessed by CIGNA Life upon withdrawal of a portion of the Account's value or upon surrender of the Contract within the first seven years of the Contract. The Sales Charge is a percentage of the amount withdrawn and is assessed against the balance remaining in the Account after withdrawal. The percentage declines depending upon how many years have passed since the withdrawn premium was originally made by the Contract owner. Applicants state that CIGNA Life guarantees that aggregate withdrawal charges under a Contract will not exceed 8.5% of total premiums paid.

9. CIGNA Life will impose a daily charge equal to an annual effective rate of 1.20% of the value of the net assets of the Account to compensate CIGNA Life for assuming certain mortality and expense risks in connection with the Contracts. Applicants state that approximately .70% of the 1.20% charge is attributable to mortality risk while approximately .50% is attributable to expense risk. The mortality and expense risk charge is guaranteed not to increase for a Contract once that Contract has been issued. If the mortality and expense risk charge is insufficient to cover actual costs of the risks assumed, CIGNA Life will bear the loss. Conversely, if the charge exceeds costs, this excess will be profit to CIGNA Life and will be available for any corporate purpose, including payment of expenses relating to the distribution of the Contracts. Applicants state that CIGNA Life expects a profit from the mortality and expense risk charge.

10. Applicants state that the mortality risk borne by CIGNA Life arises from: (a) The contractual obligation of CIGNA Life to make annuity payments regardless of how long all annuitants or any individual annuitant may live; and (b) the guarantee of a death benefit. Applicants state that the expense risk assumed by CIGNA Life under the Contracts is the risk that the administrative charges assessed under the Contracts may be insufficient to cover actual administrative expenses incurred by CIGNA Life.

11. When an application for a Contract is made, one or more optional death benefits may be selected by the Contract owner. The mortality and expense risks charge does not compensate for the anticipated costs of providing the optional death benefits. There is, therefore, an additional charge for these benefits. Applicants describe four optional death benefits. Once election is completed, the optional death benefits chosen remain in effect for the life of the Contract absent a written request by the owner of the Contract for termination. Only one request for termination may be given. Optional death benefits must be selected at the time of application, and can not be added at a later date. The optional death benefits provide for the payment of a certain amount as the death benefit if the value of the Contract is less than that amount when the death benefit is paid.

12. On each anniversary of a Contract, a charge will be made for any optional death benefit in effect for the Contract year just ended. If the charge is applicable, it will be computed in accordance with mortality tables which are made a part of the Contract and reflect the age and the gender of the owner of the Contract. The charge is based upon the ''amount at risk.'' The amount at risk is the excess of the death benefit which would be payable at the end of a Contract month over the Account value. There is no deduction made from the Account value until the Contract anniversary. At the Contract anniversary, the sum of any charges accrued at the end of each Contract month during the previous year is deducted. If the owner or the annuitant, as applicable, were to die on other than a Contract anniversary, all charges accrued will be deducted from the death benefit payable, the surrender proceeds or from the amount applied to provide annuity benefits.

13. Applicants state that CIGNA Life expects to derive a profit from the optional death benefit charge. Applicants also represent that the table of charges in the application, which sets forth the charges for the optional death benefits, is guaranteed not to change for any Contract once that Contract is issued.

14. CIGNA Life may incur premium taxes relating to the Contracts and CIGNA Life will deduct these taxes upon withdrawal, annuitization or payment of the death benefit. CIGNA Life reserves the right to deduct charges made for federal, state or local taxes incurred by CIGNA Life in the future.

Applicants' Legal Analysis and Conditions

1. Applicants request that the Commission, pursuant to Section 6(c) of the 1940 Act, grant exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act in connection with Applicants' assessment of the daily charge for the mortality and expense risks under the Contracts and for Applicants' assessment, where applicable, of the optional death benefit charge. Applicants state that the requested extension of relief to the Other Accounts and the Other Contracts is appropriate in the public interest. Applicants assert that the relief would promote competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications and would, therefore, reduce administrative expenses and maximize efficient use of resources. Applicants argue that the delay and expense involved in having to repeatedly seek exemptive relief would impair the ability of CIGNA Life to take advantage effectively of business opportunities as those opportunities arise. Applicants assert that the requested relief is consistent with the purposes of the 1940 Act and the protection of investors for the same reasons. Finally, Applicants state that were CIGNA Life required to seek repeated exemptive relief with respect to the issues addressed in the application, no additional benefit or protection would be provided to investors through the redundant filings.

2. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in pertinent part, prohibit a registered unit investment trust and any depositor thereof or underwriter therefor from selling periodic payment plan certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified bank as trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative services of a character normally performed by the bank itself.

3. Applicants assert that the charge for mortality and expense risks and the charge for the optional death benefit are reasonable in relation to the risks assumed by CIGNA Life under the Contracts.

4. Applicants represent that the mortality and expense risk charge is within the range of industry practice with respect to comparable annuity products. Applicants state that this representation is based upon Applicants' analysis of a survey of comparable contracts issued by a large number of insurance companies taking into consideration such factors as: Current charge levels; benefits provided; charge level guarantees; and guaranteed annuity rates. Applicants represent that CIGNA Life will maintain at its home office, available to the Commission, a memorandum setting forth in detail the methodology and the results of the comparative survey analyzed by Applicants.

5. Applicants represent that the charge for the optional death benefit is determined by multiplying, at the end of each Contract month, the actual amounts at risk under the benefit or benefits selected by the cost per $1,000 of the amount at risk. Applicants also represent that the amounts at risk used will be actual figures, and that the determination of the figures on a monthly basis is reasonable. Applicants state that the cost per $1,000 of amount at risk, *i.e.*, the cost of insurance charge, was determined by using assumptions regarding the expected mortality of the Contract owners. Applicants state that these assumptions reflect that the Contracts are both insurance and investment vehicles and could appeal to a different group than would a traditional annuity. CIGNA Life represents that there could be less self selection of this product by healthy individuals than a traditional annuity. Applicants further state that, because of the optional death benefits provided under the Contracts without health underwriting, there could be self selection by unhealthy individuals who would not ordinarily qualify for traditional life insurance. CIGNA Life asserts that the foregoing mortality assumptions are reasonable. Applicants state that CIGNA Life undertakes to maintain, at its home office and available to the Commission, a memorandum detailing the methodology used in determining that the optional death benefit charge is reasonable in relation to the risks assumed by CIGNA Life under the Contracts.

6. Applicants acknowledge that the Sales Charge will likely be insufficient to cover all costs relating to the distribution of the Contracts. To the extent distribution costs are not covered by the Sales Charge, CIGNA Life will recover its distribution costs from the assets of the general account. These assets may include that portion of the mortality and expense risk charge which is profit to CIGNA Life, and that portion of the optional death benefit charge that is profit. Applicants represent that CIGNA Life has concluded that there is a reasonable likelihood that the proposed distribution financing arrangement will benefit the Account, the Other Accounts and the owners of the Contracts. The basis for this conclusion is set forth in a memorandum which will be maintained by CIGNA Life at its home office and will be made available to the Commission.

7. CIGNA Life also represents that the Accounts will invest only in open-end management investment companies which undertake, in the event such company adopts a plan under Rule 12b–1 of the 1940 Act to finance distribution expenses, to have such plan formulated and approved by either the company's board of directors or the board of trustees, as applicable, a majority of whom are not interested persons of such company within the meaning of the 1940 Act.

8. Applicants also request an order under Section 6(c) granting exemptions from Sections 2(a)(32) and 27(c)(1) of the 1940 Act and Rule 22c–1 thereunder to the extent necessary to permit the deduction from Account values of the optional death benefit charges at the following times: upon surrender; upon annuitization; or upon payment of a death benefit.

9. Section 27(c)(1) requires that periodic payment plan certificates, such as the Contracts, be redeemable securities. Section 2(a)(32) defines a ''redeemable security'' as one which, upon presentation to the issuer, entitles the holder to receive ''approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.'' Rule 22c–1 under the 1940 Act prohibits redemptions ''except at a price based on the current net asset value of such security which is next computed * * *.'' Applicants concede that where the optional death benefit charge is imposed upon annuitization, surrender or payment of the death benefit, the net dollar amount paid upon surrender or in the form of a death benefit, or applied to the purchase of annuity units under the Contract, will be less than the full accumulation unit value of the variable portion of the Contract. Applicants state, however, that the gross proceeds will equal the full net asset value of the variable portion of the Contract. Applicants represent that the difference between the gross proceeds and the net dollar amount paid or applied will be equal to the unpaid aggregate charges for the optional death benefit that have accrued since the most recent Contract anniversary. Applicants state that if the cost for the optional death benefit were deducted from the value of the Contract upon accrual, there would be no difference between the gross proceeds and the net amount paid or applied. Applicants argue that payment of the accrued but unpaid charges out of the gross proceeds of redemption, annuitization or a death benefit should be viewed as a delayed deduction of otherwise permitted charges. Applicants assert that the prohibitions of Sections 2(a)(32) and 27(c)(1) and Rule 22c–1 are designed to prevent diminution or dilution of investment company assets and should not, therefore, be applied to a transaction that, but for its timing, would be otherwise permissible.

Conclusion

Applicants assert that for the reasons and upon the facts set forth above, the requested exemptions from Sections 2(a)(32), 26(a)(2)(C), 27(c)(1) and 27(c)(2) of the 1940 Act and Rule 22c–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.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–17051 Filed 7–11–95; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

[Social Security Acquiescence Ruling 95-2(9)]

Hodge v. Shalala; Workers' Compensation—Proration of a Lump-Sum Award for Permanent Disability Over the Remainder of an Individual's Working Life Under Oregon Workers' Compensation Law

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Acquiescence Ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(2), the Commissioner of Social Security gives notice of Social Security Acquiescence Ruling 95-2(9).

EFFECTIVE DATE: July 12, 1995.

FOR FURTHER INFORMATION CONTACT:

Gary Sargent, Litigation Staff, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (410) 965-1695.

SUPPLEMENTARY INFORMATION: Although not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Acquiescence Ruling in accordance with 20 CFR 422.406(b)(2).

A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act (the Act) or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

We will apply the holding of the Court of Appeals decision as explained in this Social Security Acquiescence Ruling to claims at all levels of administrative adjudication within the Ninth Circuit. This Social Security Acquiescence Ruling will apply to all determinations and decisions made on or after July 12, 1995. If we made a determination or decision on your application for benefits between June 21, 1994, the date of the Court of Appeals decision, and July 12, 1995, the effective date of this Social Security Acquiescence Ruling, you may request application of the Ruling to your claim if you first demonstrate, pursuant to 20 CFR 404.985(b), that application of the Ruling could change our prior determination or decision.

If this Social Security Acquiescence Ruling is later rescinded as obsolete, we will publish a notice in the **Federal Register** to that effect as provided for in 20 CFR 404.985(e). If we decide to relitigate the issue covered by this Social Security Acquiescence Ruling as provided for by 20 CFR 404.985(c), we will publish a notice in the **Federal Register** stating that we will apply our interpretation of the Act or regulations involved and explaining why we have decided to relitigate the issue.

(Catalog of Federal Domestic Assistance Programs Nos. 96.001 Social Security - Disability Insurance; 96.005 Special Benefits for Disabled Coal Miners.)

Dated: June 5, 1995.

Lawrence H. Thompson,

Principal Deputy Commissioner of Social Security.

Acquiescence Ruling 95-2(9)

Hodge v. *Shalala*, 27 F.3d 430 (9th Cir. 1994)—Workers' Compensation—Proration of a Lump-Sum Award for Permanent Disability Over the Remainder of an Individual's Working Life Under Oregon Workers' Compensation Law—Title II of the Social Security Act.

Issue: Whether, when offsetting workers' compensation benefits awarded for permanent disability under Oregon workers' compensation law against Social Security disability benefits, section 224(b) of the Social Security Act (the Act) requires the Social Security Administration (SSA)[1] to prorate a lump-sum award or settlement over the remainder of an individual's working life which the court concluded ends at age 65.

Statute/Regulation/Ruling Citation: Sections 224(a)(2) and (b) of the Social Security Act (42 U.S.C. 424a(a)(2) and (b)); 20 CFR 404.408; Social Security Rulings (SSRs) 76-34c, 81-33, 85-6c and 87-21c.

Circuit: Ninth (Alaska, Arizona, California, Guam, Hawaii (including American Samoa), Idaho, Montana, Nevada, Northern Mariana Islands, Oregon, Washington)

Hodge v. *Shalala*, 27 F.3d 430 (9th Cir. 1994).

Applicability of Ruling: This Ruling applies to determinations or decisions at all administrative levels (i.e., initial, reconsideration, Administrative Law Judge (ALJ) hearing and Appeals Council).

Description of Case: On October 23, 1986, the plaintiff, Gerald Hodge, injured his right wrist while working as a boilermaker. For a period of seven months, from October 24, 1986 through May 20, 1987, he received $344.77 per week in temporary disability benefits under Oregon workers' compensation law. Eventually, it was determined that Mr. Hodge had lost the use of 40 percent of his right forearm and he was deemed permanently injured as of May 20, 1987. After payment of court costs, attorneys' fees and the recoupment of a prior overpayment, Mr. Hodge received a net lump-sum award of $4,068.75 under Oregon workers' compensation law.

Mr. Hodge also became entitled to Social Security disability benefits for a closed period between October 22, 1986 through February 29, 1988. In accordance with section 224(b) of the Act, SSA offset Mr. Hodge's lump-sum workers' compensation award against his disability benefits at the rate of $344.77 per week, the same rate at which he had received temporary disability benefits under Oregon law. The plaintiff challenged the offset and the offset rate at a hearing, but an ALJ affirmed the prior determination and calculation of the offset. Regarding the offset rate issue, the plaintiff alleged that the offset amount should equal the lump-sum divided by the number of months remaining in his natural life. The ALJ found that because the lump-sum award did not specify an offset rate the proration should be based on the prior periodic rate, i.e., the temporary disability payments of $344.77 per week. The Appeals Council denied Mr. Hodge's request for review of the ALJ's decision.

The plaintiff sought judicial review and the district court reversed SSA's decision to offset the plaintiff's Social Security disability benefits, holding that ''scheduled'' loss awards[2] were not substitutes for periodic benefits and thus were not offsettable. The district court accordingly did not address the offset rate issue. SSA appealed and the United States Court of Appeals for the Ninth Circuit reversed the judgment of the district court and found that an offset should be applied. However, the Ninth Circuit held that the proper offset rate, based on Oregon workers' compensation law, is calculated by prorating the lump-sum award over the working life of the plaintiff.

Holding: The Court of Appeals held that, under Oregon workers' compensation law, both ''scheduled'' and ''unscheduled'' awards substitute for periodic benefits and ''represent a stream of lost future wages'' intended to provide wage replacement for a worker's loss of earning capacity. Accordingly, both types of benefits, including Mr. Hodge's scheduled award, ''must be offset to the extent that they overlap with federal benefits in a given month.''

Regarding the calculation of the offset, the Ninth Circuit held that ''the monthly offset amount should be equal to Hodge's lump-sum award divided by the number of months between the date of the award and the date Hodge reaches the age of 65.'' The court presumed that under section 224(a) of the Act, age 65 marks the end of an individual's working life. Under section 224(b) of the Act, SSA must ''approximate as nearly as practicable'' the rate at which the lump-sum award would have been paid on a monthly basis. Because Oregon workers' compensation law provided for payment of Mr. Hodge's lump-sum award as ''a substitute for a stream of payments for the remainder of his working life,'' the Court of Appeals found that the monthly offset rate could be determined from the application of State law without referring to SSA's policy guidelines for assistance in determining the offset.

The court noted that SSA has established policy guidelines for determining the monthly offset rates for various types of lump-sum awards.[3] Because these guidelines must be consistent with the clear requirement of section 224(b) of the Act, the court interpreted the proration method most favored by SSA, the one that calculates the offset according to the rate specified in the lump-sum award, as referring not only to the rate expressly stated in the award, ''but also to a rate specified by operation of [State] law.'' The court concluded that SSA should apply the prior periodic rate paid under a workers' compensation law only in cases where the monthly offset rate is not established by State law.

Statement As To How Hodge Differs From Social Security Policy

Under section 224(a) of the Act, a claimant's Social Security disability benefits are reduced because of the receipt of workers' compensation so that the total worker's compensation and Social Security disability benefits that a disabled worker receives will not exceed 80 percent of the worker's ''average current earnings'' at the onset of disability. In calculating this reduction when a claimant receives a workers' compensation lump-sum award or settlement, section 224(b) of the Act gives SSA authority to prorate the lump-sum in a way that ''approximate[s] as nearly as practicable the reduction'' that would have been made if the claimant had received benefits at a monthly periodic rate. According to SSA's regulation implementing section 224(b) of the Act (20 CFR 404.408(g)), the lump-sum is treated as a substitute for periodic

[1] Under the Social Security Independence and Program Improvements Act of 1994, Pub. L. No. 103-296, effective March 31, 1995, the Social Security Administration (SSA) became an independent Agency in the Executive Branch of the United States Government and was provided ultimate responsibility for administering the Social Security programs under title II of the Act. Prior to March 31, 1995, the Secretary of Health and Human Services had such responsibility.

[2] Under Oregon law, a permanently partially disabled worker receives either a scheduled or unscheduled award. Scheduled awards are fixed-sum awards for injuries to specified limbs or body parts. Unscheduled awards cover all other injuries (Or. Rev. Stat. § 656.214(2)-(5) (1993)).

[3] SSR 87-21c and Program Operations Manual System (POMS) DI 52001.555 C.4.

payments and must be prorated. Under POMS DI 52001.555 C.4. the proration is accomplished using one of three methods in the following order of priority:

(1) the rate specified in the award;

(2) the periodic rate paid prior to the lump-sum award (if no rate was specified in the lump-sum award); or

(3) the State workers' compensation maximum weekly rate in effect at the time of the workers' compensation injury (if no rate was specified in the lump-sum award and if no prior periodic payments were made).[4]

The *Hodge* court found that Oregon workers' compensation law establishes that a lump-sum award for a permanent disability is a substitute for a stream of payments for the remainder of an individual's working life which the court presumed to end at age 65. Because the amount of the payment and the period of time covered are known, the court concluded that by the operation of Oregon law the monthly offset amount equals the lump-sum award divided by the number of months between the date of the award and the date the worker reaches age 65.

Explanation of How SSA Will Apply The Hodge Decision Within The Circuit

This Ruling applies only to cases in which the worker receives a lump-sum award or settlement under Oregon workers' compensation law for a permanent disability and the applicant resides in Alaska, Arizona, California, Guam, Hawaii (including American Samoa), Idaho, Montana, Nevada, Northern Mariana Islands, Oregon or Washington at the time of the determination or decision at any administrative level, i.e., initial, reconsideration, ALJ hearing or Appeals Council.

When prorating a lump-sum award or settlement made under Oregon workers' compensation law for a permanent disability, SSA will treat the lump-sum as a substitute for periodic payments and will calculate the offset rate on a monthly basis by dividing the lump-sum by the number of months between the date of the award and the date the worker reaches age 65. However, if a workers' compensation award expressly establishes an offset rate under the Oregon statutory scheme (not merely a recital of the weekly or monthly benefit rate), SSA will prorate the lump-sum award according to that expressly stated offset rate.

[FR Doc. 95–17038 Filed 7–11–95; 8:45 am]

BILLING CODE 4190–29–F

[4] *See also* SSR 87-21c

Sunshine Act Meetings

Federal Register

Vol. 60, No. 133

Wednesday, July 12, 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: 9:30 a.m., Monday, July 17, 1995.

PLACE: William McChesney Martin, Jr. Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

Note: Until further notice, open meetings will be held in the *Martin Building,* not the Eccles Building.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposed 1996 Federal Reserve Board budget objective.
2. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to:

Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: July 10, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–17185 Filed 7–10–95; 11:06 am]

BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 10:00 a.m., Monday, July 17, 1995, following a recess at the conclusion of the open meeting.

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 Reserve 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: July 10, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–17186 Filed 7–10–95; 11:06 am]

BILLING CODE 6210–01–P

U.S. RAILROAD RETIREMENT BOARD

Notice of Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on July 19, 1995, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611.

The agenda for this meeting follows:

Portion Open to the Public

(1) M/Text Software Procurement
(2) Office of Inspector General (OIG) Deputation
(3) Recommendations Concerning the Function and Structure of the Field Service
(4) Field Service Position Vacancies
(5) FEDSIM Contract
(6) RRB Draft Bill to Establish a Single Administrative Account
(7) Revision and Codification of Basic Board Orders Pursuant to Executive Order 12861
(8) Unfunded Employment Credits
(9) Suggestions by Top Managers and Executives
(10) Coverage Determinations:
  A. Greater Shenandoah Valley Development Company d/b/a Shenandoah Valley Railroad Company
  B. Port Railroads, Inc.
  C. Hollidaysburg & Roaring Spring Railroad Company
(11) Regulations:
  A. Parts 211 and 261—Proposed Rule—Administrative Finality and Finality of Returns of Compensation
  B. Proposed Rule Part 230, Reduction and Non-Payment of Annuities by Reason of Work
  C. Part 255, Recovery of Overpayments
  D. Part 328, Voluntary Leaving of Work
  E. Part 345, Contributions and Contribution Reports
  F. Part 366 and 367, Collection of Debts

Portion Closed to the Public

(A) Personnel Actions: Extension of Temporary Promotions, Bureau of Systems Initiatives
(B) SES Position of Director of Programs

The person to contact for more information is Beatrice Ezerski, Secretary to the Board, Phone No. 312–751–4920.

Dated: July 7, 1995.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 95–17161 Filed 7–10–95; 11:05 am]

BILLING CODE 7905–01–M

Corrections

Federal Register
Vol. 60, No. 133
Wednesday, July 12, 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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 302 and 355

[SW H-FRL-5214-3]
RIN 2050-AD33

Reportable Quantity Adjustments

Correction

In rule document 95–13787 beginning on page 30926 in the issue of Monday, June 12, 1995, make the following corrections:

§ 302.4 [Corrected]

1. On page 30938, in amendment 4. to § 302.4, in the table, the following entries and certain Footnotes are corrected as set forth below. ALSO, in the last column of the table, ''(*)'' should read ''*'' wherever it appears.

§ 302.4 Designation of hazardous substances.

* * * * *

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

[NOTE: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste No.	Category	Pounds (Kg)
*	*	*	*	*		*	*
4-Aminobiphenyl	92671		1*	3		X	1 (0.454)
*	*	*	*	*		*	*
DDE[b]	3547044		1*	3		D	5000 (2270)
*	*	*	*	*		*	*
Phenol, methyl-	1319773	Cresols (isomers and mixture). Cresylic acid (isomers and mixture).	1000	1,3,4	U052	B	100 (45.4)
*	*	*	*	*		*	*
Xylene	1330207	Benzene, dimethyl- Xylene (mixed). Xylenes (isomers and mixture).	1000	1,3,4	U239	B	100 (45.4)
*	*	*	*	*		*	*
Xylene (mixed)	1330207	Benzene, dimethyl- Xylene. Xylenes (isomers and mixture).	1000	1,3,4	U239	B	100 (45.4)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[NOTE: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste No.	Category	Pounds (Kg)
Xylenes (isomers and mixture).	1330207	Benzene, dimethyl- ..... Xylene. Xylene (mixed).	1000	1,3,4	U239	B	100 (45.4)
*	*	*	*	*		*	*

1* Indicates that the 1-pound RQ is a CERCLA statutory RQ.

* * * * * * *

R'=R, H, or groups which, when removed, yield glycol ethers with the structure: R-$(OCH2CH2)_n$-OH. Polymers are excluded from the glycol category.

* * * * * * *

2. On page 30941, in the table to § 302.4, the last entry should appear at the top of page 30942.

3. On page 30942, in the table to § 302.4, the last entry should appear at the top of page 30943.

4. On page 30944, in amendment 5. to § 302.4, in the table and Appendix A, the following entries and certain Footnotes are corrected as set forth below.

§ 302.4 Designation of hazardous substances.

* * * * *

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

[NOTE: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste No.	Category	Pounds (Kg)
*	*	*	*	*		*	*
Aroclor 1232	11141165	Aroclor ..... PCBs POLYCHLORINATED BIPHENYLS	10	1,2,3		X	1 (0.454)
*	*	*	*	*		*	*
Benzenamine, N,N-dimethyl-4-(phenylazo-).	60117	Dimethyl aminoazobenzene. P-Dimethyl-aminoazobenzene	1*	3,4	U093	A	10 (4.54)
*	*	*	*	*		*	*
ρ-Benzoquinone	106514	2,5-Cyclohexadiene-1,4-dione. Quinone	1*	3,4	U197	A	10 (4.54)
*	*	*	*	*		*	*
γ-BHC	58899	Cyclohexane, 1,2,3,4,5,6-hexa chloro- (1α, 2α, 3β,4α,5α,6β)-. Hexachlorocyclohexane (gamma isomer) Lindane	1	1,2,3,4	U129	X	1 (0.454)
*	*	*	*	*		*	*
2-Butanone	78933	MEK ..... Methyl ethyl ketone	1*	3,4	U159	D	5000 (2270)
*	*	*	*	*		*	*
Camphene, octachloro- ..	8001352	Chlorinated camphene ... Toxaphene	1	1,2,3,4	P123	X	1 (0.454)
*	*	*	*	*		*	*
Carbamic acid, ethyl ester.	51796	Ethyl carbamate ..... Urethane	1*	3,4	U238	B	100 (45.4)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[NOTE: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste No.	Category	Pounds (Kg)
*	*	*	*	*		*	*
Chlordane, alpha & gamma isomers.	57749	Chlordane ..... CHLORDANE (TECHNICAL MIXTURE AND METABOLITES) 4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-.	1	1,2,3,4	U036	X	1 (0.454)
*	*	*	*	*		*	*
Chloromethane	74873	Methane, chloro- ..... Methyl chloride	1*	2,3,4	U045	B	100 (45.4)
*	*	*	*	*		*	*
2,5-Cyclohexadiene-1,4-dione.	106514	p-Benzoquinone ..... Quinone	1*	3,4	U197	A	10 (4.54)
*	*	*	*	*		*	*
Dichloromethyl ether	542881	Bis(chloromethyl) ether .. Methane, oxybis(chloro-	1*	3,4	P016	A	10 (4.54)
*	*	*	*	*		*	*
Dichloromethane	75092	Methane, dichoro- ..... Methylene chloride	1*	2,3,4	U080	C	1000 (454)
*	*	*	*	*		*	*
1,3-Dichloropropene	542756	1-Propene, 1,3-dichloro-	5000	1,2,3,4	U084	B	100 (45.4)
*	*	*	*	*		*	*
1,4-Diethyleneoxide	123911	1,4-Dioxane 1,4-Diethylenedioxide	1	3,4	U108	B	100 (45.4)
*	*	*	*	*		*	*
1,4-Diethylenedioxide	123911	1,4-Dioxane 1,4-Diethyleneoxide	1*	3,4	U108	B	100 (45.4)
*	*	*	*	*		*	*
Diethylhexyl phthalate	117817	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester. Bis(2-ethylhexyl)phthalate DEHP	1*	2,3,4	U028	B	100 (45.4)
*	*	*	*	*		*	*
3,3′-Dimethoxybenzidine	119904	[1,1′-Biphenyl]-4,4′-diamine,3,3′-dimethoxy-.	1*	3,4	U091	B	100 (45.4)
*	*	*	*	*		*	*
Dimethyl aminoazobenzene.	60117	Benzenamine, N,N-dimethyl-4-(phenylazo-). P-Dimethylaminoazobenzene	1*	3,4	U093	A	10 (4.54)
*	*	*	*	*		*	*
p-Dimethylaminoazobenzene.	60117	Benzenamine, N,N-dimethyl-4-(phenylazo-). Dimethyl aminoazobenzene	1*	3,4	U093	A	10 (4.54)
*	*	*	*	*		*	*
3,3′-Dimethylbenzidine ...	119937	[1,1′-Biphenyl]-4,4′-diamine,3,3′-dimethyl-.	1*	3,4	U095	A	10 (4.54)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[NOTE: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste No.	Category	Pounds (Kg)
*	*	*	*	*		*	*
Dimethylcarbamoyl chloride.	79447	Carbamic chloride, dimethyl-.	1*	3,4	U097	X	1 (0.454)
*	*	*	*	*		*	*
1,1-Dimethylhydrazine	57147	Hydrazine, 1,1-dimethyl-	1*	3,4	U098	A	10 (4.54)
*	*	*	*	*		*	*
Dimethyl phthalate	131113	1,2-Benzenedicarboxylic acid, dimethyl ester.	1*	2,3,4	U102	D	5000 (2270)
Dimethyl sulfate	77781	Sulfuric acid, dimethyl ester.	1*	3,4	U103	B	100 (45.4)
*	*	*	*	*		*	*
4,6-Dinitro-o-cresol, and salts.	534521	Phenol, 2-methyl-4,6-dinitro-, & salts.	1*	2,3,4	P047	A	10 (4.54)
*	*	*	*	*		*	*
*	*	*	*	*		*	*
1,4-Dioxane	123911	1,4-Diethyleneoxide 1,4-Diethlyenedioxide	1*	3,4	U108	B	100 (45.4)
*	*	*	*	*		*	*
2,5-Furandione	108316	Maleic anhydride	5000	1,3,4	U147	D	5000 (2270)
*	*	*	*	*		*	*
Hexachlorocyclohexane (gamma isomer).	58899	γ-BHC ..... Cyclohexane, 1,2,3,4,5,6-hexachloro-(1α,2α,3β,4α, 5α,6β)- Lindane Lindane (all isomers)	1	1,2,3,4	U129	X	1 (0.454)
*	*	*	*	*		*	*
LEAD AND COMPOUNDS.	N.A.	Lead Compounds	1*	2,3			(**)
*	*	*	*	*		*	*
Methane, chloro-	74873	Chloromethane ..... Methyl chloride	1*	2,3,4	U045	B	100 (45.4)
*	*	*	*	*		*	*
Methyl bromide	74839	Bromomethane ..... Methane, bromo-	1*	2,3,4	U029	C	1000 (454)
*	*	*	*	*		*	*
Phosphorothioic acid, O,O-diethyl O-(4-nitrophenyl) ester.	56382	Parathion	1	1,3,4	P089	A	10 (4.54)
*	*	*	*	*		*	*
2-Propenenitrile	107131	Acrylonitrile	100	1,2,3,4	U009	B	100 (45.4)
*	*	*	*	*		*	*
2-Propenoic acid, 2-methyl-, methyl ester.	80626	Methyl methacrylate	5000	1,3,4	U162	C	1000 (454)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[NOTE: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste No.	Category	Pounds (Kg)
*	*	*	*	*		*	*
Tetrachloroethylene	127184	Ethene, tetrachloro ..... Perchloroethylene Tetrachloroethene	1*	2,3,4	U210	B	100(45.4)
*	*	*	*	*		*	*
Toluenediamine	95807 496720 823405 25376458	Benzenediamine, ar-methyl-. 2,4-Toluene diamine	1*	3,4	U221	A	10(4.54)
2,4-Toluene diamine	95807 496720 823405 25376458	Benzenediamine, ar-methyl-. Toluenediamine	1*	3,4	U221	A	10(4.54)
Toluene diisocyanate	91087 584849 26471625	Benzene, 1,3-diisocyanato methyl-. 2,4-Toluene diisocyanate-.	1*	3,4	U223	B	100 (45.4)
2,4-Toluene diisocyanate	91087 584849 26471625	Benzene, 1,3-diisocyanatomethyl-. Toluene diisocyanate	1*	3,4	U223	B	100 (45.4)
*	*	*	*	*		*	*
1,2,4-Trichlorobenzene ...	120821	.....	1*	2,3		B	100 (45.4)
1,1,1-Trichloroethane	71556	Ethane, 1,1,1-trichloro- .. Methyl chloroform	1*	2,3,4	U226	C	1000 (454)
*	*	*	*	*		*	*
Urea, N-methyl-N-nitroso	684935	N-Nitroso-N-methylurea .	1*	3,4	U177	X	1 (0.454)
*	*	*	*	*		*	*
Vinyl acetate monomer ...	108054	Vinyl acetate	1000	1,3		D	5000 (2270)
*	*	*	*	*		*	*
Vinylidene chloride	75354	1,1-Dichloroethylene ..... Ethene, 1,1-dichloro-	5000	1,2,3,4	U078	B	100 (45.4)
*	*	*	*	*		*	*

* * * * * * *

1** Indicates that the 1-pound RQ is a CERCLA statutory RQ.

* * * * * * *

APPENDIX A TO § 302.4.—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES

CASRN	Hazardous substance
*	*
51796	Carbamic acid, ethyl ester Ethyl carbamate Urethane.
*	*
57749	Chlordane Chlordane, alpha & gamma isomers CHLORDANE (TECHNICAL MIXTURE AND METABOLITES) 4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8- octachloro-2,3,3a,4,7,7a-hexahydro-.
*	*
58899	γ-BHC Cyclohexane, 1,2,3,4,5,6-hexachloro (1α,2α,3β,4α,5α,6β)- Hexachlorocyclohexane (gamma isomer) Lindane Lindane (all isomers).

APPENDIX A TO § 302.4.—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous substance
*	* * * * * * *
60117	Benzenamine, N,N-dimethyl-4-(phenylazo-) Dimethyl aminoazobenzene p-Dimethylaminoazobenzene.
*	* * * * * * *
72559	DDE 4,4'-DDE.
*	* * * * * * *
74839	Bromomethane Methane, bromo- Methyl bromide.
*	* * * * * * *
74873	Chloromethane Methane, chloro- Methyl chloride.
*	* * * * * * *
74884	Iodomethane Methane, iodo- Methyl iodide.
*	* * * * * * *
75003	Chloroethane Ethyl chloride.
*	* * * * * * *
75092	Dichloromethane Methane, dichloro- Methylene chloride.
*	* * * * * * *
75252	Bromoform Methane, tribromo-.
*	* * * * * * *
75558	Aziridine, 2-methyl- 2-Methyl aziridine 1,2-Propylenimine.
*	* * * * * * *
78933	2-Butanone MEK Methyl ethyl ketone.
*	* * * * * * *
82688	Benzene, pentachloronitro- PCNB Pentachloronitrobenzene Quintobenzene.
*	* * * * * * *
91087	Benzene, 1,3-diisocyanatomethyl- Toluene diisocyanate 2,4-Toluene diisocyanate.
*	* * * * * * *
92875	Benzidine [1,1'-Biphenyl]-4,4'diamine.
*	* * * * * * *
94757	Acetic acid (2,4-dichlorophenoxy)-, salts & esters 2,4-D Acid 2,4-D, salts and esters.
*	* * * * * * *
95807	Benzenediamine, ar-methyl- Toluenediamine 2,4-Toluene diamine.

APPENDIX A TO § 302.4.—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous substance
*	* * * * * * *
98828	Benzene, (1-methylethyl)- Cumene.
*	* * * * * * *
106514	p-Benzoquinone 2,5-Cyclohexadiene-1,4-dione Quinone.
*	* * * * * * *
106898	1-Chloro-2,3-epoxypropane Epichlorohydrin Oxirane, (chloromethyl)-.
*	* * * * * * *
106934	Dibromoethane Ethane, 1,2-dibromo- Ethylene, dibromide.
*	* * * * * * *
117817	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester Bis(2-ethylhexyl)phthalate DEHP Diethylhexyl phthalate.
*	* * * * * * *
123911	1,4-Diethyleneoxide 1,4-Diethylenedioxide 1,4-Dioxane.
*	* * * * * * *
131113	Dimethyl phthalate 1,2-Benzenedicarboxylic acid, dimethyl ester.
*	* * * * * * *
151564	Aziridine Ethyleneimine.
*	* * * * * * *
496720	Benzenediamine, ar-methyl- Toluenediamine 2,4-Toluene diamine.
*	* * * * * * *
510156	Benzeneacetic acid, 4-chloro-α- (4-chlorophenyl)-α-hydroxy-, ethyl ester Chlorobenzilate.
*	* * * * * * *
534521	4,6-Dinitro-o-cresol, and salts Phenol, 2-methyl-4,6-dinitro-, & salts.
*	* * * * * * *
542881	Bis(chloromethyl)ether Dichloromethyl ether Methane, oxybis(chloro)-.
*	* * * * * * *
584849	Benzene, 1,3-diisocyanatomethyl- Toluene diisocyanate 2,4-Toluene diisocyanate.
*	* * * * * * *
823405	Benzenediamine, ar-methyl- Toluenediamine 2,4-Toluene diamine.
*	* * * * * * *
1336363	Aroclors PCBs POLYCHLORINATED BIPHENYLS.

APPENDIX A TO § 302.4.—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous substance
*	* * * * * * *
1746016	TCDD 2,3,7,8-Tetrachlorodibenzo-p-dioxin.
*	* * * * * * *
7803512	Hydrogen phosphide Phosphine.
*	* * * * * * *
8001352	Camphene, octachloro- Chlorinated camphene Toxaphene.
*	* * * * * * *
11096825 ..	Aroclor 1260 Aroclors PCBs POLYCHLORINATED BIPHENYLS.
11097691 ..	Aroclor 1254 Aroclors PCBs POLYCHLORINATED BIPHENYLS.
11104282 ..	Aroclor 1221 Aroclors PCBs POLYCHLORINATED BIPHENYLS.
*	* * * * * * *
11141165 ..	Aroclor 1232 Aroclors PCBs POLYCHLORINATED BIPHENYLS.
*	* * * * * * *
12672296 ..	Aroclor 1248 Aroclors PCBs POLYCHLORINATED BIPHENYLS.
12674112 ..	Aroclor 1016 Aroclors PCBs POLYCHLORINATED BIPHENYLS.
*	* * * * * * *
25376458 ..	Benzenediamine, ar-methyl- Toluenediamine 2,4-Toluene diamine.
*	* * * * * * *
26471625 ..	Benzene, 1,3-diisocyanatomethyl- Toluene diisocyanate 2,4-Toluene diisocyanate.
*	* * * * * * *
53469219 ..	Aroclor 1242 Aroclors PCBs POLYCHLORINATED BIPHENYLS.
*	* * * * * * *

Appendix A to Part 355-[Corrected]

5. On page 30961, in Appendix A to Part 355, ''l'' should appear before the second Footnote at the end of the table.

Appendix B to Part 355-[Corrected]

6. On page 30962, in Appendix B to Part 355, ''l'' should appear before the second Footnote at the end of the table.

BILLING CODE 1505–01–D

Federal Register

Wednesday
July 12, 1995

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Species; Bald Eagle Reclassification; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC48

Endangered and Threatened Wildlife and Plants; Final Rule to Reclassify the Bald Eagle From Endangered to Threatened in All of the Lower 48 States

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service reclassifies under the Endangered Species Act of 1973 (Act), as amended, the bald eagle (*Haliaeetus leucocephalus*) from endangered to threatened in the lower 48 States. The bald eagle remains classified as threatened in Michigan, Minnesota, Wisconsin, Oregon, and Washington where it is currently listed as threatened. The special rule for threatened bald eagles is revised to include all lower 48 States. This action will not alter those conservation measures already in force to protect the species and its habitats. The bald eagle also occurs in Alaska and Canada, where it is not at risk and is not protected under the Act. Bald eagles of Mexico are not listed at this time due to a recently enacted moratorium on listing additional taxa as threatened or endangered.

EFFECTIVE DATE: August 11, 1995.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Fish and Wildlife Service, Ecological Services Field Office, 4469–48th Avenue Court, Rock Island, Illinois, 61201 and at the Division of Endangered Species, Fish and Wildlife Service, 1 Federal Drive, Whipple Federal Building, Fort Snelling, Minnesota 55111–4056.

FOR FURTHER INFORMATION CONTACT: Jody Gustitus Millar, Bald Eagle Recovery Coordinator, Fish and Wildlife Service, 4469–48th Avenue Court, Rock Island, Illinois 61201 (309/793–5800).

SUPPLEMENTARY INFORMATION:

Background

Literally translated, *Haliaeetus leucocephalus* means white-headed sea eagle. This large, powerful, brown bird with a white head and tail is well known as our Nation's symbol. Young bald eagles are mostly dark brown until they reach four to six years of age and may be confused with the golden eagle (*Aquila chrysaetos*). The bald eagle is the only sea eagle regularly occurring on the North American continent (American Ornithologists' Union 1983). Its range extends from central Alaska and Canada to northern Mexico.

The bald eagle is a bird of aquatic ecosystems (Gerrard and Bortolotti 1988). It frequents estuaries, large lakes, reservoirs, major rivers, and some seacoast habitats. However, such areas must have an adequate food base, perching areas, and nesting sites to support bald eagles. In winter, bald eagles often congregate at specific wintering sites that are generally close to open water and that offer good perch trees and night roosts. Bald eagle habitats encompass both public and private lands.

The bald eagle was first described in 1766 as *Falco leucocephalus* by Linnaeus. This South Carolina bird was later renamed as the southern bald eagle, subspecies *Haliaeetus leucocephalus leucocephalus* (Linnaeus), when, in 1897, Townsend identified the northern bald eagle as *Haliaeetus leucocephalus alascanus* (American Ornithologists' Union 1957). These two subspecific names were in use when the southern bald eagle (arbitrarily declared to occur south of the 40th parallel) was listed (32 FR 4001, March 11, 1967) as endangered under the Endangered Species Protection Act of 1966 (16 U.S.C. 668aa–668cc). By the time the bald eagle was listed (43 FR 6233, February 14, 1978) for the entire lower 48 States, the subspecies were no longer recognized by ornithologists.

The bald eagle historically ranged throughout North America except extreme northern Alaska and Canada and central and southern Mexico. Bald eagles nested on both coasts from Florida to Baja California, in the south, and from Labrador to the western Aleutian Islands, Alaska, in the north. In many of these areas they were abundant.

Gerrard and Bortolotti (1988) describe early population trends as follows. When Europeans first arrived on the North American continent, there were an estimated one-quarter to one-half million bald eagles. The first major decline in the bald eagle population probably began in the mid to late 1800's. It coincided with declines in numbers of waterfowl and shorebirds and other major prey species. Direct eagle killing was also prevalent, and, coupled with loss of nesting habitat, these factors reduced bald eagle numbers until the 1940's.

In 1940, the Bald Eagle Protection Act (16 U.S.C. 668) was passed. This law prohibits the take, possession, sale, purchase, barter, offer to sell, purchase or barter, transport, export or import, of any bald eagle, alive or dead, including any part, nest, or egg, unless allowed by permit. Take includes pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, or molest or disturb.

The Bald Eagle Protection Act and increased public awareness of the bald eagle resulted in a partial recovery or a slower decline of the species in most areas of the country. However, persecution continued, notably in Alaska, which was exempted from the Bald Eagle Protection Act and maintained a bounty on bald eagles. In 1952, after lengthy studies demonstrated that bald eagles were not affecting salmon numbers, Alaska was no longer exempted.

Shortly after World War II, the use of dichloro-diphenyl-trichloroethane (DDT) and other organochlorine compounds became widespread. Initially, DDT was sprayed extensively along coastal and other wetland areas to control mosquitos (Carson 1962). Later it was used as a general insecticide. As DDT accumulated in individual bald eagles from ingesting contaminated food, the species' reproduction plummeted. In the late 1960's and early 1970's, it was determined that dichlorophenyl-dichloroethylene (DDE), the principal breakdown product of DDT, accumulated in the fatty tissues of the adult females and impaired calcium release that is necessary for egg shell formation, thus inducing thin shells and reproductive failure.

In response to the decline following World War II, the Secretary of the Interior, on March 11, 1967 (32 FR 4001), listed bald eagles south of the 40th parallel as endangered under the Endangered Species Preservation Act of 1966. The northern bald eagle was not included in that action primarily because the Alaskan and Canadian populations were not considered endangered in 1967. On December 31, 1972, DDT was banned from use in the United States.

In 1973, the Endangered Species Act (16 U.S.C. 1531 *et seq.*) was passed. Among other provisions, it allowed the listing of distinct populations of animal species and the addition of a new category of ''threatened.'' The Act defines an endangered species as a species that is in danger of extinction throughout all or a significant portion of its range. A threatened species is defined as any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

A nationwide bald eagle survey by the Service and a number of other agencies and conservation groups in 1974 revealed that, in parts of the northern half of the lower 48 States, bald eagle populations and reproductive success were lower than in certain southern areas. In 1978, the Service listed the bald eagle, *Haliaeetus leucocephalus* (no subspecies referenced) throughout the lower 48 States as endangered except in Michigan, Minnesota, Wisconsin, Washington, and Oregon, where it was designated as threatened (43 FR 6233, February 14, 1978).

Restoring endangered and threatened animals and plants to the point where they are again viable, self-sustaining members of their ecosystems is the main goal of the Endangered Species Act. Thus, the Act contains recovery, as well as listing and protection, provisions. To effect recovery, section 4(f) of the Act provides for the development and implementation of recovery plans for listed species. According to the Act, a recovery plan is a plan for the conservation and survival of the species. It identifies, describes, and schedules the actions necessary to restore endangered and threatened species to a more secure biological condition.

In establishing a recovery program for the species in the mid-1970's, the Service divided the bald eagles of the lower 48 States into five recovery regions, based on geographic location. A recovery plan was prepared for each region by separate recovery teams composed of species experts in each geographic area. The teams set forth goals for recovery and identified tasks to achieve those goals. Coordination meetings were held regularly among the five teams to exchange data and other information. The five recovery regions and the dates of their approved recovery plans are as follows: Chesapeake Bay (1982, revised 1990), Pacific (1986), Southeastern (1984, revised 1989), Northern States (1983), and Southwestern (1982). The Northern States plan is under revision and is expected to be available for public review within the next six months. Many of the tasks described within these recovery plans have been funded and carried out by the Service and other Federal, State, and private organizations. Annual expenditures for the recovery and protection of the bald eagle by public and private agencies have exceeded $1 million each year for the past decade (Service files).

In the 17 years since it was listed throughout the conterminous 48 States, the bald eagle population has clearly increased in number and expanded in range. The improvement is a direct result of the banning of DDT and other persistent organochlorines, habitat protection, and from other recovery efforts. In 1963, a National Audubon Society survey reported only 417 active nests in the lower 48 States, with an average of 0.59 young produced per active nest. In 1994, about 4,450 occupied breeding areas were reported by the States with an estimated average young per occupied territory (for 4110 territories) of 1.17. Compared to 1974, the number of occupied breeding areas in the lower 48 States has increased by 462 percent, and since 1990, there has been a 47 percent increase. The species is doubling its breeding population every 6–7 years since the late 1970's.

TABLE 1.—NUMBER OF BALD EAGLE PAIRS COUNTED IN LOWER 48 STATES, 1963–1994

[Missing years indicate incomplete data]

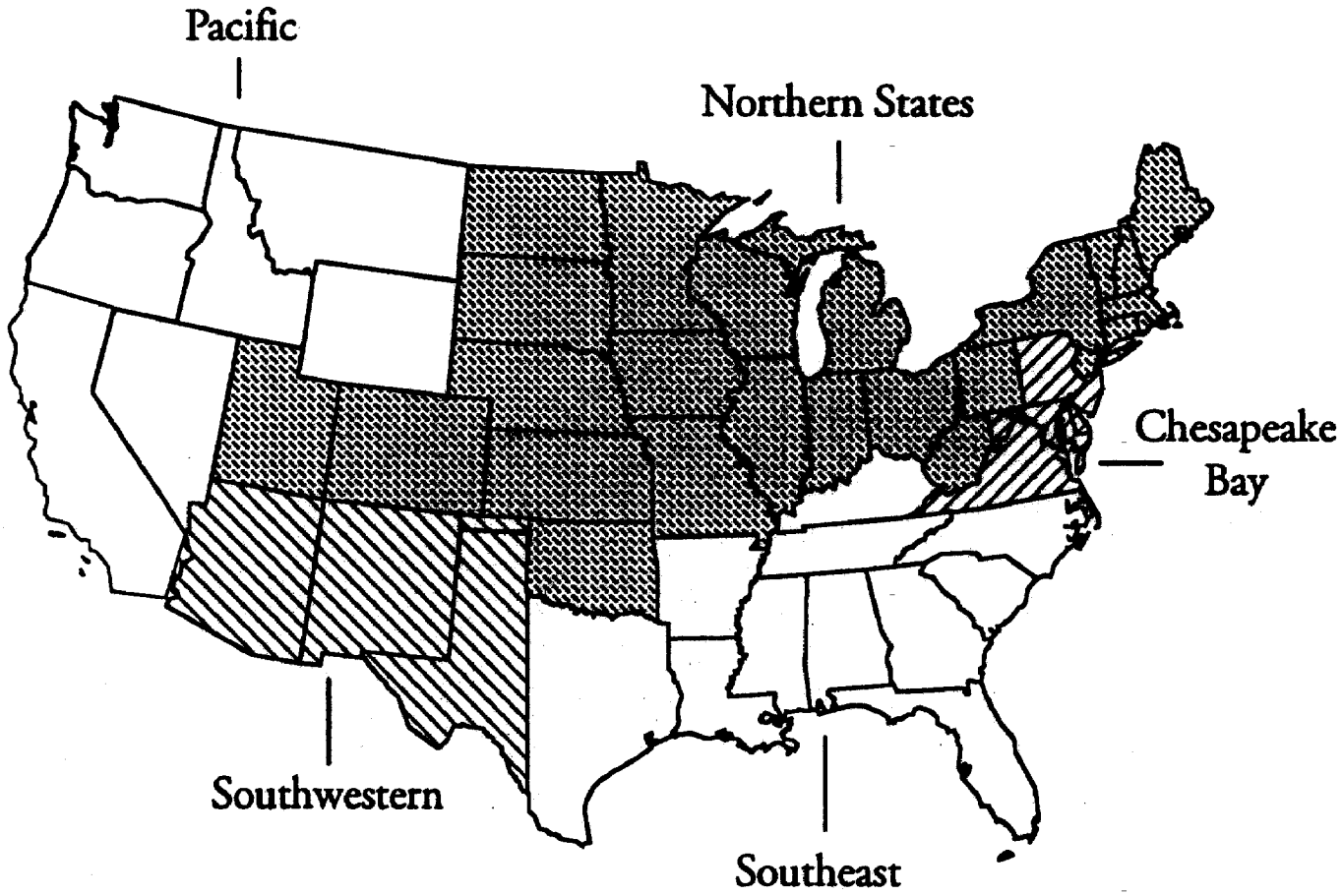
Year	Number
1963	417
1974	791
1981	1188
1984	1757
1986	1875
1988	2475
1989	2680
1990	3020
1991	3391
1992	3747
1993	4016
1994	4452

The Act requires periodic review of the status of listed species. When the status of the bald eagle was reviewed the Service recognized the achievement of specific recovery plan reclassification goals. As a result of this review, the Service issued the proposed rule for reclassification to threatened status in all or portions of four recovery regions and proposed classification of those eagles in Mexico as endangered (59 FR 35584, July 12, 1994). The current action finalizes the reclassification to threatened for all five recovery regions where not already so listed but excludes the bald eagles of Mexico due to a recently imposed moratorium on new listings (PL 104–6, 109 Stat 73, April 10, 1995).

The five bald eagle recovery plans were first approved in the early 1980's. The biological basis for the recovery goals is described in each recovery plan. The five recovery regions are illustrated on the following map:

BILLINB CODE 4310–55–P

Bald Eagle Recovery Regions



BILLING CODE 4310–55–C

A summary follows of each recovery region's reclassification and delisting goals, an estimation of progress to date in achieving those goals, and final Service action. The term ''occupied territories'' indicates that a pair of bald eagles has established a breeding territory and a nest site but was not necessarily successful in producing young. ''Young'' or ''young produced'' are fledged young. All numbers are based upon known eagle nests and are not estimates. Surveys, particularly those before the late 1970's, miss some pairs, so all figures are considered to be minimums.

Chesapeake Recovery Region

Reclassification Goals: Sustaining 175–250 breeding pairs with a productivity level of 1.1 young per active nest, concurrent with sustained progress in habitat protection measures.

Delisting Goals: Sustaining 300–400 pairs with an average productivity of 1.1 young per active nest over five years with permanent protection of sufficient habitat to support this nesting population and enough roosting and foraging habitat to support population levels commensurate with increases throughout the Atlantic coastal area.

Progress to Date: 356 occupied territories and 1.1 young per occupied territory reported in 1994. Progress in habitat protection has been sustained and additional habitat is being protected. There have been in excess of 175 known occupied breeding areas since 1988; 1992 was the first year in which there were more than 300. Reclassification goals have been met, and delisting goals have been met for three of the required five years.

Service Action: Reclassify to threatened.

Northern Recovery Region

Reclassification Goals: No goal for reclassification to threatened status in present plan.

Delisting Goals: 1,200 occupied breeding areas distributed over a minimum of 16 States with an average annual productivity of at least 1.0 young per occupied nest.

Progress to Date: In 1994, there were 1772 known occupied territories distributed over 21 States with an estimated 1.26 young per occupied territory (based upon the 1473 territories included in productivity surveys). Productivity was 1.00 in 1990, 0.97 in 1991, 1.01 in 1992, and 0.95 in 1993. (Productivity is estimated from incomplete surveys for Wisconsin and Minnesota in 1992 and 1993. Productivity data are also incomplete from Wisconsin in 1990 and 1991; partial productivity surveys were conducted during those years). Delisting

goals have been met for occupied breeding areas and for productivity.

Service Action: Reclassify to threatened; the species will remain threatened in the three States where it has had that status. The recovery plan describes the delisting goals as initial and tentative. The Northern States Bald Eagle Recovery Team has reconvened for the purpose of reviewing and updating the plan, and currently is critically reviewing the delisting goals.

Pacific Recovery Region

Reclassification Goals: Nesting populations continue to increase annually for the five years beginning with the 1986 nesting season.

Delisting Goals: A minimum of 800 nesting pairs with an average reproductive rate of 1.0 fledged young per pair with an average success rate per occupied site of not less than 65% over a 5-year period. Attainment of breeding population goals should be met in at least 80% of management zones. Wintering populations should be stable or increasing.

Progress to Date: In 1994, 1192 occupied territories were reported with 1.03 young per occupied territory. The number of occupied territories has consistently increased since 1986 and exceeded 800 for 5 years beginning in 1990 when 861 were reported. Productivity has averaged about 1.03 since 1990. Nesting targets for 37 specified management zones have been reached in 57 percent of the zones. In 1994, 21 of those zones had met or exceeded their recovery goals, and 5 other zones in addition to the original 37 had nesting eagles that are not part of the recovery goals for this region. Reclassification goals have been met. Delisting goals have been met in all categories except distribution in zones with nesting targets.

Service Action: Reclassify to threatened in California, Idaho, Montana, Nevada, and Wyoming; the species will remain threatened in Washington and Oregon.

Southeastern Recovery Region

Reclassification Goals: 600 occupied breeding areas distributed over at least 75 percent of the historical range contingent upon greater than 0.9 young per occupied nest, greater than 1.5 young per successful nest, and at least 50 percent of the nests successful in raising at least one young; based on a 3-year average and documentation of population vigor and adequate support habitat. Individual State goals are given.

Delisting Goals: Delisting may be considered if the recovery trend continues for five years after reclassification goals are met. The criteria for delisting will be developed when the species is reclassified from endangered to threatened.

Progress to Date: 1099 occupied territories were reported with an average of 1.27 young per occupied territory (based upon 1059 territories) in 1994. Nesting is distributed over all 11 Southeastern States. The number of occupied territories reached 601 in 1991 and has exceeded 600 for four successive years. Reproductive success for the years 1990–1994 averaged 1.47 young per occupied territory. All individual State goals have been met with Florida and South Carolina doubling their original goals. Existing habitat is deemed to be adequate to achieve and exceed overall recovery plan goals. Reclassification goals have been met and delisting goals as stated may be met next year.

Service Action: Reclassify to threatened.

Southwestern Recovery Region

Reclassification Goals: 10–12 young per year over a 5-year period; population range has to expand to include one or more river drainages in addition to the Salt and Verde Systems.

Delisting Goals: None given.

Progress to Date: 30 occupied breeding areas were reported for 1994 with 21 young produced. Some of the increase in the Southwestern Region is due to finding previously unrecorded nest sites which may or may not be new. Ten or more young have been produced every year since 1981. Productivity has increased 10–20 percent through the assistance of the Arizona Nest Watch program (Hunt et al. 1992).

Breeding has expanded beyond the Salt and Verde River systems. Eagles are now nesting in the Gila, Bill Williams, and most recently, the San Carlos river systems in Arizona, and the Rio Grande in New Mexico. Thus, the reclassification criteria have been fully met. Information received in response to the proposed rule indicates that the bald eagles of central Arizona are not reproductively isolated, as was previously believed. Commentors also pointed out that bald eagles were likely never abundant in this arid land. Though many unique threats persist, trends of this population segment appears stable or increasing.

Service Action: Reclassify to Threatened

In summary, the Service is reclassifying the bald eagle from endangered to threatened in the Chesapeake, Southeastern, and Southwestern Recovery Regions and in those portions of the Northern States and Pacific Recovery Regions where it is currently classified as endangered. The Service is not delisting the bald eagle anywhere in the lower 48 States at this time.

At this time the Service is deferring further action on listing the bald eagles of northern Mexico as threatened or endangered. Provisions included in the Emergency Supplemental Appropriations and Rescissions for the Department of Defense to Preserve and Enhance Military Readiness Act of 1995 (Publ. Law 104–6, 109 Stat 73; April 10, 1995) preclude the listing of taxa as threatened or endangered species during the remainder of fiscal year 1995. The bald eagles of northern Mexico will retain their status as species proposed for listing as threatened or endangered until the Service takes additional action.

Previous Federal Action

On February 7, 1990, the Service published an Advance Notice of a Proposed Rule (55 FR 4209) to announce that consideration was being given to the possible reclassification or delisting of the bald eagle in all or part of its range in the lower 48 States. A summary of those comments and Service responses to them were provided in the proposed rule of July 12, 1994 (59 FR 35584).

On July 12, 1994, the Service published the proposed rule to reclassify the bald eagle from endangered to threatened in most of the lower 48 States (59 FR 35584). Comments were requested by October 11, 1994. Newspaper notices were published on or about July 18, 1994, in papers of major cities or State capitals throughout the lower 48 States. Notification letters were sent to each State resource agency, major Federal agencies, major public conservation organizations, and all parties who submitted comments in response to the 1990 Notice. Eight written requests were received for public hearings. Two public hearings were held, and to accommodate them the comment period was extended to November 9, 1994 (59 FR 49908, September 30, 1994).

On March 23, 1995, (60 FR 15280) the Service published the announcement to reopen the comment period for 30 days due to the existence of substantial additional information concerning the possible inclusion of the Southwestern Bald Eagle Recovery Region in the reclassification. The reopened comment period was announced by a news release, and newspaper notices were published on or about March 24, 1995, in the *Washington Post* and major newspapers of the Southwest.

Notification letters were sent to all commentors on the proposed rule, State resource agencies, major Federal agencies, and major public conservation organizations. In addition, a public information meeting was held on April 3, 1995, in Phoenix, Arizona.

Summaries of Public Hearings, Comments, and Recommendations

The first public hearing was held from 7:00 p.m. to 9:00 p.m. on Tuesday, October 18, 1994, at the Somerset County Park Commission Environmental Education Center, 190 Lord Stirling Road, Basking Ridge, New Jersey. This hearing was held in response to requests from citizens living in Delaware and Rhode Island. The location was deemed to be centrally located for interested parties in both States. Notice of the public hearing was announced in local and regional newspapers. Four people attended this hearing and all provided comments. Major issues discussed included contaminants, particularly those associated with Delaware Bay, concern for low bald eagle breeding numbers in certain areas, recovery region boundaries, and scientific take permits.

The second public hearing was held from 6:30 p.m. to 9:30 p.m. on Tuesday, October 25, 1994, at St. Michael's Chapter House, Window Rock, Arizona. The hearing was held in response to requests from the Navajo Nation and representatives of Apache County, Arizona. Notice of the public hearing was published in local and regional newspapers. Five people attended this hearing and three people provided comments. Major issues discussed included take permits, Southwestern Recovery Region boundaries, and support for retaining the endangered status in the Southwestern Recovery Region.

Comments on the proposed rule were received from 72 parties including those attending the public hearings. Twenty-two State resource agencies responded to the proposed rule, of which 14 supported reclassification, three recommended the Southwestern Recovery Region be reclassified to threatened, one recommended bald eagles in its State be delisted, two did not object to reclassification but stated that they would retain State endangered status, and one provided comments, but gave no position.

Eighteen commentors represented organizations. Of these, ten stated support for the proposal, four recommended against the proposed rule, and two requested additional information.

Nineteen individuals provided comments, two of which provided surveys covering 157 people. Most individuals recommended against reclassification and several provided comments.

In response to the reopened comment period beginning March 23, 1995, the Service received 18 additional comments. Six State resource agencies responded with five of them supporting reclassification of the Southwestern Recovery Region and one requested delisting for a northern State. Four Federal entities responded. Three did not object to the reclassification, but two of those provided comments. One Federal entity requested the bald eagles of Mexico be listed as endangered. Two organizations opposed reclassification of the Southwestern bald eagles, as did two individuals. A third individual expressed opposition to any reduction of eagle protection. Three parties requested additional information but provided no comments.

Written comments received during the comment periods and oral statements presented at the public hearing are discussed in the following summary. Comments of a similar nature are grouped into general issues. These issues and the Service's response to each are discussed below.

Issue 1: The bald eagles of the Southwestern Recovery Region should be reclassified to threatened because recovery goals were met, genetic evidence does not indicate this population segment to be unique, and there is recent evidence of immigration.

Service Response: The Service has reviewed this issue, and due to the new evidence of immigration, reopened the comment period to alert the public to the new data and to reconsider whether or not this population segment is distinct and if it should also be reclassified to threatened. In considering the comments and information received, the Service has determined the Southwestern Recovery Region to be part of the same bald eagle population as that of the remaining lower 48 States. Therefore, the Service has included it in the reclassification. In 1994, a new pair of nesting bald eagles was discovered in the White Mountains at Luna Lake near Alpine, Arizona, bordering New Mexico. The male of this pair was trapped, and its band revealed that it had hatched in 1988 in southeastern Texas, south of Houston. This is the first known bald eagle to breed within Arizona's boundaries that originated in a different State and in a different recovery region (Southeastern).

Mabie et al. (1994) provides additional evidence of inter-population movements. Based on sight records, the authors believe that bald eagles fledged in Texas may enter breeding populations throughout the southern United States. Emigration of Texas-fledged eagles may also extend into Mexico (Driscoll, et al. 1993).

Though Hunt et al. (1992) suggested that the central Arizona population may be reproductively isolated, that publication also stated that, ''neither enzyme electrophoresis nor DNA fingerprinting resolved any specific genetic markers from which Arizona eagles could be differentiated from those of other populations * * *.; Both techniques showed higher levels of genetic heterozygosity in the Arizona samples than the other populations tested * * *, [and] * * * these healthy levels of variation imply that the Arizona eagles are not currently experiencing inbreeding problems and may be capable of adapting to future environmental change. This, together with the occupancy and reproductive data, suggests that the population may be viable over the long term * * *'' and that, in spite of the smaller size of the Arizona eagles, ''We were unable to show a quality of uniqueness among the Arizona eagles that implies the existence of adaptations to the desert environment * * *''

Thus, based on new information on immigration and previously known genetic data, the Service believes this population is not reproductively isolated and should be included with the reclassification of the lower 48 States population.

Issue 2: Delisting goals have been met or exceeded in many cases. The bald eagle should be delisted in States where it has fully recovered.

Response: In 1978, the Service recognized separate population segments of this species primarily on the basis of State boundaries, with bald eagles in five northern and Pacific States listed as threatened, and those in the remainder of the lower 48 States listed as endangered. The distinctiveness of these population segments is questionable, given the dispersal capabilities of the species across state lines. For the purposes of this rule, the Service recognizes only one population in the lower 48 States, although the five recovery regions remain valid for management purposes. Thus, delisting will only be considered for the listed bald eagle population as a whole and not on a State by State or recovery region basis. Delisting goals have only been met for the Northern States Recovery Region and these goals were developed and approved as ''tentative.'' Two recovery plans, those for the

Southwestern and the Southeastern Recovery Regions, have not yet established delisting goals. These three plans are currently being updated and revised, with emphasis on developing biologically sound delisting goals. Delisting goals for the remaining regions are very close to being met.

Issue 3: The number of occupied territories in several States or all the lower 48 States is too low to consider reclassification.

Response: Reclassification and delisting criteria were developed by experts in bald eagle biology in all five recovery regions. The reclassification criteria were met for all five recovery regions in the lower 48 States. Each recovery plan included the number and distribution of occupied territories and productivity as factors in recovery and reclassification. The bald eagle has never been uniformly distributed, and there is no biological reason to require a more even distribution of the species as a precursor to reclassification. The Service believes that, in the unlikely event of a catastrophe decimating a State's bald eagle population, pioneering eagles from other States would likely venture into the unoccupied habitats within a short time.

Issue 4: The Service should not proceed with reclassification until certain additional studies are conducted.

Service Response: The Endangered Species Act does not require that the Service know the answers to all outstanding biological questions before declaring the bald eagle to be recovering and worthy of reclassification to threatened status. Reclassification is based on criteria set forth in the recovery plans; those criteria are set at a level which is believed to be sufficiently high so that relisting as endangered will not be necessary in the foreseeable future. The plans were developed by the Nation's bald eagle experts and approved by the Service. Additional studies are not deemed necessary for reclassification.

Issue 5: Contaminants continue to depress reproduction and the prey base in many bald eagle nesting areas. Development continues to encroach on bald eagle habitat. Low level military aircraft flights may affect bald eagle reproduction. Many questions related to these factors remain unanswered.

Response: Even States which are known to have localized areas of contamination or development pressures have experienced increased numbers of occupied territories in the past 10 years. Achieving the reclassification criteria does not mean that all the threats are gone; rather, it means that the species is doing much better than when it was listed as endangered. The reclassification will not alter those conservation measures already in force to protect the species and its habitats. Since these pressures are expected to continue, all levels of government and the public will need to continue to work toward protection of important bald eagle habitat.

Issue 6: More bald eagles will be shot and killed if they are reclassified to threatened status.

Response: Shooting bald eagles is illegal under the Endangered Species Act regardless of whether they are classified as threatened or endangered. Bald eagles are also protected from shooting by the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act.

Issue 7: The bald eagles of the Channel Islands off California were once part of the Southwest and Mexican population segment. They were extirpated due to DDT exposure and have since been reintroduced. Reproduction remains low due to lingering contaminants. These birds should be classified as endangered.

Response: The Channel Island eagles are not a genetically unique population segment as they have recently been reintroduced to that area. The Service has also recognized the Southwestern population segment as not being reproductively isolated and, having met the reclassification criteria, is reclassified to threatened. Possible inclusion of the bald eagles of the Channel Islands with the Southwestern Recovery Region will be considered during the recovery plan updating and revision.

Issue 8: Bald eagles in western States should not be reclassified due to mortality from animal damage control methods.

Response: Animal damage control methods, such as M–44 sodium cyanide devices and zinc phosphide, if used legally and according to label instructions, pose low potential for poisoning bald eagles. Illegal use of carbofuran and other highly toxic chemicals on bait for predator control has resulted in a number of eagle mortalities. Such actions are illegal now, and will remain illegal following reclassification of the bald eagle. Western States and their respective recovery regions have met reclassification goals in spite of these localized mortalities.

Issue 9: The Service should prepare an environmental impact statement under National Environmental Policy Act (NEPA) based on increased permitted take that will result as land use changes occur on public lands.

Service Response: Reclassification will not increase permitted take of bald eagles due to land use changes occurring on public lands. Take permits are only issued for activities that promote recovery goals or for activities that incidentally take endangered or threatened species during the course of otherwise legal activities. The Service is required to consider NEPA compliance prior to deciding whether to issue each take permit. Habitat protective mechanisms remain the same under the Endangered Species Act whether a species is in the endangered or threatened status. In addition, the take prohibitions of the Bald and Golden Eagle Act and the Migratory Bird Treaty Act will remain in effect following reclassification.

Issue 10: The most current scientific information should be used for this reclassification based on the National Environmental Policy Act requirements.

Service Response: The Endangered Species Act requires the use of the best scientific and commercial data when making a determination to list, delist, or reclassify a species. Annual bald eagle survey data collected primarily by State and Federal biologists is compiled nationwide each year by the Service. In addition, many university, State, and Federal life history studies have been completed and others are on-going. Furthermore, there have been two public comment periods following the proposed reclassification notice, and one comment period subsequent to the 1990 Advance Notice. These comment periods provided opportunities for submission of additional data to the Service. The Service considered all relevant data in regards to achieving recovery plan goals, and believes the best available scientific data were used in determining that reclassification is warranted for the bald eagle. National Environmental Policy Act compliance is discussed at the end of this document.

Issue 11: The bald eagle should not be rushed into reclassification for political considerations, and it should be fully recovered before reclassification occurs.

Service Response: The Endangered Species Act requires periodic review of the status of listed species. The listing status should accurately reflect the biological status. Fully recovered implies that the species is no longer likely to become an endangered species and is candidate for delisting. The Act does not require that a species be fully recovered prior to reclassification to threatened status. Rather, a species must no longer be in danger of extinction for it to be reclassified from endangered to

threatened status. The Service used only biological information in determining to reclassify the bald eagle; political considerations were not a factor in the decision.

Issue 12: The Service acknowledges a high level of mortality due to illegal use of pesticides, yet states that pesticides in recent times have not impacted the bald eagle on a population level. How high is this mortality?

Service Response: The Service, with this rule, recognizes only one population of bald eagles in the lower 48 States and five recovery areas. Although full recovery may be faster if the Service were able to reduce all forms of mortality, the population and all management zones clearly have experienced significant improvement since completion of the recovery plans. The Service is using all available tools to minimize mortality to bald eagles from legal and illegal use of pesticides. Estimates of mortalities from illegal pesticide use cannot accurately be made, as many cases remain unreported.

Issue 13: The remnant population of Baja California, Mexico, bald eagles and possibly those of Sonora, Mexico, should be classified as endangered.

Service Response: The recent moratorium on listing new species prevents us from including the bald eagles of Mexico in this rule (PL 104–6, April 10, 1995). However, Mabie, et al. (1994) indicates the possibility that bald eagles of Texas may be emigrating to Sonora and other areas in the southwest. The numbers of nesting bald eagles in Baja, though low, appear stable. Current information does not indicate the bald eagles of Mexico are a distinct population, and thus may not warrant a separate listing as endangered. Following removal of the listing moratorium, all available data will be re-examined prior to making a final determination on Mexican bald eagles.

Issue 14: Recently, several bald eagles have died in Arkansas and Wisconsin from unknown causes.

Service Response: In the winter of 1994–95, 29 bald eagles died in Arkansas and 9 died in Wisconsin from unknown causes. Infectious disease has been ruled out as a likely cause. It is believed that the Arkansas mortalities were caused by a toxic agent different from that of Wisconsin. These mortalities are too few in number to impact recovery. Although it is disturbing that the agents have not yet been identified, the causes of these deaths do not appear to be common diseases which might spread widely to other eagles.

Issue 15: The new information regarding the successful nesting at Luna Lake, Arizona, which included a male from southeast Texas, does not constitute definitive proof that genetic interaction occurs between desert nesting bald eagle populations and wintering populations. The Service should retain the endangered status for these southwestern bald eagles.

Service Response: The significance of the Luna Lake nesting pair was that the male was documented as originating in a different recovery region, i.e. the Southeastern Recovery Region. This supported existing genetic data indicating the southwestern birds are not experiencing inbreeding problems. We are not aware of Arizona nesting birds interbreeding with wintering birds, although it is possible that a wintering bird might replace the lost mate of a pair. Though many threats remain, the Southwestern eagles have far exceeded the criteria for threatened status as outlined in the Southwestern Recovery Plan.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the bald eagle should be classified as a threatened species throughout the lower 48 States. Procedures found in section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations implementing the provisions of the Act (50 CFR Part 424) were followed. A species may be determined to be listed or reclassified as threatened or endangered due to one or more of the five factors described in section 4(a)(1). These five factors and their application to the bald eagle (*Haliaeetus leucocephalus*) are as follows.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The bald eagle is associated with aquatic ecosystems throughout most of its range. Nesting almost never occurs farther than 3 km (2 miles) from water (Gerrard and Bortolotti 1988). Fish predominate in the typical diet of eagles. Many other types of prey are also taken, including waterfowl and small mammals, depending on location, time of year, and population cycles of prey species. Dead animals or carrion, especially in the wintering areas, are also taken when available (Lincer et al. 1979).

Nest sites are usually in large trees along shorelines in relatively remote areas. The trees must be sturdy and open to support a nest that is often 2–3 m (6–9 ft) across and more than a meter (3 ft) thick (Bent 1938). Bald eagles also select cliffs or rock outcrops for nest sites where large trees are not available. This dependence upon very large trees associated with water makes the eagle vulnerable to water-associated development pressures.

One of the two major threats to the bald eagle at present and for the foreseeable future is destruction and degradation of its habitat (the other major threat is environmental contaminants—see Factor E below). This occurs through direct cutting of trees for shoreline development, human disturbance associated with recreational use of shorelines and waterways, and contamination of waterways from point and non-point sources of pollution.

Steps to reduce these threats are underway by all levels of government and numerous private conservation organizations nationwide. Increased protection of nesting habitat and winter roost sites has occurred in many areas throughout the country. Guidelines to minimize human disturbance around nesting and winter roost sites have been developed in all parts of the country. Areas of contamination continue to be identified and reduced. Rehabilitation, captive propagation, reintroduction, and transplanting programs have all worked toward increasing the viability of the U.S. bald eagle population.

Current threats to the bald eagle's habitat and range in the United States by recovery region are as follows:

Chesapeake Bay Region—Buehler et al. (1991) reported that the bald eagle feeding and resting use of Chesapeake Bay shoreline was directly related to the distance of development from the shoreline. Eagles tended to avoid shorelines with nearby pedestrian or boat traffic. With human activity and development increasing, preferred bald eagle habitat is diminishing. Associated land clearing reduces bald eagle nesting and perching sites.

To offset these impacts, the Service has expanded its National Wildlife Refuge System around the Chesapeake Bay area to protect bald eagle habitat. For example, the Service acquired 3,500 acres of nesting and roosting habitat in the James River area of Chesapeake Bay in 1991 to be protected and managed for bald eagles. Acquisition of an additional 600 acres is planned. The Blackwater National Wildlife Refuge, which provides important eagle habitat on Chesapeake Bay, is also proposing to acquire more land. Nickerson (1989) estimates that enough suitable unoccupied nesting habitat remains that, if unaltered, it could sustain continued growth of the bald eagle population through the remainder of the 20th century.

Northern States Recovery Region—Development, particularly near urban areas, remains a primary threat. In spite of these localized problems, bald eagle nesting activity in the Northern States Recovery Region has more than doubled in the past 10 years from fewer than 700 to nearly 1,800 territories known to be occupied. There also is ample unoccupied habitat still available throughout this region.

In the Great Plains States, loss of wintering habitat is a major concern. Wintering areas have been lost through development of riparian areas for recreational, agricultural, and urban uses. Loss of wintering habitat also occurs due to lack of cottonwood regeneration. This results from changes in floodplain hydrology from construction of reservoirs and dam operations. Grazing also inhibits regeneration. A threat to some wintering populations of eagles in the Great Plains States is the destruction of prairie dog colonies and other important foraging areas (U.S. Fish and Wildlife Service 1992).

However, management measures, reforestation, improved water quality, and a reduction in pesticide contamination (see factor E below) have enabled the Northern States bald eagle populations to increase substantially overall. Where reservoirs may adversely affect woody riparian growth, they have provided additional forage base for eagles. Much eagle nesting and wintering habitat is on publicly owned lands. Many of these lands are protected by habitat management plans and strict eagle nest protection and management guidelines.

Pacific Recovery Region—Development-related habitat loss continues to be a major factor limiting the abundance and distribution of the species in the Pacific Recovery Region. Habitat conservation efforts, including laws and management practices by Federal and State agencies and efforts by private organizations, have helped to facilitate bald eagle population increases in the Pacific Recovery Region since the 1960's. For example, interagency working teams in six of the seven Pacific Recovery Region States have developed implementation plans to address local issues more specifically than the recovery plan. Bald eagle habitat guidelines have also been incorporated into development covenants and land use. California and Washington have rules relating to bald eagles on private lands to encourage landowners to maintain nesting territory habitat.

Southeastern Recovery Region—The accelerated pace of development activities within eagle habitat and the extensive area involved are the most significant limiting factors in the Southeastern Region. The cumulative effects of many water development projects impinge on the ability to maintain current nesting populations and ultimately may limit the extent to which recovery may occur.

To reduce these threats, habitat management guidelines are used to minimize development disturbance in and around nests. Several counties and municipalities have adopted the guidelines in their land use and zoning policies. In addition, a significant amount of new habitat has been created in the form of manmade reservoirs. Reservoirs primarily provide wintering and non-nesting habitat, but are used by nesting eagles as well (U.S. Fish and Wildlife Service 1989).

In addition, many of the States have, or have had, active reintroduction programs. Rehabilitation and release of injured eagles occurs throughout the Southeastern Region (U.S. Fish and Wildlife Service 1989). As a result of these and other efforts, the bald eagle nesting population in the Southeastern Region has more than doubled in the past 10 years.

Southwestern Recovery Region—In addition to threats in common with other recovery regions, such as human disturbance and availability of adequate nesting and feeding habitat, the bald eagles of the Southwestern Recovery Region, and nestlings in particular, are subjected to heat stress, nest parasites, and entanglement in fishing line debris from intense fishing pressure. Extensive monitoring through the Arizona Bald Eagle Nestwatch Program has lessened the impact of mortality factors by educating the public, protecting breeding areas, and maximizing the number of fledglings produced. The protection, education, and intervention that this program and current management efforts provide help sustain this population segment.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

There is no legal commercial or recreational use of bald eagles. The Service considers present legal and enforcement measures sufficient to prevent bald eagle extinction or a need to reclassify as endangered. The Service exercises very strict control over scientific, educational, and Native American religious activities involving bald eagles or their parts. With reclassification to threatened, the Service could issue permits for limited exhibition and educational purposes, for selected research work not directly related to the conservation of the species, and for other special purposes consistent with the Act (50 CFR 17.32 and 17.41(a)). The Service does not believe that the issuance of these additional permits would adversely impact the full recovery of the bald eagle.

C. Disease or Predation

Predation is not a significant problem for bald eagle populations. Incidents of mortality due to territory disputes between bald eagles have been reported. Diseases such as avian cholera, avian pox, aspergillosis, tuberculosis, and botulism may affect individual eagles, but are not considered to be a significant threat to the population. In the winter of 1994–95, 29 bald eagles died in Arkansas and 9 died in Wisconsin. Infectious disease has been ruled out. Apparently the Arkansas mortalities were caused by a toxic agent different from that of Wisconsin. These mortalities, though significant, are too few in number to impact recovery. In the Southwestern population, the Mexican chicken bug, when abundant, is known to occasionally kill young. According to the National Wildlife Health Research Center, National Biological Survey, Wisconsin, only 2.7 percent of bald eagles submitted to the Center between 1985 and 1990 died from infectious disease.

D. The Inadequacy of Existing Regulatory Mechanisms

The bald eagle is protected by the following Federal wildlife laws in the U.S.:

* Sections 7 and 9 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) protect individual bald eagles (threatened or endangered) and their active nests on public and private land.
* The Bald Eagle Protection Act (16 U.S.C. 668) prohibits without specific authorization the possession, transport, or take of any bald or golden eagle, their parts, nests, or eggs.
* The Migratory Bird Treaty Act (16 U.S.C. 703) prohibits without specific authorization the possession, transport, or take of any migratory bird (including bald eagles), their parts, nests, or eggs.
* The Lacey Act (16 U.S.C. 3372 and 18 U.S.C. 42–44) among other provisions, makes it unlawful to export, import, transport, sell, receive, acquire, or purchase any bald eagle (1) taken or possessed in violation of any law, treaty, or regulation of the United States or in violation of any Indian tribal law or (2) to be taken, sold, or transported in interstate or foreign commerce, in violation of any law or regulation of any State or in violation of any foreign law.

This species is afforded uncommonly comprehensive statutory and regulatory

protection under Federal and State authorities. These protections will remain in effect following reclassification to threatened status.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Contaminants may affect the survival as well as the reproductive success and health of bald eagles. The abundance, and, potentially more important, the quality of prey may be seriously affected by environmental contamination. Although many of the compounds implicated in reduced reproductive rates and direct mortality are no longer used, contaminants continue to be a major problem in some areas. Pesticides in recent times have not impacted the bald eagle on a population level; however, individual poisonings still occur.

Carcasses baited with poison may attract bald eagles as well as target animals such as coyotes. Poisonings may occur secondarily, when predatory animals are poisoned and subsequently eaten by eagles. Crop insecticides may be taken up by prey animals and may also result in eagle mortality. In addition, organophosphates and carbamates are sometimes used illegally as animal poisons. The National Wildlife Health Research Center has diagnosed over 100 cases of pesticide poisonings in bald eagles in the past 15 years.

Bald eagle deaths have been reported each year in the past decade on western rangelands due, in part, to illegal use of pesticides such as famphur, phorate, and carbofuran, and highly restricted chemicals, such as strychnine, Compound 1080, and others (Tom Jackson, Fish and Wildlife Service, Denver, pers. comm.). This mortality on western rangelands corresponds with the primary wintering areas for most western bald eagles (other than Pacific Coast birds). Some illegal uses of pesticides are targeted at bald and golden eagles. Cases of suspected intentional mortality through treating carcasses with pesticides have occurred in most western States and may occur in other States. The Service is using all available means to reduce these incidents.

Long-term exposure to contaminants is a much more extensive problem than is direct mortality. Lifetime exposure to contaminants may limit an eagle's reproductive capabilities, alter their behavior and foraging abilities, and increase their susceptibility to diseases or other environmental stresses. Organochlorines, such as DDT, are no longer legally used in the United States. Their presence in bald eagles is generally a consequence of their long persistence in the environment. Consequently, residues of such compounds from historical uses can still contaminate prey animals and be passed to eagles. Exposure to these compounds is also occurring at an early age. For example, approximately 90% of the eaglets sampled in Maine in 1992 had detectable levels of DDE in their blood.

In the Chesapeake Bay Region, Delaware Bay and the James River below Richmond continue to be a source of organochlorine and heavy metal contaminants that may impact eagle reproduction (U.S. Fish and Wildlife Service 1990). However, DDE concentrations in addled bald eagle eggs in Chesapeake Bay have declined significantly during the years between 1969 and 1984 (Wiemeyer et al. 1993).

In parts of the Northern States Region, contamination is depressing bald eagle productivity. This occurs notably in the coastal areas of Lakes Michigan and Huron, those rivers accessible by anadromous fishes of those lakes, and in parts of Maine. Research on bald eagle productivity in the vicinity of Lakes Michigan and Huron shorelines indicates significantly lower productivity than for inland breeding birds. The reduced productivity is correlated with concentrations of PCB's and DDE in addled eggs (Bowerman et al. 1994). DDT rapidly converts to DDE and is highly correlated with depressed productivity in bald eagles (Garcelon 1994).

PCB's and DDE residue concentrations have markedly decreased for Lake Superior bald eagle eggs in Wisconsin. Recent data indicate DDE concentrations in eggs have declined from greater than 20 parts per million in the 1970's to less than four parts per million in the 1990's (Michael Meyer, Wisconsin Department of Natural Resources, pers. comm.). This is significant because 4 parts per million is considered the no effect concentration for DDE (Wiemeyer et al. 1993).

Bald eagles of the Pacific Recovery Region nesting on California's Channel Islands, near the Columbia River estuary, and Hood Canal, which is adjacent to Puget Sound, repeatedly have low reproductive success. DDE and PCB's have had a deleterious effect on the reproduction of bald eagles in the Columbia River estuary (Anthony et al. 1993). Residual DDE continues to depress reproduction in the eagles of the Channel Islands. Bald eagle eggs from Catalina Island had the highest reported individual concentration (60 parts per million) of those analyzed between 1968 and 1990, and highest average concentration (32.9 parts per million) compared to that of any region or State (Garcelon 1994). Wiemeyer et al. (1993) found addled bald eagle eggs collected from the Klamath Basin and Cascade Lakes regions in Oregon ranked second (behind Maine) in DDE concentrations among the fifteen States sampled. However, concentrations of other contaminants in the Oregon eggs were low.

In spite of localized reproductive impairment, the Pacific Recovery Region population has increased by about 68 percent in the past 10 years. Contaminants are not known to be a significant problem for eagles in the Southwestern Recovery Region.

Lead poisoning has also contributed to bald eagle mortality. The National Wildlife Health Research Center has diagnosed lead poisoning in more than 225 bald eagles during the last 15 years. Lead can poison bald eagles when they ingest prey items that contain lead shot or lead fragments or where the prey has assimilated lead into its own tissues. In winter, eagles may feed on waterfowl that are dead or dying from lead poisoning or upon waterfowl crippled by lead shotgun pellets during the hunting season. Lead poisoning of eagles was a primary reason the Service required the nationwide use of non-toxic shot for waterfowl hunting. The requirement for use of non-toxic shot was phased in over a period of 5 years, and its use became mandatory for all waterfowl hunting in 1991. Use of lead shot is still permitted in many parts of Canada.

Of particular concern for bald eagles in the southeastern region and in Maine are the toxic effects of mercury (Wiemeyer et al. 1993; C. Facmire, U.S. Fish and Wildlife Service, Atlanta, pers. comm.). High levels of mercury affect eagles with a variety of neurological problems in which flight and other motor skills can be significantly altered and reduce hatching rates of eggs. Mercury has entered the waterways as air emissions from solid waste incineration sites and other point and non-point sources. Impacts to bald eagles from mercury are currently under investigation in the Southeastern Region.

Illegal shooting still poses threats to individual birds. Increased law enforcement and public awareness have reduced shooting impacts from being a cause of large scale mortality in the first half of this century to being responsible only for the deaths of occasional individuals at present. From 1985 to 1990, the National Wildlife Health Research Center had diagnosed over 150 bald eagle deaths due to gunshot. Hunter education courses routinely

include bald eagle identification material to educate hunters about bald eagles and the protections that the species is afforded.

Electrocutions occur on power poles and lines that are not yet configured for the protection of raptors. Much research has been done in this area, and new poles and lines are usually configured to reduce raptor electrocutions.

Human disturbance also remains a long-term threat. Significant declines in eagle use of the Skagit River, Washington, were noted in response to recreational activity (Stalmaster 1989). Human disturbance can be harmful during egg incubation and brooding periods, because disturbance can flush adults from nests and expose the eggs or young to adverse weather conditions.

Land management practices can reduce or eliminate these disturbance problems. Management of bald eagle nesting sites has progressed in some areas to include zones of protection extending up to 2.5 miles (U.S. Fish and Wildlife Service 1986). In the Bear Valley National Wildlife Refuge, Oregon, for example, public access is restricted from November 1 through March 30 to prevent human disturbance to wintering bald eagles.

Despite these various threats to the bald eagle, none are of sufficient magnitude, individually or collectively, to place the species at risk of extinction. Over most of the 48 States, the population is doubling every 6 or 7 years.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining this rule. Based on this evaluation, the preferred action is to reclassify the bald eagle from endangered to threatened in the lower 48 States. The bald eagle will remain threatened in the five States where it is currently listed as threatened. The threatened status is appropriate because the bald eagle is not in danger of extinction (i.e. endangered) throughout all or a significant portion of its range.

Recognition of One Population in the Lower 48 States

In 1978, the Service recognized distinct population segments of this species and delineated them on the basis of State boundaries, with bald eagles in five northern States listed as threatened, and those in the remainder of the lower 48 States listed as endangered. The distinctiveness of these population segments is questionable, given the dispersal capabilities of the species across State lines.

In the July 12, 1994, proposed rule, the southwest bald eagle population was recognized as distinct from eagles elsewhere in the lower 48 States based on evidence that it appeared to be reproductively isolated. However, new evidence of immigration coupled with genetic studies which were unable to demonstrate uniqueness in the Arizona eagles leads us to conclude that the population segment is not reproductively isolated. Thus, for purposes of this rule, the Service recognizes only one population of bald eagles in the lower 48 States. This population is now reclassified to threatened.

Special Rule

The Act allows special rules to be adopted for threatened species as needed for the species' conservation; such special rules are typically provided to reduce or augment those protections afforded to threatened species under the Act. Section 17.41(a) is a special rule adopted at the time of the 1978 reclassification of the bald eagle. The original intent was to reduce the number of permits required for researchers working on threatened eagles (i.e., Oregon, Washington, Minnesota, Wisconsin, and Michigan) under both § 17.32 and 50 CFR parts 21 and 22 (bird banding and eagle permits). The present special rule at § 17.41(a) reads as follows:

(a) Bald eagles (*Haliaeetus leucocephalus*) found in Washington, Oregon, Minnesota, Wisconsin, and Michigan.

(1) *Applicable provisions.* The provisions of §§ 17.31 and 17.32 shall apply to bald eagles specified in paragraph (a) of this section to the extent such provisions are consistent with the Bald Eagle Act (16 U.S.C. 668–668d), the Migratory Bird Treaty Act (16 U.S.C. 703–711), and the regulations issued thereunder.

The Service now clarifies the language of this special rule for all threatened bald eagles. Only a permit issued under the authority of 50 CFR 21.22 or 50 CFR part 22 (subpart C) is needed for such purposes as banding (§ 21.22); scientific study or exhibition (§ 22.21), which includes taking, possession, rehabilitation, and transport; native American religious use (§ 22.22); and depredation reduction (§ 22.23). A permit under § 17.32 would only be required when a permit under parts 21 and 22 do not provide for an otherwise lawful activity. The issuance of all such permits would remain subject to section 7 of the Act and part 402 of this title.

Effects of This Rule

As a result of the reclassification, prohibitions outlined under 50 CFR 17.41(a) would apply to all bald eagles of the lower 48 States. The Service could issue permits for exhibition and educational purposes, for selected research work (including banding and marking) not directly related to the conservation of the species, and for other special purposes. In allowing for a single permit, the Service seeks to foster further research and other uses of bald eagles consistent with the Act and the purposes of the Migratory Bird Treaty Act and the Bald Eagle Act (50 CFR 17.32, 17.41(a), 21.22, 22.21–21.23).

Requirements of the Act under section 7 still apply to all Federal agencies; there are no significant distinctions made in the Act or supporting regulations (part 402) between endangered and threatened species. The consultation and other requirements under section 7 apply equally to species with either classification.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Service offices listed in the Addresses section.

Author

The primary author of this notice is Jody Gustitus Millar, Bald Eagle Recovery Coordinator, Fish and Wildlife Service, 4469–48th Avenue Court, Rock Island, Illinois 61201 (309/793–5800).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.11(h) is amended by removing the two entries for ''Eagle, bald'' under BIRDS and adding a new entry for ''Eagle, bald'' in its place to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
Birds							
*	*	*	*	*	*		*
Eagle, bald	Haliaeetus leucocephalus.	North America, south into Mexico.	U.S.A. (conterminous 48 States).	T	1, 34, 580	NA	17.41(a)

3. Section 17.41(a) is revised to read as follows:

§ 17.41 Special rules—birds.

(a) Bald eagles (*Haliaeetus leucocephalus*) wherever listed as threatened under § 17.11(h).

(1) *Applicable provisions.* All prohibitions and measures of §§ 17.31 and 17.32 shall apply to any threatened bald eagle, *except* that any permit issued under § 21.22 or part 22 of this chapter shall be deemed to satisfy all requirements of §§ 17.31 and 17.32 for that authorized activity, and a second permit shall not be required under § 17.32. A permit is required under § 17.32 for any activity not covered by any permit issued under § 21.22 or part 22 of this chapter.

(2) [Reserved]

* * * * *

Dated: June 6, 1995.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 95–16981 Filed 7–11–95; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Wednesday
July 12, 1995

Part III

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 92

HOME Investment Partnerships Program; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 92

[Docket No. FR–3836–P–01]

RIN 2501–AB94

HOME Investment Partnerships Program

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the HOME Investment Partnerships Program regulation with respect to the operation of the HOME formula; the threshold for applicability of the 20% very low-income requirement for rental housing; and, conflict of interest provisions as they apply to developers.

DATES: Comments due date: September 11, 1995.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Room 10278, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. FAXED comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: Mary Kolesar, Director, Program Policy Division, Office of Affordable Housing Programs, 451 Seventh Street SW., Washington, D.C. 20410, telephone (202) 708–2470, TDD (202) 708–2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Statement

The information collection requirements for the HOME Investment Partnerships Program have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and assigned OMB control number 2501–0013. This proposed rule does not contain additional information collection requirements.

II. Background

The HOME Investment Partnerships Program (HOME) was enacted under Title II (42 U.S.C. 12701–12839) of the Cranston-Gonzalez National Affordable Housing Act (NAHA)(Pub. L. 101–625, approved November 28, 1990). Implementing regulations for the HOME Program are at 24 CFR part 92.

The original statute has been amended three times since enactment. The Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102–550, approved October 28, 1992) included a substantial number of amendments to the HOME Program. These amendments were implemented in rules published on December 22, 1992 (57 FR 60960), June 23, 1993 (58 FR 34130), and April 19, 1994 (59 FR 18626). The HUD Demonstration Act (Pub. L. 103–120, approved October 27, 1993) provided additional authorization for HOME Program technical assistance. The Multifamily Housing Property Disposition Reform Act of 1994 (MHPDRA) (Pub. L. 103–233, approved April 11, 1994) included an additional number of amendments to the HOME Program. These amendments were implemented in a rule published on August 26, 1994 (59 FR 44258). An interim rule with clarifying changes to the HOME rule and a request for additional comments before the issuance of a final rule is also published in this issue of the **Federal Register**.

One of the purposes of this rule is to propose a change in the operation of the HOME formula. Section 92.50(d)(3) would be revised to maximize the number of units of general local government which receive an initial allocation of HOME funds.

Formerly, units of general local government, after an initial distribution of funds available for allocation, were eliminated at $250,000 and below. They were eliminated from the pool of eligible jurisdictions and their allocations were redistributed among other units of general local government. This redistribution technique continued until 95% of the funds had been distributed among units of general local government that received $500,000 or more. The new method would drop only one jurisdiction on each recalculation, and redistribute funds to all others, thus assuring that the maximum number of units of general local government receive an allocation.

A further rule change is proposed to § 92.252, Qualification as affordable housing and income targeting: Rental housing, that would change the threshold for the 20% very-low income occupancy requirement from a project with three or more rental units to a project with five or more rental units.

Finally, this rule proposes to apply, as appropriate, the conflict of interest provisions at § 92.356 to housing developers, whether private, for profit, or non-profit, of projects assisted with HOME funds. The general conflicts prohibition in § 92.356(c) cannot be specifically applicable to such developers (including their employees, agents, consultants, and officers), because they do obtain a financial interest or benefit from a HOME assisted activity, for example, developer's fees. The conflict with respect to developers arises when they receive an unfair advantage for the HOME-assisted affordable housing. The range of situations in which a conflict may arise includes, for example, an individual who creates a non-profit, serves as executive director, receives HOME funds to construct rental housing, and then becomes the first to occupy a rental unit; or an individual employed as a receptionist at a non-profit that develops and manages a HOME-assisted project who becomes homeless, and applies for a newly-vacated unit in the project. This rule proposes that no owner, employee, agent, consultant, or officer of a developer of a project assisted with HOME funds may occupy a HOME-assisted affordable housing unit in the project. As is the case with the present conflict of interest provision, the rule would permit requests for exceptions. However, rather than provide for HUD review, as is presently done for exception requests by participating jurisdictions, state recipients and subrecipients, this rule would permit participating jurisdictions to grant exceptions upon consideration of factors delineated in the rule.

III. Findings and Certifications

Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk.

Regulatory Planning and Review

This proposed rule has been reviewed in accordance with Executive Order 12866, issued by the President on September 30, 1993 (58 FR 51735, October 4, 1993). Any changes to the proposed rule resulting from this review are available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk.

Impact on Small Entities

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the

undersigned hereby certifies that this proposed rule does not have a significant economic impact on a substantial number of small entities, because jurisdictions that are statutorily eligible to receive formula allocations are relatively larger cities, counties or States.

Regulatory Agenda

This proposed rule was not listed in the Department's Semiannual Agenda of Regulations published on May 8, 1995 (60 FR 23368, 23376) under Executive Order 12866 and the Regulatory Flexibility Act.

Federalism Impact

The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, *Federalism*, that this proposed rule does not have federalism implications concerning the division of local, State, and federal responsibilities. While the HOME Program interim rule proposed to be amended by this rule was determined to be a rule with federalism implications and the Department submitted a Federalism Assessment concerning the interim rule to OMB, this proposed rule would only make limited adjustments to the interim rule and does not significantly affect any of the factors considered in the Federalism Assessment for the interim rule.

Impact on the Family

The General Counsel, as the designated official under Executive Order 12606, *The Family*, has determined that this proposed rule would have an indirect, though beneficial, impact on family formation, maintenance, and general well-being. As such, it is not subject to further review under the Order.

The Catalog of Federal Domestic Assistance Number for the HOME Program is 14.239.

List of Subjects in 24 CFR Part 92

Administrative practice and procedure, Grant programs—housing and community development, Grant programs—Indians, Indians, Low and moderate income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, part 92 of title 24 of the Code of Federal Regulations, would be amended as follows:

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

1. The authority citation for part 92 would continue to read as follows:

Authority: 42 U.S.C. 3535(d) and 12701–12839.

2. In § 92.50, paragraph (d)(3) would be revised to read as follows:

§ 92.50 Formula allocation.

* * * * *

(d) * * *

(3) To determine the maximum number of units of general local government that receive a formula allocation, only one jurisdiction (the unit of general local government with the smallest allocation of HOME funds) is dropped from the pool of eligible jurisdictions on each successive recalculation. Then the amount of funds available for units of general local government is redistributed to all others. This recalculation/redistribution continues until all remaining units of general local government receive an allocation of $500,000 or more.

* * * * *

3. In § 92.252, the introductory text of paragraph (a)(2) would be revised to read as follows:

§ 92.252 Qualification as affordable housing and income targeting: Rental housing.

(a) * * *

(2) Has, in the case of projects with five or more rental units, not less than 20 percent of the rental units:

* * * * *

4. In § 92.356, a new paragraph (f) would be added to read as follows:

§ 92.356 Conflict of interest.

* * * * *

(f) *Developers*—(1) *Prohibition.* No owner, employee, agent, consultant, or officer of a developer, whether private, for profit, or non-profit, of a project assisted with HOME funds may occupy a HOME-assisted affordable housing unit in the project.

(2) *Exceptions.* Upon the written request of a housing developer, the participating jurisdiction may grant an exception to the provisions of paragraph (f)(1) of this section on a case-by-case basis when it determines that the exception will serve to further the purposes of the HOME program and the effective and efficient administration of the developer's HOME-assisted program or project. In determining whether to grant a requested exception, the participating jurisdiction shall consider the following factors:

(i) Whether the person receiving the benefit is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(ii) Whether the person has withdrawn from his or her functions or responsibilities, or the decisionmaking process with respect to the specific assisted activity in question;

(iii) Whether the tenant protection requirements of § 92.253 are being observed;

(iv) Whether the affirmative marketing requirements of § 92.351 are being observed and followed;

(v) Any other factor relevant to the participating jurisdiction's determination, including the timing of the requested exception.

Dated: May 16, 1995.

Henry G. Cisneros,

Secretary.

[FR Doc. 95–17016 Filed 7–11–95; 8:45 am]

BILLING CODE 4210–32–P

Federal Register

Wednesday
July 12, 1995

Part IV

Department of Housing and Urban Development

24 CFR Part 572

HOPE for Homeownership of Single Family Homes Program (HOPE 3); Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 572

[Docket No. FR–3857–I–01]

RIN 2501–AB77

HOPE for Homeownership of Single Family Homes Program (HOPE 3)

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule amends the HOPE for Homeownership of Single Family Homes Program (HOPE 3) by making a number of miscellaneous changes, generally based on comments by HOPE 3 Program grantees or statutory amendments.

DATES: Effective Date: August 11, 1995.

Comments due date: September 11, 1995.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Rules Docket Clerk, Office of General Counsel, Room 10278, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. FAXED comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, Office of Affordable Housing Programs, 451 Seventh Street SW, Washington, DC 20410; (202) 708–3226, TDD (202) 708–2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Statement

The information collection requirements for the HOPE for Homeownership of Single Family Homes Program have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and assigned OMB control number 2506–0128. This interim rule does not contain additional information collection requirements.

II. Background

The HOPE for Homeownership of Single Family Homes Program (HOPE 3) is authorized by title IV, subtitle C, of the National Affordable Housing Act (NAHA), as amended by the Housing and Community Development Act of 1992. The purpose of the HOPE 3 program is to provide homeownership opportunities in certain single family housing for eligible families and individuals (generally, low-income first-time homebuyers). The Department published for public comment Guidelines for HOPE 3 on February 4, 1991 (56 FR 4458), revised Guidelines on January 14, 1992 (57 FR 1592), and a final rule on July 7, 1993 (58 FR 36518).

Changes to the final rule contained in this interim rule are in response to comments from HOPE 3 grant recipients and HUD's experience with the program during the first two funding rounds. The purpose of the changes is to correct provisions of the final rule which unnecessarily create operational difficulties and to streamline program implementation.

Specifically, this interim rule implements the following changes to the HOPE 3 Program: Making conforming changes at § 572.400 to reference the Consolidated Plan under part 91, rather than the CHAS; revising the requirements for how income eligibility and affordability are determined; counting the financing costs of program-required rehabilitation (whenever incurred) when determining whether a homebuyer can afford a HOPE 3 unit; eliminating the prohibition against the commingling of grant or match funds with sale and resale proceeds; adding a paragraph authorizing program closeout issuances; and reducing the match requirement from 33 to 25 percent for grants awarded after April 11, 1994. These changes are discussed individually in the discussion which follows.

Section 572.120(a) is being revised to ensure that the same annual income used for the purpose of determining eligibility is used as the basis (divided by 12 to determine monthly income) for determining affordability except that, for the purposes of determining affordability, a recipient may, but is not required to, adjust downward the monthly incomes of eligible families using reasonable standards and procedures consistently applied. Previously, recipients were required to adjust the family income in accordance with 24 CFR part 813, part 913 or part 905 to determine affordability which is not appropriate to homeownership activities.

Therefore, under the interim rule, the grantee or its designee will determine whether an applicant family is an eligible family, defined in § 572.5 as a low-income family who is a first-time homebuyer. The definition of low-income family in § 572.5 directs the grantee to determine whether the family is a low-income family according to one of the parts of 24 CFR cited therein, e.g., 24 CFR part 813. If part 813 is applicable, the family's annual income would be determined in accordance with 24 CFR 813.106. This annual income (with further reasonable adjustments by the grantee, if applicable) would then be compared with the applicable income limits published annually by HUD (based on 80 percent of area median income), with adjustments for high-cost areas, if applicable, for the applicable family size. Then (assuming the two determinations are reasonably contemporaneous) one-twelfth of the same annual income will be used as the basis for the affordability calculation required by § 572.120(a).

It should also be noted that the HOPE 3 regulations neither entitle an eligible family which meets the statutory affordability standard to receive a home under the program, nor mandate that lenders use the same income in determining whether a family qualifies for a mortgage. As to the former, whether a family actually receives a home may depend on entirely different factors, such as the sizes of homes available compared to the size of the family, and the other financial obligations the family may have in addition to a projected mortgage on the HOPE 3 property. As to the latter point, while the maximum size of an eligible family's monthly PITI payment for its HOPE 3 acquisition/rehabilitation obligations is limited by the statutorily-required affordability determination, a mortgage lender is not necessarily required to use the same income base for determining affordability to repay a mortgage as is used by the grantee in making a statutory affordability determination.

A clarification of the affordability requirements in § 572.120(a) is also necessary to insure that families are not indebted with HOPE 3 program-related financing costs for acquisition and rehabilitation that exceed their means. The final regulation assumed that rehabilitation necessary to bring a property up to local code or housing quality standards would occur prior to closing or shortly thereafter, and the payments related to the rehabilitation would be considered in the family's affordability calculation at the time of closing. However, in certain situations, rehabilitation of properties required by the program has occurred after families have taken title to their properties and

is financed through a separate rehabilitation loan. This rule change clarifies the requirement that monthly payments for HOPE 3 Program required rehabilitation, whether it occurs before or after the family takes title to the property, should be considered in the family's affordability calculation. Deferred payment loans due on sale do not need to be included, since they do not represent a monthly financial burden.

Several grantees have requested a change to § 572.115(a) concerning the deadline for property transfers. Those grantees felt that there was an inconsistency between § 572.115(a) and § 572.225(d) in the current regulation. Section 572.115(a) states that all units in eligible properties must be transferred to eligible families within two years of the effective date of the grant agreement, whereas § 572.225(d) states that remedial action may be taken if a grantee fails to provide at least 70 percent of the number of homeownership opportunities proposed in the application within four years of the effective date of the grant agreement. After reviewing these sections, the Department has determined that an inconsistency does not exist between the requirements. Both § 572.115(a) and § 572.225(d) will be retained as program requirements. Section 572.115(a) simply establishes a requirement to transfer properties to families within two years (which can be extended to three years by the Field Office). Section 572.115(a) does not deal at all with the grantee's program volume goals in its HUD-approved application. On the other hand, § 572.225(d) is intended as a minimum performance standard in the event that grantees, due to unforeseen circumstances, such as unanticipated costs incurred by grantees in program implementation due to changes in market conditions, are unable to provide the total number of homeownership opportunities proposed in their applications. Remedial action may be taken under § 572.225(d) at the time of program closeout. A change has been made in § 572.210(f) to permit HUD Field Offices to approve a one year extension of the deadline for completion of activities, and the six-month limit on extensions by Headquarters has been deleted.

Section 572.135(c), which concerns the use of sale and resale proceeds, is changed to remove the prohibition against ''commingling'' of HOPE 3 grant or match funds with sale and resale proceeds. Under the current regulation, grantees have found it difficult to use their grant funds within the required timeframes if they are first required to utilize their sale and resale proceeds. The problem is compounded because grantees must use their sale proceeds within one year of receipt even though the accumulated amount of sale proceeds is often not sufficient to carry out a viable activity. This rule change will allow grantees to expeditiously use their resale and sale proceeds to carry out eligible activities by permitting the proceeds to be used at the same time on the same properties with grant or match funds. However, since eligible uses of grant or match funds are somewhat more limited than uses of sale/resale proceeds, grantees should assure that they maintain records sufficient to document the eligible use of both types of funds in accordance with the HOPE 3 Program regulations.

In addition to the above change, the last sentence of § 572.135(c) has been revised. This provision required that the grant recipient, or any other entity approved by HUD to administer the sale and resale proceeds, remain responsible to comply with the existing requirements of the HOPE 3 Program notwithstanding closeout of the HOPE 3 grant. The revision provides that HUD may specify alternative requirements, to the extent permitted by then applicable law, for the approved entity to follow.

A new paragraph (g) has been added at § 572.210 in reference to program closeout in anticipation of the issuance of additional guidance that is currently being developed.

Finally, the references to the 33 percent match requirement in § 572.210 and § 572.220 are amended to reflect a legislative change established by the Multifamily Housing Disposition Reform Act of 1994 (''1994 Act''), which reduced the match requirement from 33 percent to 25 percent of the amount of the implementation grant. The language of the regulation reflects the fact that this legislation affects only grants awarded by HUD (based on the date of HUD obligation of funds) after April 11, 1994, the effective date of the 1994 Act. Therefore, all grants made pursuant to the FY 1995 HOPE 3 NOFA recently published will be governed by the 25 percent match requirement.

III. Findings and Certifications

Justification for Interim Rulemaking

The Department has determined that this interim rule should be adopted without the delay occasioned by requiring prior notice and comment. This interim rule only makes a number of clarifying changes to existing provisions. The purpose of the changes is to correct provisions of the final rule which unnecessarily create operational difficulties and to streamline program implementation. As such, prior notice and comment are unnecessary under 24 CFR part 10.

Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk.

Impact on Small Entities

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the undersigned hereby certifies that this interim rule does not have a significant economic impact on a substantial number of small entities. The rule governs the procedures under which HUD will make assistance available to applicants under a program designed to provide homeownership opportunities to low-income families and individuals.

Regulatory Agenda

This interim rule was not listed in the Department's Semiannual Agenda of Regulations published on May 8, 1995 (60 FR 23368, 23394) under Executive Order 12866 and the Regulatory Flexibility Act.

Federalism Impact

The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, that this interim rule does not have federalism implications concerning the division of local, State, and federal responsibilities. This rule only clarifies existing requirements without significantly affecting the relationship between the Federal government and other public bodies or the distribution of power and responsibilities among various levels of government.

Impact on the Family

The General Counsel, as the designated official under Executive Order 12606, The Family, has determined that this interim rule would have an indirect, though beneficial, impact on family formation, maintenance, and general well-being. Assistance provided under this rule can be expected to support family values, by helping families achieve security and independence; and by enabling them to live in decent, safe, and sanitary

housing. As such, it is not subject to further review under the Order.

The Catalog of Federal Domestic Assistance Number for the HOPE 3 Program is 14.240.

List of Subjects in 24 CFR Part 572

Condominiums, Cooperatives, Fair housing, Government property, Grant programs-housing and community development, Low and moderate income housing, Nonprofit organizations, Reporting and recordkeeping requirements.

Accordingly, part 572 of title 24 of the Code of Federal Regulations, is amended as follows:

PART 572—HOPE FOR HOMEOWNERSHIP OF SINGLE FAMILY HOMES PROGRAM (HOPE 3)

1. The authority citation for part 572 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12891.

2. In § 572.5, the definition of *''Comprehensive Housing Affordability Strategy (CHAS)''* is removed, and the definition of *''Consolidated plan''* is added in alphabetical order, to read as follows:

§ 572.5 Definitions.

* * * * *

Consolidated plan means the document that is submitted to HUD that serves as the planning document of the jurisdiction, in accordance with 24 CFR part 91.

* * * * *

3. In § 572.120, paragraph (a)(1) is revised to read as follows:

§ 572.120 Affordability standards.

(a) *Initial affordability.* (1) The monthly expenditure for principal, interest, taxes, and insurance by an eligible family that is required under the financing both for the acquisition and for the rehabilitation in accordance with § 572.100(d) of a unit (whether the required rehabilitation occurs before or after the family takes title) must be not less than 20 percent and not more than 30 percent of one-twelfth of the annual income of the family used for the purpose of determining eligibility under § 572.110(a). (For the purpose of determining affordability of the family, the recipient may, at its option, adjust downward the annual incomes of eligible families using reasonable standards and procedures consistently applied.) HUD may approve a justified request for a floor lower than 20 percent to avoid undue hardship to families, such as where the cost of utilities is high.

* * * * *

4. In § 572.135, paragraph (c) is revised to read as follows:

§ 572.135 Use of proceeds from sales to eligible families, resale proceeds, and program income.

* * * * *

(c) *Requirements for use of sale and resale proceeds.* Sale and resale proceeds must be committed for approved activities within one year of receipt. All sale and resale proceeds must be accounted for by the recipient, and 50 percent of all resale proceeds received by the recipient must be returned to HUD, as described in paragraph (b) of this section. Recipients may use up to 15 percent of their sale and resale proceeds for administrative expenses to expand their HOPE 3 program and provide additional homeownership opportunities. Recipients must retain records on the use of these funds to the same level of detail as required of grant funds under the HOPE 3 system or whatever records HUD otherwise prescribes. The recipient, and any other entity approved by HUD to administer the sale and resale proceeds, remain responsible to comply with the requirements of this part, or such other requirements as HUD may prescribe (consistent with then applicable law) in closeout procedures or agreements.

* * * * *

5. Section 572.210 is amended by revising the first sentence of paragraph (e)(1) and paragraph (f), and by adding a new paragraph (g), to read as follows:

§ 572.210 Implementation grants.

* * * * *

(e) *Matching requirement.* (1) Except as provided in paragraph (e)(2) of this section, recipients of implementation grants must assure that matching contributions equal to not less than 33 percent (or 25 percent for grants awarded by HUD after April 11, 1994) of the amount of the implementation grant will be provided from non-Federal sources to carry out the homeownership program. * * *

(f) *Deadline for Completion.* A recipient must spend all implementation grant amounts within four years from the effective date of the grant agreement. The HUD Field Office may approve a request to extend the deadline not to exceed one year. HUD Headquarters may approve a further request to extend the deadline where it determines an extension is warranted under the circumstances.

(g) *Program closeout.* Recipients will comply with closeout procedures as issued by HUD.

6. Section 572.220 is amended by revising the first sentence of paragraph (a)(1), and the *example* following paragraph (b)(2)(ii), to read as follows:

§ 572.220 Implementation grants—matching requirements.

(a) *General Requirements.* (1) Each recipient must assure that matching contributions equal to not less than 33 percent (or 25 percent for grants awarded after April 11, 1994) of the amount of the implementation grant shall be provided from non-Federal sources to carry out the homeownership program. * * *

* * * * *

(b) * * *

(2) * * *

(ii) * * *

Example: If the grant amount is $600,000, the recipient must assure the provision of at least $198,000 (33 percent of grant) or $150,000 (25 percent of the grant, if awarded after April 11, 1994) from non-Federal sources, as applicable. Contributions for administrative costs that may be counted toward the match may not exceed $42,000 (7 percent of the grant amount of $600,000). Although a recipient can spend more than this on administrative costs, it may not be counted towards the match. In addition, the recipient must provide contributions covering the remaining $156,000 ($198,000 − $42,000) or the remaining $108,000 ($150,000 − $42,000 for grants awarded after April 11, 1994) required for the match from non-Federal sources.

* * * * *

7. Section 572.400 is revised to read as follows:

§ 572.400 Consolidated plan.

Applicants must provide a certification of consistency with the approved consolidated plan, in accordance with 24 CFR 91.510.

Dated: June 13, 1995.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 95–17015 Filed 7–11–95; 8:45 am]

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Federal Register

Wednesday
July 12, 1995

Part V

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 92

HOME Investment Partnerships Program; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 92

[Docket No. FR–3840–I–01]

RIN 2501–AB95

HOME Investment Partnerships Program

AGENCY: Office of the Secretary, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule amends the existing interim rule for the HOME Investment Partnerships Program by making a number of clarifying and conforming changes that include: extending the interim rule expiration date; permitting loan guarantees as an eligible form of HOME assistance; allowing fees waived by private entities to qualify for match credit; increasing the flexibility of HOME rents when HOME funds and project-based rental assistance are used to assist the same units; clarifying the match status of CHDO project-specific, pre-development loans for which repayment is waived; allowing the use of tenant-based rental assistance (TBRA) for special needs populations; and replacing references to OMB Circular A–110 with references to the HUD rule at 24 CFR part 84 that adopted the revised OMB Circular.

DATES: Effective Date: August 11, 1995. Comments due date: September 11, 1995.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. FAXED comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: Mary Kolesar, Director, Program Policy Division, Office of Affordable Housing Programs, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 708–2470, TDD (202) 708–2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Statement

The information collection requirements for the HOME Investment Partnerships Program have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and assigned OMB control number 2501–0013. This interim rule does not contain additional information collection requirements.

II. Background

The HOME Investment Partnerships Program (HOME) was enacted under Title II (42 U.S.C. 12701–12839) of the Cranston-Gonzalez National Affordable Housing Act (NAHA) (Pub. L. 101–625, approved November 28, 1990). Implementing regulations for the HOME Program are at 24 CFR part 92.

The original statute has been amended three times since enactment. The Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102–550, approved October 28, 1992) included a substantial number of amendments to the HOME Program. These amendments were implemented in rules published on December 22, 1992 (57 FR 60960), June 23, 1993 (58 FR 34130), and April 19, 1994 (59 FR 18626). The HUD Demonstration Act (Pub. L. 103–120, approved October 27, 1993) provided additional authorization for HOME Program technical assistance. The Multifamily Housing Property Disposition Reform Act of 1994 (MHPDRA) (Pub. L. 103–233, approved April 11, 1994) included an additional number of amendments to the HOME Program. These amendments were implemented in a rule published on August 26, 1994 (59 FR 44258).

The purpose of this publication is twofold: (1) an interim rule which implements clarifying and conforming changes in several areas of the rule, including loan guarantees as an eligible activity, increased flexibility with regard to HOME rents when HOME funds and project-based rental assistance are used to assist the same units, replacing references to OMB Circular A–110 with references to the HUD rule at 24 CFR part 84 that adopted the revised OMB Circular, and the amount of HOME subsidy subject to recapture in the sale of a homebuyer unit when net proceeds are insufficient to repay the full subsidy amount; and (2) a preamble which solicits comments on various policy issues in anticipation of preparing a final rule. The preamble will discuss the interim rule changes first before soliciting comments on a wide variety of issues by section of the rule. While comments are being solicited on specific sections of the rule, the Department welcomes comments on any part.

Interim Rule Changes

A change at § 92.2, Definitions, would revise the definition of single room occupancy (SRO) to clarify neither food preparation nor sanitary facilities are required in the unit for an existing residential structure or hotel. This change clarifies that the Department does not consider a hotel a conversion of nonresidential space, which requires one or both facilities in the unit.

Section 92.5 was added to implement a Department-wide policy for the expiration of interim rules within a set period of time if they are not issued in final form before the end of the period. The rule provides that the expiration period may be extended by notice published in the **Federal Register**. Because the expiration date for the HOME interim rule is currently June 30, 1995, and a final rule is not expected before that date, such a notice has been published extending the expiration date for an additional year. This rule makes the conforming change to § 92.5.

The Department, based on a number of comments it has already received in revising § 92.205, Eligible activities: general, has added a new paragraph (b)(2) to specify that loan guarantees are included within the phrase ''other forms of assistance'' in § 92.205(b) (the existing paragraph (b) is now designated (b)(1)). The addition of a loan guarantee feature was prompted by both HUD and participating jurisdictions' interest in effectively leveraging additional private funds to finance HOME projects. By expanding eligible activities to permit loan guarantees, it is the participating jurisdiction's choice and responsibility to properly underwrite and manage loans made under the guarantee. There is no implied Federal guarantee when a jurisdiction chooses to undertake this activity. The Department has considered how a loan guarantee could be structured and how to relate the expense involved to a specific HOME project. This will be done as follows: A PJ or its subrecipient would estimate the number of loans it potentially wants to guarantee and then establish the loan guarantee as a project in the HOME Cash and Management Information System (C/MIS). The amount of funding from HOME or other resources required for the loan guarantee would be based on the PJ's current default experience with its portfolio or, in the absence of empirical data, a reasonable estimate of the default rate. In general, the Department expects that the specific terms of the loan guarantee fund would be established by the PJ or subrecipient based on negotiations with local lenders and/or secondary market entities. The

rule provides that the amount of HOME funds in the loan guarantee account may not exceed 20 percent of the total outstanding principal amount guaranteed, except that a minimum account balance may be maintained. A minimum balance is permitted to initiate the loan guarantee program and to meet varying local and secondary market requirements for loan guarantees. When a PJ has determined (1) the percentage of outstanding loan principal to be set aside in the loan guarantee account from HOME or other resources (referred to as the ''fixed percentage''), and (2) a minimum balance needed to initiate the guarantee and ensure private sector financing (referred to as the ''minimum balance''), PJ would draw down funds equal to the amounts guaranteed, at the time each loan is guaranteed, until the minimum balance is reached in the loan guarantee account, and additional funds would be drawn down when necessary to maintain the account at the fixed percentage of the outstanding amount guaranteed.

For example, in establishing a loan guarantee amount for a pool totaling 200 loans (estimated principal value of $4.0 million), a PJ may determine that local and/or secondary market lenders require the project account to be maintained at a level of 10 percent of the outstanding balance of loans guaranteed, with a minimum balance amount of $100,000. The PJ would draw down funds into its loan guarantee account at the time the loan is guaranteed equal to the amount of each guaranteed loan until the minimum balance amount of $100,000 is deposited in the account (e.g., if five $20,000 loans are guaranteed, the loan guarantee account would be funded to the minimum balance amount of $100,000). Additional amounts of HOME funds could be added when the amount deposited is less than 10 percent of the loans outstanding. The number of loans initially planned for a loan guarantee project may not be increased. Housing projects financed with HOME guaranteed loans must meet HOME requirements. Once the planned number of loan guarantees is made, or if the loan guarantee activity ends before that number is reached, information must be reported in the C/MIS on the units financed under the loan guarantee project. If a participating jurisdiction wishes to continue with loan guarantee activity, it would set up another loan guarantee project.

Based on numerous requests to use tenant-based rental assistance for the special needs populations, the Department in this rule is making substantial alterations to § 92.211, Tenant-based rental assistance, outlining under what circumstances that might be done. Conforming changes are made to § 92.210, Tenant-based rental assistance: security deposits.

With regard to match requirements, the Department is clarifying in this rule, at § 92.218(f), that CHDO project specific pre-development loans for which repayment is waived are not required to be matched.

Another change amends paragraph (a)(2) in § 92.220, Forms of match, to recognize as a matching contribution fees and charges, normally and customarily associated with real estate transactions or development, that are charged by private institutions or businesses but are being waived or reduced. Some examples of such fees or charges include lender origination or servicing fees; title examination, insurance or recordation fees; or private mortgage insurance fees.

To permit Federal and State project-based assistance programs to work more effectively with the HOME Program, § 92.252, Qualification as affordable housing and income targeting: Rental housing, now explicitly states that when HOME funds are combined with Federal or State project-based assistance, the rents may be set at the maximum rent allowable under the Federal or State programs. The Department is allowing this flexibility for those units occupied by families below 50 percent of median income and paying not more than 30 percent of their adjusted income as a contribution toward rent, which are the provisions reflected in the ''low HOME rent'' provision of the rule at § 92.252(a)(2). The Department is aware of State or local programs which provide ongoing ''shelter allowances'' or other rental subsidies to meet the needs of special populations. The Department invites commenters to describe these situations, whether HOME rents are an obstacle to overall project feasibility and possible solutions.

A rule change at § 92.254, Qualification as affordable housing: homeownership, offers participating jurisdictions additional flexibility to structure recapture provisions to meet local program design and market conditions. With this change, the Department is publishing three examples of recapture guidelines that it would find acceptable.

The first example would authorize a PJ to forgive a portion of the HOME investment prorated over the time the homeowner has owned and occupied the unit measured against the required affordability period. For example: A homebuyer provides a $3,000 downpayment, and a participating jurisdiction provides a $10,000 second mortgage loan to defray the cost of acquisition and rehabilitation of the homebuyer unit, which triggers a five-year period of affordability when the property is subject to the resale or recapture provisions. Currently, the HOME regulation would require that the full $10,000 be subject to recapture and only if the net proceeds do not allow full recapture of the HOME subsidy plus the homeowner's investment, may the amount to be recaptured ($10,000) be reduced based on the period of occupancy by the homebuyer. With this change in the regulation, the PJ could allow the amount subject to recapture to be reduced *during* the period of occupancy. If the homebuyer had to sell after living in the property for two-years of the five-year affordability period, two fifths of the HOME subsidy ($4,000) could be written off. The amount subject to recapture would be $6,000 even when the net proceeds are sufficient to both recapture the full HOME investment and enable the homeowner to recover his/her investment. Examples two and three assume that net proceeds (sales price minus loan repayment and closing costs) are insufficient to both recapture the HOME investment and enable the homeowner to recover his/her investment. Example two shows how the PJ can share the proceeds with the homeowner based on their relative investment in the property. Example three authorizes the PJ to permit homebuyers to recapture all of their investment including downpayment and capital improvements first before any return to the jurisdiction.

Alternatively, when net proceeds are insufficient, the participating jurisdiction could also permit homebuyers to recapture all their investment including downpayment and capital improvements first before any return to the jurisdiction.

In this same section of the rule, a clarifying change is being made at § 92.254(a)(4)(ii)(C) which describes the amounts of HOME funds provided per unit which trigger the periods that the property is subject to the recapture provision. The change being made would clarify that the amount in question is the per unit amount of HOME funds provided to the homebuyer. Many participating jurisdictions were counting both the direct subsidy to the homebuyer as well as the development subsidy when determining the affordability period. It should be noted that when resale provisions are used, the period of affordability is based on the total investment of HOME funds.

Finally, on September 13, 1994 (59 FR 47010), the Department published a final rule that adopted OMB's revised Circular A–110 at 24 CFR part 84. This rule makes conforming changes to replace references to Circular A–110 with references to 24 CFR part 84 at §§ 92.2 (in the definition of *Community housing development organization*), 92.356 (a)(1) and (a)(2), and 92.505(b).

Solicitation of Comments for the Final Rule

The Department is also taking this opportunity to solicit comments on the current interim rule in anticipation of preparing a final rule for the HOME Program. The current interim rule consists of all six interim rules which have been published for the program since its inception. The Department has received valuable public input on all those rules and has made many changes based on public comment. As the Department prepares the final HOME rule, it requests that commenters distinguish between issues that can be changed by regulation and those that would require legislative action.

To facilitate public review, the Department has made available the HOME statute and consolidated interim rule through the *American Communities Information Center at 1–800–998–9999.* Commenters may obtain copies of both the statute and rule by calling the information center.

The Department also presents a discussion of particular sections of the rule and raises specific questions which it requests that comments address, below:

Section 92.2 Definitions

Community housing development organization (CHDO)—The Department has received numerous comments on the definition of CHDO, with regard to purpose, composition, experience, and history. The Department invites further comment from State and local officials based on the experience of qualifying CHDOs and from nonprofits who have participated in the qualification process and have competed for CHDO setaside funds.

Homeownership—While ownership or membership in a cooperative has been included in the definition of homeownership, the Department is considering allowing participating jurisdictions to classify limited equity cooperative and/or mutual housing either as homeownership or rental housing based on State law. Comment is requested.

Project—The Department is considering changes to include in the definition of project: (1) new construction subdivisions that cover more than a four block area, and (2) loan guarantee programs funded by the participating jurisdiction which by their nature cover loans to a number of units at diverse sites.

Sections 92.60–92.66 Insular Areas

The Department invites comments from insular area participants, who now have three years of program experience, as to whether changes are needed in the provisions that guide insular applications and operations.

Section 92.202 Site and Neighborhood Standards

The Department invites comment on the application of site and neighborhood standards and their effect on the siting of new construction projects.

Section 92.203 Income Determinations

Because continued affordability and eligibility were contemplated in HOME-assisted rental housing, the Department adopted the Section 8 definitions of income in 24 CFR part 813 for use in the HOME program. Recently, in an August 10, 1994 proposed rule in the **Federal Register**, the Department invited comment on income definitions in the Community Development Block Grant Program. The Department will consider those comments for the final HOME rule, but also invites additional comments on this subject.

Section 92.205 Eligible Activities: General

The Department has permitted the refinancing of single family properties under certain conditions but has not allowed refinancing of multifamily properties. Refinancing of multifamily projects has not generally been viewed as a net increase in the number of affordable housing units, a primary goal of the program. The Department would welcome comments regarding when and under what conditions multifamily refinancing might be permitted.

Sections 92.218–92.222 Match Requirements

The Department in this interim rule recognizes the waiver of fees or charges by private or public institutions as a source of match. The Department is open to additional public comment about other possible sources of match which meet the statutory tests of not being derived from Federal funds and being a true contribution to affordable housing. Should the Department count State and local contributions to social services provided in HOME-assisted or HOME-eligible housing as a source of match? Another issue on which the Department requests comment is whether donated professional services should be valued at a higher rate than other volunteer labor currently valued at $10 per hour. Comment on these and other possible sources of match are invited.

Section 92.251 Property Standards

The Department in implementing the HOME Program took note of the program's purpose to expand the supply of decent, safe, and sanitary housing, and adopted the Section 8 Housing Quality Standards as a minimum standard. The Department is open to suggestions as to whether a different standard might be more suitable, particularly as it relates to new construction. Should the Department adopt the Minimum Property Standards? Allow the PJ to adopt a written 'decent, safe and sanitary' standard? Keep the Section 8 HQS for tenant based rental assistance units only? Continue to require the Cost Effective Energy Standards for units with over $25,000 in rehabilitation? Authorize emergency repairs to structures that may not meet housing quality standards? Comment is invited on the housing standards issue.

Section 92.254 Qualification as Affordable Housing: Homeownership

The Department in this interim rule takes further steps to make the recapture provisions of the rule more flexible. In recognizing an owner's investment in the property, the rule permits a greater return from net proceeds to the homeowner.

The Department also invites comment on the appraisal requirement to determine eligibility i.e. the property has an initial purchase price that does not exceed 95 percent of the median purchase price for the area. Alternative approaches to assure that HOME funds are invested only in modest housing are requested.

The Department also wishes comment on the permanent foundation requirement for manufactured housing when the owner owns both the unit and the land on which it is situated.

Section 92.257 Religious Organizations

In the August 26, 1994 interim rule, the Department modified this section to be more permissive with regard to control of a secular entity established by a religious organization. The Department invites further comment on this section of the rule.

Section 92.258 Limitation on the Use of HOME Funds With FHA Mortgage Insurance

When HOME funds are used in combination with FHA insurance, the period of affordability is extended to the term of the mortgage. The Department invites comments on this policy.

Subpart G, Sections 92.300–92.303 Community Housing Development Organizations

The Department has tried to implement the CHDO setaside with a view of these funds as an entitlement for CHDOs who ''own, sponsor or develop'' HOME projects. The Department invites comments on the ''own, sponsor or develop'' provisions set out in the rule and discussed in CPD Notice 94–01.

Subpart H, Other Federal Requirements

Over time the rule has been amended to reflect statutory changes with regard to environmental reviews and revised to reflect clarifications on other requirements. The Department invites comments on additional changes which might provide clarification or simplification of the requirements for PJs.

Subpart K, Program Administration

In preparing a final rule, the Department will be reviewing this subpart paying special attention to the sections on the cash and management information system, written agreements and monitoring. Comments on these and other sections are welcome.

III. Findings and Certifications

Justification for Interim Rulemaking

The Department has determined that this interim rule should be adopted without the delay occasioned by requiring prior notice and comment. This interim rule only makes a number of clarifying changes to existing provisions. As such, prior notice and comment are unnecessary under 24 CFR part 10. This rule is being published as an interim rule and not as a final rule because the HOME program regulation at 24 CFR part 92 has not yet been issued as a final rule.

Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk.

Regulatory Planning and Review

This interim rule has been reviewed in accordance with Executive Order 12866, issued by the President on September 30, 1993 (58 FR 51735, October 4, 1993). Any changes to the interim rule resulting from this review are available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk.

Impact on Small Entities

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the undersigned hereby certifies that this interim rule does not have a significant economic impact on a substantial number of small entities, because jurisdictions that are statutorily eligible to receive formula allocations are relatively larger cities, counties or States.

Regulatory Agenda

This interim rule was not listed in the Department's Semiannual Agenda of Regulations published on May 8, 1995 (60 FR 23368, 23379) under Executive Order 12866 and the Regulatory Flexibility Act.

Federalism Impact

The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, *Federalism*, that this interim rule does not have federalism implications concerning the division of local, State, and federal responsibilities. While the HOME Program interim rule amended by this interim rule was determined to be a rule with federalism implications and the Department submitted a Federalism Assessment concerning the interim rule to OMB, this amending rule only makes limited adjustments to the interim rule and does not significantly affect any of the factors considered in the Federalism Assessment for the interim rule.

Impact on the Family

The General Counsel, as the designated official under Executive Order 12606, *The Family*, has determined that this interim rule would not have significant impact on family formation, maintenance, and general well-being. Assistance provided under this interim rule can be expected to support family values, by helping families achieve security and independence; by enabling them to live in decent, safe, and sanitary housing; and by giving them the means to live independently in mainstream American society. This interim rule would not, however, affect the institution of the family, which is requisite to coverage by the Order.

The Catalog of Federal Domestic Assistance Number for the HOME Program is 14.239.

List of Subjects in 24 CFR Part 92

Administrative practice and procedure, Grant programs—housing and community development, Grant programs—Indians, Indians, Low and moderate income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, part 92 of title 24 of the Code of Federal Regulations, is amended as follows:

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

1. The authority citation for part 92 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12701–12839.

2. Section 92.2 is amended by revising paragraph (6) of the definition of ''*Community housing development organization*'', and by revising the definition of ''*Single room occupancy (SRO) housing*'', to read as follows:

§ 92.2 Definitions.

* * * * *

Community housing development organization * * *

(6) Has standards of financial accountability that conform to 24 CFR 84.21, ''Standards for Financial Management Systems.''

* * * * *

Single room occupancy (SRO) housing means housing (consisting of single room dwelling units) that is the primary residence of its occupant or occupants. The unit must contain either food preparation or sanitary facilities (and may contain both) if the project consists of new construction, conversion of non-residential space, or reconstruction. For acquisition or rehabilitation of an existing residential structure or hotel, neither food preparation nor sanitary facilities are required to be in the unit. If the units do not contain sanitary facilities, the building must contain sanitary facilities that are shared by tenants. SRO does not include facilities for students.

* * * * *

3. Section 92.5 is revised to read as follows:

§ 92.5 Expiration of interim rule.

This part shall expire and shall not be in effect after June 30, 1996, unless it is published as a final rule or the Department publishes a notice in the **Federal Register** to extend the effective date.

4. In § 92.205, paragraph (b) is revised to read as follows:

§ 92.205 Eligible activities: general.

* * * * *

(b) *Forms of assistance.* (1) A participating jurisdiction may invest HOME funds as equity investments, interest-bearing loans or advances, noninterest-bearing loans or advances, interest subsidies consistent with the purposes of this part, deferred payment loans, grants, or other forms of assistance that HUD determines to be consistent with the purposes of this part. Each participating jurisdiction has the right to establish the terms of assistance, subject to the requirements of this part.

(2) A participating jurisdiction may invest HOME funds to guarantee loans made by lenders and, if required, the participating jurisdiction may establish a loan guarantee account with HOME funds. The amount of the loan guarantee account must be based on a reasonable estimate of the default rate on the guaranteed loans, but under no circumstances may the amount on deposit exceed 20 percent of the total outstanding principal amount guaranteed; except that the account may include a reasonable minimum balance. While loan funds guaranteed with HOME funds are subject to all HOME requirements, funds which are used to repay the guaranteed loans are not.

* * * * *

5. In § 92.210, paragraph (f) is revised to read as follows:

§ 92.210 Tenant-based rental assistance: security deposits

* * * * *

(f) The provisions at § 92.211 (a), (b), (c), (d), (f), (g) and (i), applicable to tenant-based rental assistance, are applicable to HOME security deposit assistance.

6. Section 92.211 is revised to read as follows:

§ 92.211 Tenant-based rental assistance.

(a) *General.* A participating jurisdiction may use HOME funds for tenant-based rental assistance only if the participating jurisdiction makes the certification about inclusion of this type of assistance in its consolidated plan in accordance with §§ 91.225(d)(1), 91.325(d)(1), or 91.425(a)(2)(i) of this title, and specifies local market conditions that lead to the choice of this option.

(b) *Tenant selection.* A participating jurisdiction may use HOME funds for tenant-based rental assistance in the following manner:

(1) *Federal preferences.* The participating jurisdiction selects families in accordance with written tenant selection policies and criteria that are consistent with the purposes of providing housing to very low- and low-income families and are reasonably related to preference rules established under section 6(c)(4)(A) of the Housing Act of 1937 (42 U.S.C. 1437 et seq.). Selection policies and criteria meet the ''reasonably related'' requirement if at least 50 percent of the families assisted qualify, or would qualify in the near future without tenant-based rental assistance, for one of the three Federal preferences under section 6(c)(4)(A) of the Housing Act of 1937. These are families that occupy substandard housing (including families that are homeless or living in a shelter for homeless families); families that are paying more than 50 percent of (gross) family income for rent; or families that are involuntarily displaced. [For FY 1995 only, a Federal preference is also given to families that include one or more adult members who are employed.]

(2) *Local Preferences for Individuals with Special Needs.* (i) The participating jurisdiction may establish a preference for individuals with special needs. The participating jurisdiction may offer, in conjunction with a tenant-based rental assistance program, particular types of services that may be most appropriate for persons with a particular disability. Generally, tenant-based rental assistance and the related services should be made available to all persons with disabilities who can benefit from such services.

(ii) The participating jurisdiction may also provide a preference for a specific category of individuals with disabilities (e.g., persons with HIV/AIDS or chronic mental illness) if the specific category is identified in the participating jurisdiction's housing strategy or consolidated plan as having unmet need and the preference is needed to narrow the gap in benefits and services received by such persons.

(iii) Preferences cannot be administered in a manner that limits the opportunities of persons in a protected class. For example, a participating jurisdiction may not determine that persons given a preference under the program are therefore prohibited from applying for or participating in other programs or forms of assistance.

(iv) To the extent that a participating jurisdiction is operating a tenant-based rental assistance program targeted exclusively to individuals with disabilities or to a specific category of individuals with disabilities, at least 50% of the individuals must qualify or would qualify in the near future for one of the three Federal preferences as described in paragraph (b)(1) of this section.

(3) *Existing tenants in the HOME-assisted projects.* A participating jurisdiction may select low-income families currently residing in the units that are designated for rehabilitation or acquisition under the participating jurisdiction's HOME program without requiring that the family meet the written tenant selection policies and criteria. Families so selected may use the tenant-based assistance in the rehabilitated or acquired unit or in other qualified housing.

(c) *Portability of assistance.* A participating jurisdiction may require the family to use the tenant-based assistance within the participating jurisdiction's boundaries or may permit the family to use the assistance outside its boundaries.

(d) *Program operation.* A tenant-based rental assistance program must be operated consistently with the requirements of this section and § 92.210, if applicable. The participating jurisdiction may operate the program itself, or may contract with a PHA or other entity with the capacity to operate a rental assistance program. The tenant-based rental assistance may be provided through an assistance contract to an owner that leases a unit to an assisted family or directly to the family.

(e) *Term of rental assistance contract.* The term of the rental assistance contract providing assistance with HOME funds may not exceed 24 months, but may be renewed, subject to the availability of HOME funds. The term of the rental assistance contract must begin on the first day of the term of the lease. For a rental assistance contract between a participating jurisdiction and an owner, the term of the contract must terminate on termination of the lease. For a rental assistance contract between a participating jurisdiction and a family, the term of the contract need not end on termination of the lease, but no payments may be made after termination of the lease until a family enters into a new lease.

(f) *Rent reasonableness.* The participating jurisdiction must disapprove a lease if the rent is not reasonable, based on rents that are

charged for comparable unassisted rental units.

(g) *Lease requirements.* The lease must comply with the requirements in § 92.253 (a) and (b).

(h) *Maximum subsidy.* (1) The amount of the monthly assistance that a participating jurisdiction may pay to, or on behalf of, a family may not exceed the difference between a rent standard for the unit size established by the participating jurisdiction and 30 percent of the family's monthly adjusted income.

(2) The participating jurisdiction must establish a minimum tenant contribution to rent.

(3) The participating jurisdiction's rent standard for a unit size must be based on:

(i) Local market conditions; or

(ii) May not be less, for each unit size, than 80 percent of the published Section 8 Existing Housing fair market rent (in effect when the payment standard amount is adopted) nor more than the fair market rent or HUD-approved community-wide exception rent (in effect when the participating jurisdiction adopts its rent standard amount). (Community-wide exception rents are maximum gross rents approved by HUD for the Rental Certificate Program under § 882.106(a)(3) of this title for a designated municipality, county, or similar locality, which apply to the whole PHA jurisdiction.) A participating jurisdiction may approve on a unit-by-unit basis a subsidy based on a rent standard that exceeds the applicable fair market rent by up to 10 percent for 20 percent of units assisted.

(i) *Housing quality standards.* Housing occupied by a family receiving tenant-based assistance under this section must meet the performance requirements set forth in § 882.109 of this title. In addition, the housing must meet the acceptability criteria set forth in § 882.109 of this title, except for such variations as are proposed by the participating jurisdiction and approved by HUD. Local climatic or geological conditions or local codes are examples which may justify such variations.

(j) *Use of Section 8 assistance.* In any case where assistance under section 8 of the United States Housing Act of 1937 becomes available to a participating jurisdiction, recipients of tenant-based rental assistance under this part will qualify for tenant selection preferences to the same extent as when they received the tenant-based rental assistance under this part.

7. In § 92.218, a new paragraph (f) is added to read as follows:

§ 92.218 Amount of matching contribution.

* * * * *

(f) HOME funds made available as project-specific assistance to community housing development organizations pursuant to § 92.301 are subject to matching requirements. HOME funds used for such assistance for which repayment is waived under the provisions of § 92.301(a)(3) or § 92.301(b)(3) are not required to be matched.

8. In § 92.220, paragraphs (a)(1)(ii)(A), (a)(2), and (a)(5) introductory text, are revised to read as follows:

§ 92.220 Form of matching contribution.

(a) * * *

(1) * * *

(ii) * * *

(A) If the loan is made from funds borrowed by a jurisdiction or public agency or corporation (including proceeds from general obligation debt), the contribution is the present discounted cash value of the difference between the payments to be made on the borrowed funds and payments to be received from the loan to the project based on a discount rate equal to the interest rate on the borrowed funds.

* * * * *

(2) *Forbearance of fees.* (i) *State and local taxes, charges or fees.* The value, based on customary and reasonable means for establishing value, of State or local taxes, fees, or other charges that are normally and customarily imposed or charged by a State or local government on all transactions or projects in the conduct of State or local government operations but are waived, foregone, or deferred (including State low-income housing tax credits) in a manner that achieves affordability of housing assisted with HOME funds. Fees or charges that are associated with the HOME Program only (rather than normally and customarily imposed or charged on all transactions or projects) are not eligible forms of matching contributions. The amount of any real estate taxes may be based on post-improvement property value, using customary and reasonable means of establishing value. For taxes, fees, or charges that are given for future years, the value is the present discounted cash value, based on a rate equal to the rate for the Treasury security with a maturity closest to the number of years for which the taxes, fees, or charges are waived, foregone, or deferred.

(ii) *Other charges or fees.* Amount of fees or charges normally and customarily imposed or charged by public or private institutions associated with the transfer or development of real estate but are waived or foregone, in whole or in part, in a manner that achieves affordability of housing assisted with HOME funds. Fees or charges that are associated with the HOME Program only (rather than normally and customarily imposed or charged on all transactions or projects) are not eligible forms of matching contributions.

* * * * *

(5) Proceeds from multi-family and single family affordable housing project bond financing validly issued by a State or local government, or an agency, instrumentality, or political subdivision of a State and repayable with revenues from the affordable housing project financed, as follows:

* * * * *

9. In § 92.252, paragraph (a)(2) is revised to read as follows:

§ 92.252 Qualification as affordable housing and income targeting: Rental housing.

(a) * * *

(2) * * *

(i)(A) Occupied by very low-income families whose rent does not exceed 30 percent of the family's monthly adjusted income as determined by HUD. To obtain the maximum monthly rent that may be charged for a unit (in a project that does not receive Federal or State project-based rental subsidy) that is subject to this limitation, the owner or participating jurisdiction multiplies the annual adjusted income of the tenant family by 30 percent and divides by 12 and, if applicable, subtracts a monthly allowance for any utilities and services (excluding telephone) to be paid by the tenant; or

(B) Occupied by very low-income families who pay as a contribution toward rent not more than 30 percent of the family's monthly adjusted income as determined by HUD if the units receive Federal or State project-based rental subsidy. The maximum rent (i.e., tenant contribution plus project-based rental subsidy) is the rent allowable under the Federal or State project-based rental subsidy program; or

(ii) Occupied by very low-income families and bearing rents not greater than 30 percent of the gross income of a family whose income equals 50 percent of the median income for the area, as determined by HUD, with adjustment for smaller and larger families, except that HUD may establish income ceilings higher or lower than 50 percent of the median for the area on the basis of HUD's findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes. In determining the

maximum monthly rent that may be charged for a unit that is subject to this limitation, the owner or participating jurisdiction must subtract a monthly allowance for any utilities and services (excluding telephone) to be paid by the tenant. HUD will provide average occupancy per unit assumptions to be used in calculating the maximum rent allowed under paragraph (a)(2)(ii) of this section;

(iii) If the rent determined under this paragraph (a)(2) is higher than the applicable rent under paragraph (a)(1) of this section, then the applicable maximum rent for units under this paragraph would be that calculated under paragraph (a)(1) of this section except for units that receive Federal or state project-based rental assistance.

* * * * *

10. In § 92.254, paragraph (a)(4)(ii) is revised to read as follows:

§ 92.254 Qualification as affordable housing: homeownership.

(a) * * *

(4) * * *

(ii) A participating jurisdiction may structure the recapture provisions, subject to HUD approval, based on its program design and market conditions.

(A) The following methods of recapture would be acceptable to the Department:

(*1*) Recapture the entire amount of the HOME investment, except that the HOME investment amount may be reduced prorata based on the time the homeowner has owned and occupied the unit measured against the required affordability period.

(*2*) If the net proceeds (i.e., the sales price minus loan repayment, other than HOME funds, and closing costs) are not sufficient to recapture the full (or a reduced amount as provided for in paragraph (a)(4)(ii)(A)(*1*) of this section) HOME investment plus enable the homeowner to recover the amount of the homeowner's downpayment and any capital improvement investment, the participating jurisdiction's recapture provisions may share the net proceeds. The net proceeds may be divided proportionally as set forth in the following mathematical formulas:

$$\frac{\text{HOME investment}}{\text{HOME investment} + \text{homeowner investment}} \times \text{Net proceeds} = \text{HOME amount to be recaptured}$$

$$\frac{\text{homeowner investment}}{\text{HOME investment} + \text{homeowner investment}} \times \text{Net proceeds} = \text{amount to homeowner}$$

(*3*) Alternatively, the PJ may also allow the homebuyer to recover all the homebuyer's investment (downpayment and capital improvements) first before recapturing the HOME investment.

(B) The HOME investment that is subject to recapture is based on the amount of HOME assistance that enabled the homebuyer to buy the dwelling unit. This is also the amount upon which the affordability period is based. This includes any HOME assistance that reduced the purchase price from fair market value to an affordable price, but excludes the amount between the cost of producing the unit and the market value of the property (i.e., the development subsidy). The recaptured funds must be used to carry out HOME-eligible activities. If no HOME funds will be subject to recapture, the provisions at § 92.254(a)(4)(i) apply.

(C) Upon recapture of the HOME funds used in a single-family, homebuyer project with two to four units, the affordability period on the rental units may be terminated at the discretion of the participating jurisdiction.

* * * * *

11. In § 92.356, paragraphs (a)(1) and (a)(2) are revised to read as follows:

§ 92.356 Conflict of interest.

(a) * * *

(1) In the procurement of property and services by participating jurisdictions, state recipients, and subrecipients, the conflict of interest provisions in 24 CFR 85.36 and 24 CFR 84.42, respectively, apply.

(2) In all cases not governed by 24 CFR 85.36 and 24 CFR 84.42, the provisions of this section apply. These cases include the acquisition and disposition of real property and the provision of assistance by the participating jurisdiction, by the state recipient, by subrecipients, or to individuals, housing developers, and other private entities under eligible activities which authorize such assistance (e.g., rehabilitation of housing).[4]

* * * * *

[4] See § 92.505 concerning the availability of OMB Circulars.

12. Section 92.505, is revised to read as follows:

§ 92.505 Applicability of uniform administrative requirements.

(a) *Governmental entities.* The requirements of OMB Circular No. A–87 and the following requirements of 24 CFR part 85 apply to the participating jurisdiction, state recipients, and any governmental subrecipient receiving HOME funds: §§ 85.6, 85.12, 85.20, 85.22, 85.26, 85.32–85.34, 85.36, 85.44, 85.51, and 85.52, of this title.

(b) *Non-profit organizations.* The requirements of OMB Circular No. A–122 and the following requirements of 24 CFR part 84 apply to subrecipients receiving HOME funds that are private nonprofit organizations: §§ 84.2, 84.5, 84.13–84.16, 84.21, 84.22, 84.26–84.28, 84.30, 84.31, 84.34–84.37, 84.40–84.48, 84.51, 84.60–84.62, 84.72, and 84.73, of this title.

Dated: May 16, 1995.

Henry G. Cisneros,

Secretary.

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H.R. 483/P.L. 104–18

To amend the Omnibus Budget Reconciliation Act of 1990 to permit medicare select policies to be offered in all States. (July 7, 1995; 109 Stat. 192; 2 pages)

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