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# federal register

Wednesday
August 16, 1995

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

**WHO:** The Office of the Federal Register.

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

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2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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

### WASHINGTON, DC

**WHEN:** September 12 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

### ATLANTA, GA

**WHEN:** September 20 at 9:00 am

**WHERE:** Centers for Disease Control and Prevention
1600 Clifton Rd., NE.
Auditorium A
Atlanta, GA

**RESERVATIONS:** 404–639–3528
(Atlanta area)
1–800–688–9889
(Outside Atlanta area)

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## 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**

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 581

**RIN 3206–AG49**

### Processing Garnishment Order for Child Support and/or Alimony

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule; correction.

**SUMMARY:** This document contains corrections to the final regulations which were published on Wednesday, January 25, 1995, (60 FR 5044). The regulations updated the list of agents designated to accept service of process in garnishment actions.

**EFFECTIVE DATE:** February 24, 1995.

**FOR FURTHER INFORMATION CONTACT:** Murray M. Meeker, Attorney, Office of the General Counsel, (202) 606–1980.

**SUPPLEMENTARY INFORMATION:** On January 25, 1995, OPM published a list of agents designated to receive legal process in garnishment actions where the indebtedness was based on child support and/or alimony, and on April 14, 1995, OPM published corrections to the list. Subsequent to the publication of the corrections, OPM was notified that additional corrections needed to be made. This amendment is in compliance with these requests.

### Correction

In rule document 95–1781 beginning on page 5044 in the issue of Wednesday, January 25, 1995, make the following corrections:

### Appendix A to Part 581—List of Agents Designated to Accept Legal Process

1. On page 5044, in the second column, under the heading ''Department of Agriculture,'' the designated agent listing is corrected as follows:

Office of the Secretary

Office of the Deputy Secretary
Office of the Under Secretaries
Office of the Assistant Secretaries

Director, Executive Resources and Services Division, Office of Personnel, Room 334 W—Administration Bldg., 14th St. and Independence Ave., SW., Washington, DC 20250, (202) 720–6047

Office of Inspector General

Chief Counsel to the Inspector General, Office of Inspector General, Room 27 E—Administration Bldg., 14th St. and Independence Ave., SW., Washington, DC 20250, (202) 720–9110

Administration

Board of Contract Appeals
Chief Financial Officer
Judicial Officer
Office of Administrative Law Judges
Office of Budget and Program Analysis
Office of Civil Rights Enforcement
Office of Communications
Office of Congressional and Intergovernmental Relations
Office of the General Counsel
Office of Information and Resources Management
Office of Operations
Office of Personnel
Office of Small and Disadvantaged Business Utilization

Chief, Employment and Compensation Branch, Office of Personnel—POD, Room 31 W—Administration Bldg., 14th St. and Independence Ave., SW., Washington, DC 20250–9630, (202) 720–7797

Chief Economist

Office of Risk Assessment and Cost-Benefit Analysis World Agricultural Outlook Board

Chief, Economics and Statistics Operations Branch, Human Resources Division, Agricultural Research Service, Room 1424—South Bldg., 14th St. and Independence Ave., SW., Washington, DC 20250, (202) 720–7657

Farm and Foreign Agricultural ServicesI25Consolidated Farm Service Agency

Foreign Agricultural Service

Chief, Employee and Labor Relations Branch, Human Resources Division, Consolidated Farm Service Agency, Room 6732—South Bldg., P.O. Box 2415, Washignton, DC 20013, (202) 720–5964

Federal Crop Insurance Corporation

Chief, Labor Relations Branch, Federal Crop Insurance Corporation, Consolidated Farm Service Agency, Room 6732—South Bldg., 14th St. and Independence Ave., SW., Washington, DC 20250, (202) 720–5964

Food, Nutrition, and Consumer Services

Food and Consumer Service

Senior Employee Relations Specialist, Employee Relations Division, Food and Consumer Service, 3101 Park Center Drive, Room 623, Alexandria, VA 22302, (703) 305–2374

Marketing and Regulatory Programs

Agricultural Marketing Service (Except for employees of the Milk Marketing Administration)

Chief, Employee Relations Branch, Agricultural Marketing Service, PED, ERB, Room 1745—South Bldg., P.O. Box 96456, Washington, DC 20090–6456, (202) 720–5721

Agricultural Marketing Service

Milk Marketing Employees

Personnel Management Specialist, Agricultural Marketing Service, DA, Room 2754—South Bldg., P.O. Box 96456, Washington, DC 20090–6456, (202) 720–7258

Animal and Plant Health Inspection Service

Grain Inspection, Packers and Stockyards Administration

Chief, Personnel Branch, Animal and Plant Health Inspection Service, HRD, HRO, Butler Square West, 5th Floor, 100 N. 6th St., Minneapolis, MN 55403, (612) 370–2107

Food Safety

Food Safety and Inspection Service

Chief, Classification and Organization Branch, Personnel Division, Food Safety and Inspection Service, Room 3821—South Bldg., 14th St. and Independence Ave., SW., Washington, DC 20250–3700, (202) 720–6287

Rural Economic and Community Development

Rural Housing and Community Development Service
Rural Business and Cooperative Development Service

Chief, Employee Information Systems Branch, Human Relations Division, Rural Housing and Community Development Service, 501 School St., SW., Washington, DC 20250, (202) 245–5573

Rural Utilities Service

Chief, Rural Utilities Service, Personnel Operations Branch, Human Relations Division, Rural Housing and Community Development Service, Room 4031—South Bldg., 14th St. and Independence Ave., SW., Washington, DC 20250–1382, (202) 720–1382.

Natural Resources and Environment

Forest Service

(agents are listed below by subordinate units)

Natural Resources Conservation Service

Director, Employee Relations Branch, Human Resources Management Division, Natural Resources Conservation Service, Room

6205—South Bldg., P.O. Box 2890, Washington, DC 20250, (202) 720–4137

Research, Education, and Economics

Agricultural Research Service
Cooperative State Research, Education, and Extension Service
National Agricultural Statistics Service
Economic Research Service

Chief, Personnel Operations Branch, Agricultural Research Service, Personnel Division—POB, 6305 Ivy Lane, Room 301, Greenbelt, MD 20770, (301) 344–3151

National Appeals Division

Administrative Officer, National Appeals Division, 3101 Park Center Drive, Room 1020, Alexandria, VA 22302, (703) 305–2566

Forest Service

Washington Office

Director, Personnel Management, 900 RP–E, PO Box 96090, Washington, DC 20090–6090, (703) 235–8102

International Institute of Tropical Forestry

Director, Call Box 25000, UPR Experimental Station Grounds, Rio Piedras, PR 00928–2500, (809) 766–5335

Region 1

Regional Forester, Regional Office, Federal Bldg., PO Box 7669, Missoula, MT 59807, (406) 329–3003

*Idaho*

Clearwater—Forest Supervisor, 12730 Highway 12, Orofino, ID 83544, (208) 476–4541
Idaho Panhandle National Forests—Forest Supervisor, 1201 Ironwood Dr., Coeur d'Alene, ID 83814, (208) 765–7223
Nez Perce—Forest Supervisor, Rt. 2, Box 475, Grangeville, ID 83530, (208) 983–1950

*Montana*

Beaverhead—Forest Supervisor, 420 Barrett St., Dillon, MT 59725–3572, (406) 683–3900
Bitterroot—Forest Supervisor, 1801 N. 1st St., Hamilton, MT 59840, (406) 363–7121
Custer—Forest Supervisor, Box 2556, Billings, MT 59103, (406) 657–6361
Deerlodge—Forest Supervisor, Federal Bldg., Box 400, Butte, MT, (406) 496–3400
Flathead—Forest Supervisor, 1935 3rd Ave., E., Kalispell, MT, (406) 755–5401
Gallatin—Forest Supervisor, Federal Bldg., 10 E. Babcock, Box 130, Bozeman, MT 59771, (406) 587–6701
Helena—Forest Supervisor, 2880 Skyway Dr., Helena, MT, (406) 449–5201
Kootenai—Forest Supervisor, 506 Highway 2 W., Libby, MT 59923, (406) 293–6211
Lewis and Clark—Forest Supervisor, PO Box 869, 1101 15th St. N., Great Falls, MT 59403, (406) 791–7700
Lolo—Forest Supervisor, Bldg. 24, Ft. Missoula, Missoula, MT 59801, (406) 329–3750

Region 2

Regional—Forester, Regional Office, 740 Simms St., Lakewood, CO 80255, (303) 275–5306

*Colorado*

Arapaho and Roosevelt—Forest Supervisor, 240 W. Prospect, Fort Collins, CO, (303) 498–1100
Grand Mesa, Uncompahgre, and Gunnison—Forest Supervisor, 2250 Highway 50, Delta, CO 81416, (303) 874–7691
Pike and San Isabel—Forest Supervisor, 1920 Valley Dr., Pueblo, CO 81008, (719) 545–8737
Rio Grande—Forest Supervisor, 1803 West Highway 160, Monte Vista, CO 81144, (719) 852–5941
Routt—Forest Supervisor, 29587 W. US 40, Suite 20, Steamboat Springs, CO 80487–9550, (303) 879–1722
San Juan—Forest Supervisor, 701 Camino Del Rico, Room 301, Durango, CO 81301, (303) 247–4874
White River—Forest Supervisor, Old Federal Bldg., Box 948, Glenwood Springs, CO 81602, (303) 945–2521

*Nebraska*

Nebraska—Forest Supervisor, 125 N. Main St., Chadron, NE 69337, (308) 432–0300

*South Dakota*

Black Hills—Forest Supervisor, R.R. 2, Box 200, Custer, SD 57730–9504, (605) 673–2251

*Wyoming*

Bighorn—Forest Supervisor, 1969 So. Seridan Ave., Seridan, WY 82801, (307) 672–0751
Medicine Bow—Forest Supervisor, 2468 Jackson St., Laramie, WY 82070–6535, (305) 745–8971
Shoshone—Forest Supervisor, 808 Meadow Lane, Cody, WY 82414, (307) 527–6241

Region 3

Regional Forester—Regional Office, Federal Bldg. 517 Gold Ave., SW., Albuquerque, NM 87102, (505) 842–3380

*Arizona*

Apache—Sitgreaves—Forest Supervisor, Federal Bldg., Box 640, Springerville, AZ 85938, (602) 333–4301
Coconino—Forest Supervisor, 2323 E. Greenlaw Lane, Flagstaff, AZ 86004, (602) 527–3600
Coronado—Forest Supervisor, 300 W. Congress, Tucson, AZ 85701, (692) 670–4552
Kaibab—Forest Supervisor, 800 S. 6th St., Williams, AZ 86046, (602) 635–2681
Prescott—Forest Supervisor, 344 South Cortez, Prescott, AZ 86303, (602) 771–4700
Tonto—Forest Supervisor, 2324 E. McDowell Rd., Phoenix, AZ 85006, (602) 225–5200

*New Mexico*

Carson—Forest Supervisor, 208 Cruz Alta Rd., PO Box 558, Paos, NM 87571, (505) 758–6200
Cibola—Forest Supervisor, 2113 Osuna Rd., NE., Suite A, Albuquerque, NM 87113–1001, (505) 761–4650
Gila—Forest Supervisor, 3005 E. Camino del Bosque, Silver City, NM 88061, (505) 388–8201
Lincoln—Forest Supervisor, Federal Bldg. 1101 New York Ave., Alamogordo, NM 88310–6992, (505) 434–7200
Santa Fe—Forest Supervisor, 1220 St. Francis Dr., Sanata Fe, NM 87504, (505) 988–6940

Region 4

Regional Forester, Regional Officer, Federal Bldg., 324 25th St., Ogden, UT 84401, (801) 625–5298

*Idaho*

Boise—Forest Supervisor, 1750 Front Street, Boise, ID 83702, (208) 364–4100
Caribou—Forest Supervisor, 250 S. 4th Ave., Suite 282, Federal Bldg., Pocatello, ID 83201, (208) 236–7500
Challis—Forest Supervisor, HC 63 Box 1671, F.S. Bldg., Challis, ID 83226, (208) 879–2285
Payette—Forest Supervisor, Box 1026 or 106 W. Park, McCall, ID 83638, (208) 634–0700
Salmon—Forest Supervisor, PO Box 729, Salmon, ID 83467–0729, (208) 765–2215
Sawtooth—Forest Supervisor, 2647 Kimberly Rd. East, Twin Falls, ID 83301–7976, (208) 737–3200
Targhee—Forest Supervisor, 420 N. Bridge St., PO Box 208, St. Anthony, ID 83445, (208) 624–3151

*Nevada*

Humboldt—Forest Supervisor, 976 Mountain City Highway, Elko, NV 89801, (702) 738–5171
Toiyabe—Forest Supervisor, 1200 Franklin Way, Sparks, NV 89431, (702) 355–5300

*Utah*

Ashley—Forest Supervisor, 355 North Vernal Ave., Vernal, UT 84078, (801) 789–1181
Dixie—Forest Supervisor, 82 No. 100 E. St., PO Box 580, Cedar City, UT 84721–0580, (801) 865–3700
Fishlake—Forest Supervisor, 115 E. 900 N, Richfield, UT 84701, (801) 896–9233
Manti—La Sal—Forest Supervisor, 599 W. Price River Drive, Price, UT 84501, (801) 637–2817
Uinta—Forest Supervisor, 88 W. 100 N., Provo, UT 84601, (801) 342–5100
Wasatch—Cache—Forest Supervisor, 8236 Federal Bldg., 125 S. State St., Salt Lake City, UT 84138, (801) 524–5030

*Wyoming*

Bridger—Teton—Forest Supervisor, F.S. Bldg., 340 N. Cache, Box 1888, Jackson, WY 83001, (307) 739–5500

Region 5

Regional Forester, Regional Office, 630 Sansome St., San Francisco, CA 94111, (415) 705–2856

*California*

Angeles—Forest Supervisor, 701 N. Santa Anita Ave., Arcadia, CA 91006, (818) 574–1613
Cleveland—Forest Supervisor, 10845 Rancho Bernardo Rd., Suite 200, San Diego, CA 92127–2107, (619) 673–6180
Eldorado—Forest Supervisor, 100 Forni Rd., Placerville, CA 95667, (916) 622–5062
Inyo—Forest Supervisor, 873 North Main St., Bishop, CA 93514, (619) 873–2400
Klamath—Forest Supervisor, 1312 Fairlane Rd., Yreka, CA 96097, (916) 842–6131
Lassen—Forest Supervisor, 55 So. Sacramento St., Susanville, CA 96130, (916) 257–2151

Los Padres—Forest Supervisor, 6144 Calle Real, Goleta, CA 93117, (805) 683–6711
Mendocino—Forest Supervisor, 420 E. Laurel St., Willows, CA 95988, (916) 934–3316
Modoc—Forest Supervisor, 800 W. 12th St., Alturas, CA 96101, (916) 233–5811
Plumas—Forest Supervisor, 159 Lawrence St., Box 11500, Quincy, CA 95971–6025, (916) 283–2050
San Bernardino—Forest Supervisor, 1824 S. Commercenter Cir., San Bernardino, CA 92408–3430, (909) 383–5588
Sequoia—Forest Supervisor, 900 W. Grand Ave., Porterville, CA 93257–2035, (209) 784–1500
Shasta—Trinity—Forest Supervisor, 2400 Washington Ave., Redding, CA 96001, (916) 246–5222
Sierra—Forest Supervisor, 1600 Tollhouse Rd., Clovis, CA 93611, (209) 297–0706
Six Rivers—Forest Supervisor, 1330 Bayshore Way, Eureka, CA 95501–3834, (707) 441–3517
Stanislaus—Forest Supervisor, 19777 Greenley Rd., Sonora, CA 95370, (209) 532–3671
Tahoe—Forest Supervisor, 631 Coyote St., PO Box 6003, Nevada City, CA 95959–6003, (916) 265–4531

Region 6

Regional Forester, Regional Office, 333 S.W. 1st Ave., PO Box 3623, Portland, OR 97208, (503) 326–3630

*Oregon*

Deschutes—Forest Supervisor, 1645 Highway 20 E., Bend, OR 97701, (503) 388–2715
Fremont—Forest Supervisor, 524 North G St., Lakeview, OR 97630, (503) 947–2151
Malheur—Forest Supervisor, 139 N. E. Dayton St., John Day, OR 97845, (503) 575–1731
Mt. Hood—Forest Supervisor, 2955 N.W. Division St., Gresham, OR 97030, (503) 666–0700
Ochoco—Forest Supervisor, Box 490, Prineville, OR 97754, (503) 447–6247
Rogue River—Forest Supervisor, Federal Bldg., 333 W. 8th St., Box 520, Medford, OR 97501, (503) 776–3600
Siskiyou—Forest Supervisor, Box 440, Grants Pass, OR 97526, (503) 471–6500
Siuslaw—Forest Supervisor, Box 1148, Corvallis, OR 97339, (503) 750–7000
Umatilla—Forest Supervisor, 2517 S.W. Hailey Ave., Pendleton, OR 97801, (503) 278–3721
Umpqua—Forest Supervisor, Box 1008, Roseburg, OR 97470, (503) 672–6601
Wallowa—Whitman—Forest Supervisor, Box 907, Baker City, OR 97814, (503) 523–6391
Willamette—Forest Supervisor, Box 10607, Eugene, OR 97440, (503) 465–6521
Winema—Forest Supervisor, 2819 Dahlia, Klamath Falls, OR 97601, (503) 883–6714

*Washington*

Colville—Forest Supervisor, 765 S. Main, Colville, WA 99114, (509) 684–7000
Gifford Pinchot—Forest Supervisor, 6926 E. 4th Plain Blvd., Vancouver, WA 98668–8944, (206) 750–5000
Mt. Baker—Snoqualmie—Forest Supervisor, 21905 64th Avenue, West, Mountlake Terrace, WA 98043, (206) 744–3200
Okanogan—Forest Supervisor, 1240 South Second Ave., Okanogan, WA 98840, (509) 826–3275
Olympic—Forest Supervisor, 1835 Black Lake Blvd., SW., Olympia, WA 98512, (206) 956–2300
Wenatchee—Forest Supervisor, 301 Yakima St., P.O. Box 811, Wenatchee, WA 98807, (509) 662–4335

Region 8

Regional Forester, Regional Office, 1720 Peachtree Rd., NW., Atlanta, GA 30367, (404) 347–3841

*Alabama*

National Forests in Alabama—Forest Supervisor, 2946 Chestnut St., Montgomery, AL 36107–3010, (205) 832–4470

*Arkansas*

Ouachita—Forest Supervisor, Box 1270, Federal Bldg., Hot Springs National Park, AR 71902, (501) 321–5200
Ozark—St. Francis—Forest Supervisor, 605 West Main, Box 1008, Russellville, AR 72801, (501) 968–2354

*Florida*

National Forests in Florida—Forest Supervisor, Woodcrest Office Park, 325 John Knox Rd., Suite F–100, Tallahassee, FL 32303, (904) 681–7265

*Georgia*

Chattahoochee and Oconee—Forest Supervisor, 508 Oak St., NW., Gainesville, GA 30501, (404) 536–0541

*Kentucky*

Daniel Boone—Forest Supervisor, 100 Vaught Rd., Winchester, KY 40391, (606) 745–3100

*Louisiana*

Kisatchie—Forest Supervisor, 2500 Shreveport Hwy., P.O. Box 5500, Pineville, LA 71361–5500, (318) 473–7160

*Mississippi*

National Forests in Mississippi—Forest Supervisor, 100 W. Capital St., Suite 1141, Jackson, MS 69, (601) 965–4391

*North Carolina*

National Forests in North Carolina—Forest Supervisor, Post and Otis Streets, P.O. Box 2750, Asheville, NC 28802, (704) 257–4200

*Puerto Rico and the Virgin Islands*

Caribbean N.F.—Forest Supervisor, Call Box 25000, Rio Piedras, PR 00928–2500, (809) 766–5335

*South Carolina*

Francis Marion and Sumter National Forests— Forest Supervisor, 4923 Broad River Rd., Columbia, SC 29212, (803) 765–5222

*Tennessee*

Cherokee, Forest Supervisor, 2800 N. Ocoee St., NE., P.O. Box 2010, Cleveland, TN 37320, (615) 476–9700

*Texas*

National Forests in Texas—Forest Supervisor, Homer Garrison Federal Bldg., 701 N. First St., Lufkin, TX 75901, (409) 639–8501

*Virginia*

George Washington—Forest Supervisor, P.O. Box VA, 22801, (703) 433–2491

Region 9

Regional Forester, Regional Office, 310 W. Wisconsin Ave., Room 500 Milwaukee, WI 53203 (414) 297–3674

*Illinois*

Shawnee—Forest Supervisor, 901 S. Commercial Street, Harrisburg, IL 62946, (618) 523–7114

*Indiana*

Hoosier—Forest Supervisor, 811 Constitution Ave., Bedford, IN 47421, (812) 275–5987

*Michigan*

Hiawatha—Forests Supervisor, 2727 N. Lincoln, Rd., Escanaba, MI 49829, (906) 785–4062
Huron—Manistee Forest—Supervisor, 421 S. Mitchell St., Cadillac, MI 49601, (616) 775–2421
Ottawa—Forest Supervisor 2100 E. Cloverland Dr., Ironwood, MI 49938, (906) 932–1330

*Minnesota*

Chippewa—Forest Supervisor, Rt. 3 Box 244, Cass Lake, MN 56633, (218) 335–8600
Superior—Forest Supervisor, Box 338, Federal Bldg., 515 W. First St., Duluth, MN 55802, (218) 720–5324

*Missouri*

Mark Twain—Forest Supervisor, 401 Fairgounds Rd., Rolla, MO 65401, (314) 364–4621

*New Hampshire and Maine*

White Mountain—Forest Supervisor, Federal Bldg., 719 Main St., P.O. Box 638, Laconia, NH 03247, (603) 528–8721

*Ohio*

Wayne—Forest Supervisor, 219 Columbus Rd., Athens, OH 45701–1399, (614) 592–6644

*Pennsylvania*

Allegheny—Forest Supervisor, 222 Liberty St., Box 847, Warren, PA 16365, (814) 723–5150

*Vermont*

Green Mountain and Finger Lakes—Forest Supervisor, 231 N. Main St., Rutland, NY 05701, (802) 747–6700

*West Virginia*

Monogahela—Forest Supervisor, USDA Bldg., 200 Sycamore St., Elkins, WV 26241–3962, (304) 636–1800

*Wisconsin*

Chequamegon—Forest Supervisor, 1170 4th Ave. South, Park Falls, WI 54552, (715) 762–2461

Nicolet—Forest Supervisor, Federal Bldg., 68 S. Stevens, Rhinelander, WI 54501, (715) 362–1300

Region 10

Regional Forester, Regional Office, Federal Office Bldg., Box 21628, Juneau, AK 99802–1628, (907) 586–8719

*Alaska*

Chugach—Forest Supervisor, 3301 C St., Suite 300, Anchorage, AK 99503–3998, (907) 271–2500

Tongass—Chatham Area—Forest Supervisor, 204 Siginaka Way, Sitka, AK 99835, (907) 747–6671

Tongass—Ketchikan Area—Forest Supervisor, Federal Bldg., Ketchikan, AK 99901, (907) 225–3101

Tongass—Stikine Area—Forest Supervisor, Box 309, Petersburg, AK 99833, (907) 772–3841

Forest and Range Experiment Stations, Intermountain Research Station, Director, 324 25th St., Ogden, UT 84401, (801) 625–5412

North Central Forest Experiment Station, Director, 1992 Folwell Ave., St. Paul, MN 55108, (612) 649–5249

Northeastern Forest Experiment Station, Director, 5 Radnor Corporate Center, Suite 200, P.O. Box 6775, Radnor, PA 19087–8775, (610) 975–4017

Pacific Northwest Research Station, Director, P.O. Box 3890, Portland, OR 97208–3890, (503) 326–5640

Pacific Southwest Forest and Range Experiment Station, Director, 800 Buchanan St., West Bldg., Albany, CA 94710–0011, (510) 559–6310

Rocky Mountain Forest and Range Experiment Station, Director, 240 W. Prospect Rd., Fort Collins, CO 80526–2098, (303) 498–1126

Southeastern Forest Experiment Station, Director, 200 Weaver Blvd., P.O. Box 2680, Ashville, NC 28802, (704) 257–4300

Southern Forest Experiment Station, Director, T–10210, U.S. Postal Service Bldg., 701 Loyola Ave., New Orleans, LA 70113, (504) 589–3921

Forest Products Laboratory, Director, One Gifford Pinchot Dr., Madison, WI 53705–2398, (608) 231–9318

Northeastern Area State and Private Forestry, Director, 5 Radnor Corporate Center, Suite 200, P.O. Box 6775, Radnor, PA 19087–8775, (610) 975–4103

2. On page 5046, in the second column, under the heading ''Air Force,'' paragraph 4, ''Civilian employees of all other Air Force nonappropriated fund activities'' the designated agent listing is corrected as follows:

Office of Legal Counsel, Air Force Service Agency, 10100 Reunion Place, Suite 503, San Antonio, TX 78216–4138, (210) 652–7051

3. On page 5048, in the first column, under the heading ''Department of Housing and Urban Development'' the designated agent listing is corrected as follows:

Headquarters

Chief, Systems Support Branch, Technology Support Division, 451 7th Street, SW., Room 2256, Washington, DC 20410, (202) 708–0241

New England (Massachusetts, Maine, Vermont, New Hampshire, Rhode Island, and Connecticut)

Human Resources Officer, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Room 375, Boston, MA 02222, (617) 565–5435

New York, New Jersey

Human Resources Officer, 26 Federal Plaza, New York, NY 10278, (212) 264–0782

Mid-Atlantic (Pennsylvania, Maryland, Washington, DC, West Virginia, Virginia, and Delaware)

Human Resources Officer, The Wanamaker Building, 100 Penn Square East, Philadelphia, PA 19107, (215) 656–0593

Southwest (Georgia, North Carolina, Kentucky, Tennessee, South Carolina, Alabama, Mississippi, Puerto Rico, and Florida)

Human Resources Officer, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, GA 30303, (404) 331–4078

Midwest (Illinois, Minnesota, Wisconsin, Michigan, Ohio, and Indiana)

Human Resources Officer, Ralph H. Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604, (312) 353–5960

Southwest (Texas, Oklahoma, Arkansas, Louisiana, and New Mexico)

Human Resources Officer, 1600 Throckmorton, Post Office Box 2905, Fort Worth, TX 76113, (817) 885–5471

Great Plains (Kansas, Missouri, Iowa, and Nebraska)

Human Resources Officer, Gateway Tower II, 400 State Avenue, Kansas City, KS 66101, (913) 551–5419

Rocky Mountain (Colorado, Montana, North Dakota, South Dakota, Wyoming, and Utah)

Human Resources Officer, First Interstate Tower North, 633 17th Street, Denver, CO 80202, (303) 672–5259

Pacific/Hawaii (California, Nevada, Arizona, and Hawaii)

Human Resources Officer, Phillip Burton Federal Building and U.S. Courthouse, 450 Golden Gate Avenue, Post Office Box 36003, San Francisco, CA 94102, (415) 556–7142

Northwest/Alaska (Washington, Oregon, Idaho, and Alaska)

Human Resources Officer, Federal Office Building, 909 First Avenue, Suite 200, Seattle, WA 98104, (206) 220–5125

4. On page 5048, in the second column, under the heading Department of Justice the designated agent listing for ''Offices, Boards and Divisions'' is corrected to read as follows:

Office, Boards, and Divisions, Personnel Group/Payroll Operations, 1331 Pennsylvania Avenue, NW., Suite 1170, Washington, DC 20530, (202) 514–6008

5. On page 5048, in the third column, under the heading ''Immigration and Naturalization Service,'' the designated agent listing is corrected as follows:

Personnel Support, Immigration and Naturalization Service, 425 I Street, NW., Room 2038, Washington, DC 20536, (202) 514–2525

Human Resources and Career Development, Immigration and Naturalization Service, One Federal Drive #400, Whipple, Bldg., Fort Snelling, MN 55111, (612) 725–3211

Human Resources and Career Development, Immigration and Naturalization Service, 70 Kimball Avenue, South Burlington, VT 05403, (802) 660–5137

Human Resources and Career Development, Immigration and Naturalization Service, 7701 N. Stemmons Freeway, Dallas, TX 75247, (214) 655–6032

Personnel Office, Immigration and Naturalization Service, P.O. Box 30070, Laguna Niguel, CA 92607, (714) 643–4934

6. On page 5052, in the first column, under the heading ''Department of the Treasury,'' the U.S. Savings Bonds Division should be removed and the listings renumbered.

7. On page 5052, in the first column, under the heading ''Department of the Treasury,'' the designated agent listing for the Bureau of the Public Debt should be corrected as follows:

Deputy Chief Counsel, Bureau of the Public Debt, Room 119, Hintgen Building, Parkersburg, WV 26106–1328, (304) 480–5192

8. On page 5060, in the third column, the following heading and designated agent should be added:

Social Security Administration, Office of the General Counsel, Room 311, Althmeyer Bldg., 6401 Security Blvd., Baltimore, MD 21235 (410) 965–3169

9. On page 5061, in the first column, under the heading ''Central Intelligence Agency,'' the designated agent listing is corrected as follows:

Office of Personnel Security, Attn: Chief, Special Activities Staff, Washington, DC 20505, (703) 482–1217

10. On page 5062, in the first column, under the heading ''National Aeronautics and Space Administration,'' the designated agent listing for NASA Headquarters is corrected as follows:

Associate General Counsel (General), Attention: SN Code GG, NASA Headquarters, 300 E Street, SW., Washington, DC 20546, (202) 358–2465

11. On page 5062, in the second column, under the heading ''National Credit Union Administration,'' the designated agent listing is corrected as follows:

General Counsel, Office of General Counsel, 1775 Duke Street, Alexandria, VA 22314–3428, (703) 518–6540

12. On page 5062, in the third column, under the heading ''Panama Canal Commission,'' the designated agent listing should be corrected as follows:

Secretary, Office of the Secretary, International Square, 1825 I Street, NW., Suite 1050, Washington, DC 20006–5402, (202) 634–6441

13. On page 5064, in the third column, the following heading and designated agent should be added:

**VI. Executive Office of the President**

*Executive Office of the President*

General Counsel, Office of Administration, Old Executive Office Building, Washington, DC 20503, (202) 395–2273

U.S. Office of Personnel Management.

**Lorraine A. Green,**

*Deputy Director.*

[FR Doc. 95–19893 Filed 8–15–95; 8:45 am]

BILLING CODE 6325–01–M

## DEPARTMENT OF AGRICULTURE

### Grain Inspection, Packers and Stockyards Administration

### 7 CFR Part 802

**RIN 0580–AA39**

### Official Performance and Procedural Requirements for Grain Weighing Equipment and Related Grain Handling Systems

**AGENCY:** Grain Inspection, Packers and Stockyards Administration, USDA.

**ACTION:** Direct Final Rule; Confirmation of Effective Date.

**SUMMARY:** On June 19, 1995, the Grain Inspection, Packers and Stockyards Administration published a direct final rule [69 FR 31907] entitled, ''Official Performance and Procedural Requirements for Grain Weighing Equipment and Related Grain Handling Systems.'' The direct final rule notified the public of amendments to the grain weighing equipment and related grain handling systems regulations by adopting the applicable recommendations of the National Institute of Standards and Technology Handbook 44, 1994 edition, ''Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices.'' No adverse comments or written notice of intent to submit adverse comments were received in response to the direct final rule.

**DATES:** The effective date of the direct final rule is confirmed as August 18, 1995.

**FOR FURTHER INFORMATION CONTACT:** George Wollam, GIPSA–FGIS, USDA, Room 0623–S, P.O. Box 96454, Washington, DC 20090–6454; Telephone (202) 720–0292; FAX (202) 720–4628.

**Authority:** Pub. L. 940582, 90 Stat. 2867, as amended (7 U.S.C. 71 et seq.)

Dated: August 10, 1995.

**James R. Baker,**

*Administrator.*

[FR Doc. 95–20219 Filed 8–15–95; 8:45 am]

BILLING CODE 3410–EN–M

## FEDERAL ELECTION COMMISSION

### 11 CFR Parts 106, 9002, 9003, 9004, 9006, 9007, 9008, 9032, 9033, 9034, 9036, 9037, 9038, and 9039

**[Notice 1995–11]**

### Public Financing of Presidential Primary and General Election Candidates

**AGENCY:** Federal Election Commission.

**ACTION:** Final rule; announcement of effective date.

**SUMMARY:** On June 16, 1995 (60 FR 31854), the Commission published the text of revised regulations governing publicly financed Presidential primary and general election candidates. 11 CFR Parts 9002, 9003, 9004, 9006, 9007, 9008, 9032, 9033, 9034, 9036, 9037, 9038 and 9039. These regulations implement the provisions of 26 U.S.C. Chapters 95 and 96, the Presidential Election Campaign Fund Act and the Presidential Primary Matching Payment Account Act. The Commission also published a conforming amendment to 11 CFR 106.2(a)(1). The Commission announces that these rules are effective as of August 16, 1995.

**EFFECTIVE DATE:** August 16, 1995.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC 20463, (202) 219–3690 or toll free (800) 424–9530.

**SUPPLEMENTARY INFORMATION:** Section 438(d) of Title 2, United States Code, require that any rules or regulations prescribed by the Commission to implement Titles 2 and 26 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate thirty legislative days prior to final promulgation. The revisions to 11 CFR 106.2(a)(1) and Parts 9002, 9003, 9004, 9006, 9007, 9008, 9032, 9033, 9034, 9036, 9037, 9038 and 9039 were transmitted to Congress on June 12, 1995. Thirty legislative days expired in the Senate and the House of Representatives on August 2, 1995.

*Announcement of Effective Date:* The amendments to 11 CFR 106.2(a)(1) and 11 CFR Parts 9002, 9003, 9004, 9006, 9007, 9008, 9032, 9033, 9034, 9036, 9037, 9038 and 9039, as published at 60 FR 31854, are effective as of August 16, 1995.

Dated: August 11, 1995.

**Lee Ann Elliott,**

*Vice Chairman, Federal Election Commission.*

[FR Doc. 95–20281 Filed 8–15–95; 8:45 am]

BILLING CODE 6715–01–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Airspace Docket No. 95–AWP–12]**

### Revocation of Class E Airspace Area; Merced, Castle Air Force Base (AFB), CA, and Amendment of Class E Airspace Areas; Merced Municipal/ MacReady Field, CA

**AGENCY:** Federal Aviation Administration [FAA], DOT.

**ACTION:** Final rule; change in effective date.

**SUMMARY:** This corrective action changes the effective date of the revocation of Class E airspace area at Merced, Castle AFB, CA, and amendment of Class E airspace area at Merced Municipal/ MacReady Field, CA. The recent closure of Castle AFB, CA, has made this change necessary.

**EFFECTIVE DATE:** The effective date of 0901 UTC, November 9, 1995, is changed to 0901 UTC September 5, 1995.

**FOR FURTHER INFORMATION CONTACT:** Scott Speer, System Management Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6533.

**SUPPLEMENTARY INFORMATION:**

**History**

Airspace Docket No. 95–AWP–12, published on July 18, 1995 (60 FR 36637), modified the Class E airspace areas at Merced, Castle AFB, CA, and Merced Municipal/MacReady Field, CA.

This action was originally scheduled to become effective on November 9, 1995; however, the early closure of Castle AFB, CA, has required the effective date of this action to be changed to September 5, 1995.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operational current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**Change in Effective Date**

The effective date on Airspace Docket No. 95–AWP–12 is hereby changed from November 9, 1995, to September 5, 1995.

**Authority:** 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

Issued in Los Angeles, California, on August 4, 1995.

**James H. Snow,**

*Acting Manager, Air Traffic Division, Western-Pacific Region.*

[FR Doc. 95–20268 Filed 8–15–95; 8:45 am]

BILLING CODE 4910–13–M

## 14 CFR Part 71

**[Airspace Docket No. 95–AGL–6]**

## Modification of Class E Airspace; Mount Vernon, IL

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action modifies the Class E2 airspace near Mount Vernon-Outland Airport, Mount Vernon, IL, by changing the airspace area's effective hours from part-time to full-time. The intended effect of this action is to enhance safety for all potential users of this airspace by providing segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. An Automated Weather Observation System (AWOS) provides 24-hour weather reporting capability for the airport which makes it possible to designate a full-time Class E2 airspace area. The appropriate publications will be modified to provide the aviation public with updated information.

**EFFECTIVE DATE:** 0901 UTC, November 9, 1995.

**FOR FURTHER INFORMATION CONTACT:** Angeline Perri, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7571.

**SUPPLEMENTARY INFORMATION:**

**History**

On June 9, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR Part 71) to modify the Class E2 airspace near Mount Vernon, IL (60 FR 30478).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas designated as a surface area for an airport are published in paragraph 6002 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

**The Rule**

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies the Class E airspace area near Mount Vernon, IL, by changing the airspace area's effective hours from part-time to full-time. The intended effect of this action is to enhance safety for all potential users of this airspace by providing segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. An AWOS provides 24-hour weather reporting capability for the airport which makes it possible to designate a full-time Class E2 airspace area. The appropriate publications will be modified to provide the aviation public with updated information.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

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

## PART 71—[AMENDED]

1. The authority citation for 14 part 71 continues to read as follows:

**Authority:** 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

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

* * * * *

**AGL IL E2 Mount Vernon, IL [Revised]**

Mount Vernon-Outland Airport, IL
(Lat. 38°19′24″ N, long. 88°51′31″ W)
Mount Vernon-VOR/DME
(Lat. 38°21′43″ N, long. 88°48′26″ W)

Within a 4.2-mile radius of Mount Vernon-Outland Airport and within 4 miles each side of the Mount Vernon VOR/DME 044° radial extending from the 4.2-mile radius to 9.1 miles northeast of the VOR/DME.

* * * * *

Issued in Des Plaines, Illinois, on July 27, 1995.

**Maureen Woods,**

*Acting Manager, Air Traffic Division.*

[FR Doc. 95–20265 Filed 8–15–95; 8:45 am]

BILLING CODE 4910–13–M

**14 CFR Part 71**

**[Airspace Docket No. 95–AGL–5]**

## Modification of Class E Airspace; Devils Lake, ND

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action modifies the Class E5 airspace near Devils Lake, ND. Based on the results of an airspace review the existing geographic size of the E5 airspace area was found to be insufficient to accommodate existing instrument approach procedures to Devils Lake Municipal Airport, Devils Lake, ND. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area will be depicted on aeronautical charts to provide a reference for pilots operating in Visual Flight Rule (VFR) conditions.

**EFFECTIVE DATE:** 0901 UTC, November 9, 1995.

**FOR FURTHER INFORMATION CONTACT:** Angeline Perri, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7571.

**SUPPLEMENTARY INFORMATION:**

### History

On June 9, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Class E5 airspace near Devils Lake, ND (60 FR 30479).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

### The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies the Class E airspace area near Devils Lake, ND. Based on the results of an airspace review the geographic size of the E5 airspace area was found to be insufficient to accommodate existing instrument approach procedures to Devils Lake Municipal Airport, Devils Lake, ND. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area will be depicted on aeronautical charts to provide a reference for pilots operating in VFR conditions.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

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

## PART 71—[AMENDED]

1. The authority citation for 14 part 71 continues to read as follows:

**Authority:** 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**AGL ND E5 Devils Lake, ND [Revised]**

Devils Lake Municipal Airport, ND
(Lat. 48°06′51″ N, long. 98°54′32″ W)
Devils Lake VORTAC
(Lat. 48°06′48″ N, long. 98°54′29″ W)

That airspace extending upward from 700 feet above the surface within an 8.7-mile radius of the Devils Lake Municipal Airport and that airspace extending upward from 1,200 feet above the surface within a 22-mile radius of the Devils Lake VORTAC.

* * * * *

Issued in Des Plaines, Illinois, on July 27, 1995.

**Maureen Woods,**

*Acting Manager, Air Traffic Division.*

[FR Doc. 95–20266 Filed 8–15–95; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TREASURY

## Customs Service

## 19 CFR Part 19

## Duty–Free Stores

*CFR Correction*

In title 19 of the Code of Federal Regulations, parts 1 to 140, revised as of July 1, 1995, § 19.5 appearing on page 235 should be removed and reserved.

**BILLING CODE 1505-01-D**

## SOCIAL SECURITY ADMINISTRATION

## 20 CFR Parts 404 and 422

**RIN 0960–AD70**

## Wage Reports and Pension Information

**AGENCY:** Social Security Administration.

**ACTION:** Final rules.

**SUMMARY:** We are updating our rules on the need for and use of employer identification numbers and on processing reports of wages provided annually by employers to the Social Security Administration (SSA). In addition, we are adding to our rules the procedures we have for maintaining and providing information we receive from employers on deferred vested pension benefits.

**EFFECTIVE DATE:** These rules are effective August 16, 1995.

**ADDRESSES:** Organizations and individuals desiring to submit comments on the information collection requirements under ''Paperwork Reduction Act'' should submit them to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, Room 3208, Washington, DC 20503, Attention: Desk Officer for SSA.

**FOR FURTHER INFORMATION CONTACT:** Jack Schanberger, Legal Assistant, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–8471.

**SUPPLEMENTARY INFORMATION:**

**Employer Identification Numbers**

Pursuant to section 205(c)(2)(A) of the Social Security Act (the Act), SSA maintains a record of the wages and self-employment income of each individual. The record includes earnings covered under title II of the Act, earnings covered under title XVIII of the Act, and earnings not covered under the Act. The record is identified by the individual's social security number. Wages posted to an individual's record are based on wage reports submitted to SSA and the Internal Revenue Service (IRS) by employers. IRS regulations at 26 CFR 31.6011(a)–1 require an employer to file employment tax returns with IRS each year and IRS regulations at 26 CFR 31.6051–2 and 31.6091–1(d) require an employer to file wage reports with SSA each year. These requirements are also explained on wage reporting forms and in related instructions issued by SSA and IRS. To help account for these returns and reports, IRS assigns an employer identification number (EIN) to every employer. However, SSA will assign a special identification number to one or more political subdivisions of a State which submits a modification to its coverage agreement under section 218 of the Act. These numbers are assigned only for State bookkeeping purposes unless coverage is extended to periods prior to 1987. Then, the special number will be assigned and used for reporting the pre-1987 wages to SSA. The special number will also be assigned to an interstate instrumentality if pre-1987 coverage is obtained.

**Annual Wage Reporting**

Section 232 of the Act was added by section 8 of Public Law 94–202. Section 8 is cited as the ''Combined Old-Age, Survivors, and Disability Insurance-Income Tax Reporting Amendments of 1975.'' Section 232, as amended by section 107 of Public Law 103–296, provides authority for the Secretary of the Treasury to make available to the Commissioner of Social Security such documents that are agreed upon as being necessary for processing information contained in returns required by the Internal Revenue Code and by IRS regulations. Under this authority and Public Law 94–455 and 95–216, SSA and IRS have entered into an Agreement governing the manner in which employer wage reports will be processed. Included in this process are the wage reports which employers are required to file annually with SSA. As required by IRS regulations at 26 CFR 301.6011–2, employers who file 250 or more wage reports per year must file them on magnetic media, unless the requirement is waived by IRS. These regulations reflect these requirements for filing annual wage reports with SSA and explain how SSA will process the reports and reconcile reporting errors with IRS, employees, and employers.

**Incorrect Wage Reports**

We are also consolidating §§ 422.115 and 422.120 to include in one section (§ 422.120) our current procedures for processing wage reports submitted to us by employers that do not include a worker's social security number or include an incorrect name or number. The existing regulations provide that we will first contact the employer for the missing information or correction. However, in this revised regulation, we state our current procedure which is to attempt to contact the employee first. Additionally, we provide that we may return to the employer a wage report submittal if 90 percent or more of the wage reports in that submittal are unidentified or incorrectly identified. We also explain in revised § 422.120 that we will inform IRS of all wage reports filed with SSA that do not include the required social security numbers. IRS may then assess the employer a penalty for erroneous report filing, pursuant to the authority provided in section 6721 of the Internal Revenue Code.

**Pension Plan Information**

Under section 6057 of the Internal Revenue Code, certain private pension plan administrators must file with the IRS annual reports that identify individuals who separated from plan coverage during the year and still have a right to future retirement benefits. In addition, this provision of the Internal Revenue Code, as amended by section 108(h)(5) of Public Law 103–296, provides for transmitting copies of the annual reports to the Commissioner of Social Security. Then SSA transcribes the reports onto an electronic record for the purpose of maintaining the pension information which SSA must provide to specified individuals, as explained below.

Section 1131 of the Act, as amended by section 108(b)(11) of Public Law 103–296, requires that whenever the Commissioner of Social Security is requested to do so, or whenever he or she makes a finding of fact and a decision as to the entitlement of an individual to social security or medicare benefits under title II of the Act, he or she must transmit to the individual any information, as reported by the employer, regarding any deferred vested benefits under a private pension plan. In these rules, we explain how we administer this provision.

**Final Rules**

On August 30, 1994, we published proposed rules in the **Federal Register** at 59 FR 44674 with a 60-day comment period. We received no comments on these proposed rules. We are, therefore, publishing the proposed rules essentially unchanged as final rules.

**Regulatory Procedures**

*Executive Order 12866*

We have consulted with the Office of Management and Budget (OMB) and determined that these rules do not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they were not subject to OMB review.

*Regulatory Flexibility Act*

We certify that these final rules will not have a significant economic impact on a substantial number of small entities because the procedures stated in these rules are already in effect without having caused a significant impact. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

*Paperwork Reduction Act*

These final rules contain reporting requirements in §§ 422.114 (e) and (f) and 422.120(a). We would normally seek approval of these requirements, under the Paperwork Reduction Act, from OMB. We are not doing so in this situation because we already have clearance from OMB to collect this information using forms SSA–L93, 95 and 97 (OMB No. 0960–0432) and form SSA–2765 (OMB No. 0960–0471).

There is also a reporting requirement in § 422.122, which deals with information on deferred vested pension benefits. As required by section 2(a) of the Paperwork Reduction Act of 1980, 44 U.S.C. 3504(h), we have submitted a copy to OMB for its review of this information collection requirement. Other organizations and individuals desiring to submit comments on these information collection requirements should direct them to the address shown in **ADDRESSES**.

Public reporting burden for this collection of information is estimated to average 30 minutes per response. This includes the time it will take to understand what is needed, gather the necessary facts, and provide the information. We expect that annually there will be 2,280 requesters of pension plan information. Therefore, the annual

reporting burden is expected to be 1,140 hours. If you have any comments or suggestions on this estimate, write to the Social Security Administration, ATTN: Reports Clearance Officer, 1–A–21 Operations Building, Baltimore, MD 21235, and to the Office of Management and Budget, Paperwork Reduction Project (0960–NEW), Washington, DC 20503.

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security-Disability Insurance; 96.002 Social Security-Retirement Insurance; 96.004 Social Security-Survivors Insurance.)

**List of Subjects**

*20 CFR Part 404*

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

*20 CFR Part 422*

Administrative practice and procedure, Freedom of information, Organization and functions (Government agencies), Social security.

Dated: July 27, 1995.

**Shirley Chater,**

*Commissioner of Social Security.*

For the reasons set out in the preamble, we are amending subpart M of part 404 and subpart B of part 422 of 20 CFR chapter III as follows:

## PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950– )

### Subpart M—[Amended]

1. The authority citation for subpart M of part 404 continues to read as follows:

**Authority:** Secs. 205, 210, 218, and 1102 of the Social Security Act; 42 U.S.C. 405, 410, 418, and 1302; sec. 12110 of Pub. L. 99–272, 100 Stat. 287; sec. 9002 of Pub. L. 99–509, 100 Stat. 1970.

2. Section 404.1220 is amended by revising paragraphs (a) and (e) to read as follows:

**§ 404.1220 Identification numbers.**

(a) *State and local government.* When a State submits a modification to its agreement under section 218 of the Act, SSA will assign a special identification number to each political subdivision included in that modification. SSA will inform the State of the special identification number(s) by sending a Form SSA–214–CD, ''Notice of Identifying Number,'' to the State. These numbers are assigned only for State bookkeeping purposes unless coverage is extended to periods prior to 1987. Then, the special number will be assigned and used for reporting the pre-1987 wages to SSA. The special number will also be assigned to an interstate instrumentality if pre-1987 coverage is obtained and SSA will send a Form SSA–214–CD to the interstate instrumentality to notify it of the number assigned.

* * * * *

(e) *Use.* For wages paid prior to 1987, the employer shall show the appropriate SSA-issued identifying number, including any coverage group or payroll record unit number, on records, reports, returns, and claims to report wages, adjustments, and contributions.

## PART 422—ORGANIZATION AND PROCEDURES

### Subpart B—[Amended]

1. The authority citation for subpart B of part 422 is revised to read as follows:

**Authority:** Secs. 205, 232, 1102, 1131, and 1143 of the Social Security Act (42 U.S.C. 405, 432, 1302, 1320b–1, and 1320b–13).

2. Section 422.112 is revised to read as follows:

**§ 422.112 Employer identification numbers.**

(a) *General.* Most employers are required by section 6109 of the Internal Revenue Code and by Internal Revenue Service (IRS) regulations at 26 CFR 31.6011(b)–1 to obtain an employer identification number (EIN) and to include it on wage reports filed with SSA. A sole proprietor who does not pay wages to one or more employees or who is not required to file any pension or excise tax return is not subject to this requirement. To apply for an EIN, employers file Form SS–4, ''Application for Employer Identification Number,'' with the IRS. For the convenience of employers, Form SS–4 is available at all SSA and IRS offices. Household employers, agricultural employers, and domestic corporations which elect social security coverage for employees of foreign subsidiaries who are citizens or residents of the U.S. may be assigned an EIN by IRS without filing an SS–4.

(b) *State and local governments.* To facilitate a State's bookkeeping, SSA will assign a special identification number to each political subdivision included in a modification to the State's agreement under section 218 of the Act. These numbers are not used for reporting purposes unless coverage is extended to periods prior to 1987. Then, the special number will be assigned and used for reporting the pre-1987 wages to SSA. This special number will also be assigned to an interstate instrumentality if pre-1987 coverage is obtained. SSA will inform the appropriate State or interstate instrumentality official of the assigned number by sending a Form SSA–214–CD, ''Notice of Identifying Number.''

3. A new § 422.114 is added to read as follows:

**§ 422.114 Annual wage reporting process.**

(a) *General.* Under the authority of section 232 of the Act, SSA and IRS have entered into an agreement that sets forth the manner by which SSA and IRS will ensure that the processing of employee wage reports is effective and efficient. Under this agreement, employers are instructed by IRS to file annual wage reports with SSA on paper Forms W–2, ''Wage and Tax Statement,'' and Forms W–3, ''Transmittal of Income and Tax Statements,'' or equivalent W–2 and W–3 magnetic media reports. Special versions of these forms for Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands are also filed with SSA. SSA processes all wage reporting forms for updating to SSA's earnings records and IRS tax records, identifies employer reporting errors and untimely filed forms for IRS penalty assessment action, and takes action to correct any reporting errors identified, except as provided in paragraph (c) of this section. SSA also processes Forms W–3c, ''Transmittal of Corrected Income Tax Statements,'' and W–2c, ''Statement of Corrected Income and Tax Amounts'' (and their magnetic media equivalents) that employers are required to file with SSA when certain previous reporting errors are discovered.

(b) *Magnetic media reporting requirements.* Under IRS regulations at 26 CFR 301.6011–2, employers who file 250 or more W–2 wage reports per year must file them on magnetic media in accordance with requirements provided in SSA publications, unless IRS grants the employer a waiver. Basic SSA requirements are set out in SSA's Technical Instruction Bulletin No. 4, ''Magnetic Media Reporting.'' Special filing requirements for U.S. territorial employers are set out in SSA Technical Instruction Bulletins No. 5 (Puerto Rico), No. 6 (Virgin Islands), and No. 7 (Guam and American Samoa). At the end of each year, SSA mails these technical instructions to employers (or third parties who file wage reports on their behalf) for their use in filing wage reports for that year.

(c) *Processing late and incorrect magnetic media wage transmittals.* If an employer's transmittal of magnetic media wage reports is received by SSA after the filing due date, SSA will notify

IRS of the late filing so that IRS can decide whether to assess penalties for late filing, pursuant to section 6721 of the Internal Revenue Code. If reports do not meet SSA processing requirements (unprocessable reports) or are out of balance on critical money amounts, SSA will return them to the employer to correct and resubmit. In addition, beginning with wage reports filed for tax year 1993, if 90 percent or more of an employer's magnetic media wage reports have no social security numbers or incorrect employee names or social security numbers so that SSA is unable to credit their wages to its records, SSA will not attempt to correct the errors, but will instead return the reports to the employer to correct and resubmit (see also § 422.120(b)). An employer must correct and resubmit incorrect and unprocessable magnetic media wage reports to SSA within 45 days from the date of the letter sent with the returned report. Upon request, SSA may grant the employer a 15-day extension of the 45-day period. If an employer does not submit corrected reports to SSA within the 45-day (or, if extended by SSA, 60-day) period, SSA will notify IRS of the late filing so that IRS can decide whether to assess a penalty. If an employer timely resubmits the reports as corrected magnetic media reports, but they are unprocessable or out of balance on W–2 money totals, SSA will return the resubmitted reports for the second and last time for the employer to correct and return to SSA. SSA will enclose with the resubmitted and returned forms a letter informing the employer that he or she must correct and return the reports to SSA within 45 days or be subject to IRS penalties for late filing.

(d) *Paper form reporting requirements.* The format and wage reporting instructions for paper forms are determined jointly by IRS and SSA. Basic instructions on how to complete the forms and file them with SSA are provided in IRS forms materials available to the public. In addition, SSA provides standards for employers (or third parties who file wage reports for them) to follow in producing completed reporting forms from computer software; these standards appear in SSA publication, ''Software Specifications and Edits for Annual Wage Reporting.'' Requests for this publication should be sent to: Social Security Administration, Office of Financial Policy and Operations, Attention: AWR Software Standards Project, P.O. Box 17195, Baltimore, MD 21235.

(e) *Processing late and incorrect paper form reports.* If SSA receives paper form wage reports after the due date, SSA will notify IRS of the late filing so that IRS can decide whether to assess penalties for late filing, pursuant to section 6721 of the Internal Revenue Code. SSA will ask an employer to provide replacement forms for illegible, incomplete, or clearly erroneous paper reporting forms, or will ask the employer to provide information necessary to process the reports without having to resubmit corrected forms. (For wage reports where earnings are reported without a social security number or with an incorrect name or social security number, see § 422.120.) If an employer fails to provide legible, complete, and correct W–2 reports within 45 days, SSA may identify the employers to IRS for assessment of employer reporting penalties.

(f) *Reconciliation of wage reporting errors.* After SSA processes wage reports, it matches them with the information provided by employers to the IRS on Forms 941, ''Employer's Quarterly Federal Tax Return,'' for that tax year. Based upon this match, if the total social security or medicare wages reported to SSA for employees is less than the totals reported to IRS, SSA will write to the employer and request corrected reports or an explanation for the discrepancy. If the total social security or medicare wages reported to SSA for employees is more than the totals reported to IRS, IRS will resolve the difference with the employer. If the employer fails to provide SSA with corrected reports or information that shows the wage reports filed with SSA are correct, SSA will ask IRS to investigate the employer's wage and tax reports to resolve the discrepancy and to assess any appropriate reporting penalties.

**§ 422.115 [Removed]**

4. Section 422.115 is removed.

5. Section 422.120 is revised to read as follows:

**§ 422.120 Earnings reported without a social security number or with an incorrect employee name or social security number.**

(a) *Correcting an earnings report.* If an employer reports an employee's wages to SSA without the employee's social security number or with a different employee name or social security number than shown in SSA's records for him or her, SSA will write to the employee at the address shown on the wage report and request the missing or corrected information. If the wage report does not show the employee's address or shows an incomplete address, SSA will write to the employer and request the missing or corrected employee information. SSA notifies IRS of all wage reports filed without employee social security numbers so that IRS can decide whether to assess penalties for erroneous filing, pursuant to section 6721 of the Internal Revenue Code. If an individual reports self-employment income to IRS without a social security number or with a different name or social security number than shown in SSA's records, SSA will write to the individual and request the missing or corrected information. If the employer, employee, or self-employed individual does not provide the missing or corrected report information in response to SSA's request, the wages or self-employment income cannot be identified and credited to the proper individual's earnings records. In such cases, the information is maintained in a ''Suspense File'' of uncredited earnings. Subsequently, if identifying information is provided to SSA for an individual whose report is recorded in the Suspense File, the wages or self-employment income then may be credited to his or her earnings record.

(b) *Returning incorrect reports.* SSA may return to the filer, unprocessed, an employer's annual wage report submittal if 90 percent or more of the wage reports in that submittal are unidentified or incorrectly identified. In such instances, SSA will advise the filer to return corrected wage reports within 45 days to avoid any possible IRS penalty assessment for failing to file correct reports timely with SSA. (See also § 422.114(c).) Upon request, SSA may grant the employer a 15-day extension of the 45-day period.

5. A new § 422.122 is added to read as follows:

**§ 422.122 Information on deferred vested pension benefits.**

(a) *Claimants for benefits.* Each month, SSA checks the name and social security number of each new claimant for social security benefits or for hospital insurance coverage to see whether the claimant is listed in SSA's electronic pension benefit record. This record contains information received from IRS on individuals for whom private pension plan administrators have reported to IRS, as required by section 6057 of the Internal Revenue Code, as possibly having a right to future retirement benefits under the plan. SSA sends a notice to each new claimant for whom it has pension benefit information, as required by

section 1131 of the Act. If the claimant filed for the lump-sum death payment on the social security account of a relative, SSA sends the claimant the pension information on the deceased individual. In either case, SSA sends the notice after it has made a decision on the claim for benefits. The notice shows the type, payment frequency, and amount of pension benefit, as well as the name and address of the plan administrator as reported to the IRS. This information can then be used by the claimant to claim any pension benefits still due from the pension plan.

(b) *Requesting deferred vested pension benefit information from SSA files.* Section 1131 of the Act also requires SSA to provide available pension benefit information on request. SSA will provide this pension benefit information only to the individual who has the pension coverage (or a legal guardian or parent, in the case of a minor, on the individual's behalf). However, if the individual is deceased, the information may be provided to someone who would be eligible for any underpayment of benefits that might be due the individual under section 204(d) of the Act. All requests for such information must be in writing and should contain the following information: the individual's name, social security number, date of birth, and any information the requestor may have concerning the name of the pension plan involved and the month and year coverage under the plan ended; the name and address of the person to whom the information is to be sent; and the requester's signature under the following statement: ''I am the individual to whom the information applies (or ''I am related to the individual as his or her _____''). I know that if I make any representation which I know is false to obtain information from Social Security records, I could be punished by a fine or imprisonment or both.'' Such requests should be sent to: Social Security Administration, Office of Central Records Operations, P.O. Box 17055, Baltimore, Maryland 21235.

[FR Doc. 95–19501 Filed 8–15–95; 8:45 am]

BILLING CODE 4190–29–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 310

**[Docket No. 77N–334S]**

**RIN 0905–AA06**

## Topical Drug Products for Over-the-Counter Human Use; Products for the Prevention of Swimmer's Ear and for the Drying of Water-Clogged Ears; Partial Stay of Final Rule

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; partial stay of regulation.

**SUMMARY:** The Food and Drug Administration (FDA) is staying part of a final rule that established that any over-the-counter (OTC) topical otic drug products for the prevention of swimmer's ear or for the drying of water-clogged ears is not generally recognized as safe and effective and is misbranded. This action, which is being taken in response to new clinical data and a petition for stay of action, applies only to topical otic drug products for the drying of water-clogged ears. This action is part of the ongoing review of OTC drug products conducted by FDA.

**EFFECTIVE DATE:** June 22, 1995.

**FOR FURTHER INFORMATION CONTACT:** William E. Gilbertson, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5000.

**SUPPLEMENTARY INFORMATION:**

### I. Background

In the **Federal Register** of August 8, 1986 (51 FR 28656), the agency published a final rule establishing conditions under which OTC topical otic drug products are generally recognized as safe and effective. That final rule applied only to earwax removal aids. Products for the prevention of swimmer's ear and for the drying of water-clogged ears were not considered by the agency at that time.

In the **Federal Register** of February 15, 1995 (60 FR 8916), the agency declared that OTC drug products containing active ingredients for the prevention of swimmer's ear or for the drying of water-clogged ears were new drugs under section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(p)). To be marketed, such products would require an application or abbreviated application approved under section 505 of the act (21 U.S.C. 355) and 21 CFR part 314. In the absence of an approved application, products for this use also would be misbranded under section 502 of the act (21 U.S.C. 352). The agency also stated that, in appropriate circumstances, a citizen petition to establish a monograph may be submitted under § 10.30 (21 CFR 10.30) in lieu of an application.

Subsequently, Buc Levitt & Beardsley, on behalf of Del Pharmaceuticals, Inc., filed a citizen petition (Ref. 1) to: (1) Permit the marketing of 95 percent isopropyl alcohol in 5 percent anhydrous glycerin for the drying of water-clogged ears, and (2) remove glycerin, anhydrous glycerin, and isopropyl alcohol from the list of active ingredients in § 310.545(a)(15)(ii) (21 CFR 310.545(a)(15)(ii)). This petition included the results of a double-blinded, 3-arm parallel study to evaluate the efficacy and tolerability of isopropyl alcohol in drying water-clogged ears in 90 adult volunteers. Buc Levitt & Beardsley, on behalf of Del Pharmaceuticals, Inc., also filed a petition (Ref. 2), pursuant to 21 CFR 10.35, requesting a stay of the August 15, 1995, effective date of the final rule to allow time for the agency to review the results of the new study.

The agency reviewed the results of this study and determined that 95 percent isopropyl alcohol in a 5 percent anhydrous glycerin base is safe and effective for OTC use for drying water-clogged ears. The agency's detailed comments and evaluations of this study are on file in the Dockets Management Branch (Ref. 3).

On June 22, 1995, FDA agreed to stay the effective date of the final rule for OTC swimmer's ear and the drying of water-clogged ear drug products (Ref. 4). The agency intends to propose to amend the final monograph for OTC topical otic drug products to include conditions under which drug products for the drying of water-clogged ears are generally recognized as safe and effective and not misbranded.

The agency has determined that the stay of action applies only to topical otic drug products for the drying of water-clogged ears. The new study did not involve the prevention of swimmer's ear. Therefore, the August 15, 1995, effective date for § 310.545(a)(15)(ii) remains in effect for topical otic drug products for the prevention of swimmer's ear. The August 15, 1995, effective date is stayed only for topical otic drug products for the drying of water-clogged ears.

### II. References

The following references are on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

(1) Citizen's Petition, Buc Levitt & Beardsley, filed on behalf of Del Pharmaceuticals, Inc., coded CP1, Docket No. 77N–334S, Dockets Management Branch.

(2) Citizen's Petition to Stay Action, Buc Levitt & Beardsley, filed on behalf of Del Pharmaceuticals, Inc., coded PSA 1, Docket No. 77N–334S, Dockets Management Branch.

(3) Letter from W. E. Gilbertson, FDA, to Buc Levitt & Beardsley, attorneys for Del Pharmaceuticals, Inc., coded LET 12, Docket No. 77N–334S, Dockets Management Branch.

(4) Letter from W. E. Gilbertson, FDA to Buc Levitt & Beardsley, attorneys for Del Pharmaceuticals, Inc., coded LET 13, Docket No. 77N–334S, Dockets Management Branch.

### List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 310 is amended as follows:

## PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

**Authority:** Secs. 201, 301, 501, 502, 503, 505, 506, 507, 512–16, 520, 601(a), 701, 704, 705, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b–360f, 360j, 361(a), 371, 374, 375, 379e; secs. 215, 301, 302(a) 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 242(a), 262, 263b–263n).

### § 310.545 [Partial stay]

2. Section 310.545 *Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses* is stayed in paragraph (a)(15)(ii) only for topical otic drug products for the drying of water-clogged ears.

Dated: August 7, 1995.

**William K. Hubbard,**

*Acting Deputy Commissioner for Policy.*

[FR Doc. 95–20315 Filed 8–15–95; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF JUSTICE

## Drug Enforcement Administration

## 21 CFR Parts 1309 and 1310

**[DEA No. 112C]**

## Implementation of the Domestic Chemical Diversion Control Act of 1993 (PL 103–200); Correction

**AGENCY:** Drug Enforcement Administration (DEA), Justice.

**ACTION:** Correction to final regulations.

**SUMMARY:** This document contains corrections to the final regulations which were published on Thursday, June 22, 1995 (60 FR 32447). The regulations related to the registration, recordkeeping and reporting requirements for manufacturers, distributors, importers and exporters of listed chemicals.

**EFFECTIVE DATE:** August 21, 1995.

**FOR FURTHER INFORMATION CONTACT:** G. Thomas Gitchel, Chief, Liaison and Policy Section, Office of Division Control, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307–7297.

**SUPPLEMENTARY INFORMATION:** The final regulations that are the subject of these corrections implement the Domestic Chemical Diversion Control Act of 1993 (PL 103–200) (DCDCA). The regulations amend Title 21, Code of Federal Regulations, to add a new Part 1309 and revise certain sections in Parts 1310, 1313 and 1316. As published, the final regulations contain errors that could cause confusion in the regulated industry.

Accordingly, the publication on June 22, 1995 of the final regulations to implement the DCDCA, which were the subject of **Federal Register** Document 95–14978, is corrected as follows:

### § 1309.02 [Corrected]

1. On page 32455, in the first column, in section 1309.02, paragraphs (f) through (h) are redesignated as paragraphs (e) through (g).

### § 1310.04 [Corrected]

2. On page 32461, in the first column at the top, in section 1310.04, paragraphs (f)(1)(xxii) and (f)(1)(xxiii) are redesignated as paragraphs (f)(1)(xxi) and (f)(1)(xxii).

Dated: July 28, 1995.

**Stephen H. Greene,**

*Deputy Administrator, Drug Enforcement Administration.*

[FR Doc. 95–20108 Filed 8–15–95; 8:45 am]

BILLING CODE 4410–09–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

## Office of the Assistant Secretary for Housing-Federal Housing Commissioner

## 24 CFR Part 1710

**[Docket No. FR–3925–N–01]**

## Interstate Land Sales Registration Program—Notice of Order of Withdrawal of State Certification for State of Georgia

**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

**ACTION:** Notice of Order of Withdrawal of State Certification for Georgia.

**SUMMARY:** A special feature of the Interstate Land Sales Full Disclosure Act, permits subdivisions to be registered under the Act through a State Certification Program. Due to changes in Georgia law, the State of Georgia, which had been one of five certified States, has withdrawn from the certification program, effective July 1, 1995.

**DATES:** In accordance with HUD regulations, HUD's acceptance of all Georgia Certified Registrations expires 90 days after the date of publication in the **Federal Register**. Unless a registrant submits a modified registration in accordance with this Notice or requests a voluntary suspension of its registration, its registration will be terminated at the end of the 90-day period.

**FOR FURTHER INFORMATION CONTACT:** Maurice D. Gulledge, Acting Director, Interstate Land Sales Registration Division, Office of Housing, Room 9160, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–0502, ext. 2073 or (202) 708–4594 (TDD).

**SUPPLEMENTARY INFORMATION:** The Secretary may certify a State disclosure equivalency pursuant to subpart C of 24 CFR part 1710. Five States, Arizona, California, Florida, Georgia and Minnesota, have been participating in HUD's certification program. Georgia is the first state to withdraw from this certification program. The benefit of certification is that a developer operating in compliance with a certified state's law does not have to file a comprehensive, duplicate registration with HUD. Thus, once the Secretary has certified a State's land sales program, the developer of a subdivision located in that state may satisfy the Federal registration requirements of the

Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1701 *et seq.*, by filing with HUD a certified copy of the state's disclosure report.

Under 24 CFR 1710.508(a), HUD's acceptance of Georgia's Certified Registration will expire 90 days after the date of this notice, unless a Georgia registrant files a registration request with HUD by that date. Under the Act, unless subdivision sales are exempt by statute or regulation, the subdivision must be effectively registered with HUD before the developer may offer to sell or lease any lots.

HUD will try to minimize the burden on Georgia developers by accepting much of the former Georgia State registration. A Georgia registrant previously registered under the State Certification Program that wants to maintain its Federal registration, must submit, within 90 days after this Notice, a modified Statement of Record that includes (1) a current Property Report and (2) an Affirmation pursuant to the instructions found at 24 CFR § 17120.219. There will be no fees required for these changes. The Property Report must be modified to include the following changes:

1. A revised cover page pursuant to the instructions found at 24 CFR 1710.105;

2. A revised Agent, Certification and Cancellation page pursuant to instructions found at 24 CFR 1710.118;

3. Deletion of the Supplemental Receipt for Georgia purchasers; and,

4. Deletion of any other information that is no longer applicable due to changes in Georgia law.

Once these above mentioned materials are accepted by the Department, a new effective date will be issued for the registration. Developers are reminded that within 30 days of each anniversary date of the new effective date, the registrant must submit to the Department an Annual Report of Activity accompanied by the prescribed fee (see 24 CFR 1710.310). Within 120 days after the close of the developer's fiscal year, the developer shall submit financial statements meeting the standards of 24 CFR 1710.212(c) to the Department.

In addition, any additional changes in material fact must be made in conformance with the Interstate Land Sales Full Disclosure Act and its implementing Regulations. For purposes of these filings, Georgia developers need only update the particular sections of the Property Report and supply any required supporting documentation.

Charles Clark, Georgia Real Estate Commissioner, sent a letter, dated May 8, 1995, to all interested parties, notifying them of changes in Georgia's regulation of land sales development, effective July 1, 1995, pursuant to Georgia House Bills 621 and 622. This Notice of Order of Withdrawal of State Certification for the State of Georgia will be sent to the same parties.

The above constitutes the Order of Withdrawal referred to in 24 CFR 1710.508(a) with respect to the State of Georgia's certification under the Interstate Land Sales Full Disclosure Act.

**Authority:** 15 U.S.C. 1708.

Dated: August 7, 1995.

**Nicolas P. Retsinas,**

*Assistant Secretary for Housing-Federal Housing Commissioner.*

[FR Doc. 95–20091 Filed 8–15–95; 8:45 am]

BILLING CODE 4210–27–M

## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 948

## West Virginia Regulatory Program

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

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** OSM is approving an amendment to the West Virginia permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment concerns West Virginia's regulations for the design and construction of durable rock fills. The amendment will revise the West Virginia program to be consistent with SMCRA and the Federal regulations.

**EFFECTIVE DATE:** August 16, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mr. James C. Blankenship Jr., Director, Charleston Field Office, Office of Mining Reclamation and Enforcement, 1027 Virginia Street East, Charleston, West Virginia 25301, Telephone: (304) 347–7158.

**SUPPLEMENTARY INFORMATION:**



### I. Background on the West Virginia Program

SMCRA was passed in 1977 to address environmental and safety problems associated with coal mining. Under SMCRA, OSM works with States to ensure that coal mines are operated in a manner that protects citizens and the environment during mining, that the land is restored to beneficial use following mining, and that the effects of past mining at abandoned coal mines are mitigated.

Many coal-producing States, including West Virginia, have sought and obtained approval from the Secretary of the Interior to carry out SMCRA's requirements within their borders. In becoming the primary enforcers of SMCRA, these ''primacy'' States accept a shared responsibility with OSM to achieve the goals of the Act. Such States join with OSM in a shared commitment to the protection of citizens—our primary customers—from abusive mining practices, to be responsive to their concerns, and to allow them full access to information needed to evaluate the effects of mining on their health, safety, general welfare, and property. This commitment also recognizes the need for clear, fair, and consistently applied policies that are not unnecessarily burdensome to the coal industry—producers of an important source of our Nation's energy.

Under SMCRA, OSM sets minimum regulatory and reclamation standards. Each primacy State ensures that coal mines are operated and reclaimed in accordance with the standards in its approved State program. The States serve as the front-line authorities for implementation and enforcement of SMCRA, while OSM maintains a State performance evaluation role and provides funding and technical assistance to States to carry out their approved programs. OSM also is responsible for taking direct enforcement action in a primacy State, if needed, to protect the public in cases of imminent harm or, following appropriate notice to the State, when a State acts in an arbitrary and capricious manner in not taking needed enforcement actions required under its approved regulatory program.

Currently there are 24 primacy states that administer and enforce regulatory programs under SMCRA. These states may amend their programs, with OSM approval, at any time so long as they remain no less effective than Federal regulatory requirements. In addition, whenever SMCRA or implementing Federal regulations are revised, OSM is required to notify the States of the changes so that they can revise their programs accordingly to remain no less effective than the Federal requirements.

A major goal of SMCRA is to ensure adequate reclamation of all areas disturbed by surface coal mining.

During reclamation, the removal of coal is followed by backfilling the mine pit with spoil to return the land to its approximate original contour. There is usually more spoil than is needed for backfilling because solid rock that was removed when the mine pit was excavated increases in volume. This excess rock is typically disposed of as fills in valleys adjacent to the mine pit. A ''durable rock fill'' is an excess spoil fill composed of at least 80 percent by volume of sandstone, limestone, or other rocks that do not slake in water. It is usually constructed in a single lift or layer and has an underdrain system that is created by the natural segregation of rock and soil as it is dumped and rolls downslope.

Background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the January 21, 1981, **Federal Register** (46 FR 5915). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

## II. Submission of the Amendment

In a series of three letters dated June 28, 1993, and July 30, 1993 (Administrative Record Nos. WV–888, WV–889 and WV–893), the West Virginia Division of Environmental Protection (WVDEP) submitted an amendment to its approved permanent regulatory program that included numerous revisions to the West Virginia Surface Coal Mining and Reclamation Act (referred to herein as ''the Act'', WVSCMRA § 22A–3–1 *et seq.*) and the West Virginia Surface Mining Reclamation Regulations (CSR § 38–2–1 *et seq.*). OSM grouped the proposed revisions that concern durable rock fills into one amendment which is the subject of this notice. The main provisions of the amendment will:

- Require that certification forms for durable rock fills be accompanied by statements attesting to the percentage of non-durable material, foundation preparation, prohibited materials and sediment control measures.
- Establish criteria for testing spoil material to determine if it qualifies as durable rock.
- Require surface water runoff from areas above and adjacent to the fill to be diverted into channels designed and constructed to ensure stability of the fill, control erosion, and minimize water infiltration.
- Require additional sediment control measures if construction and operation of the fill results in significant non-compliance with effluent limits or water quality standards.
- Prohibit certain materials from being placed in durable rock fills.

OSM announced receipt of the proposed amendment in the August 12, 1993, **Federal Register** (58 FR 42903) and invited public comment on its adequacy. Following this initial comment period, WVDEP revised the amendment on September 1, 1994, and May 16, 1995 (Administrative Record Nos. WV–937, and WV–979B). OSM reopened the comment period on August 31, 1994 (59 FR 44593), September 29, 1994 (59 FR 49619), and July 5, 1995 (60 FR 34934), and held a public hearing in Charleston, West Virginia on September 7, 1993, and a public meeting on October 27, 1994.

## III. Director's Findings

### *A. CSR § 38–2–14.14(b)(4) Certification of Durable Rock Fills*

West Virginia proposes to add a provision requiring that certification forms, submitted to WVDEP by registered professional engineers overseeing the construction of durable rock fills, be accompanied by: (1) a statement attesting that the fill contains no more than 20 percent non-durable material, (2) a statement attesting that the foundation is proceeding in accordance with the design plans, (3) a statement that the prohibited materials are not being placed, deposited, or disposed of into the fill areas, and (4) a statement that sediment control measures are constructed and being maintained in accordance with the approved design plans and the terms and conditions of the permit.

Under 30 CFR 816/817.73(c), the Federal rules require a qualified registered engineer to certify that the design of a durable rock fill will ensure the stability of the fill and meet all other applicable requirements. Furthermore, 30 CFR 816/817.71(h) requires inspections at least quarterly throughout construction and during critical construction periods. Following each inspection, the qualified registered professional engineer must submit certified reports to the regulatory authority attesting that the fill has been constructed and maintained in accordance with the approved plan and program requirements. The report must include appearances of instability, structural weakness, and other hazardous conditions. West Virginia's program already contains these requirements. Other than described above, the Federal rules do not specify that the certified report include specific statements by the engineer. Since West Virginia proposes to require a more detailed certification, the Director finds that subsection 14.14(b)(4) is consistent with the Federal rules and is hereby approved.

### *B. CSR § 38–2–14.14(g)(1)(B) Testing of Fill Materials*

State and Federal regulations for durable rock fills require that no more than 20 percent of the volume of the fill may be spoil material that is not durable rock as determined by tests performed by a registered engineer and approved by the regulatory authority. Durable rock is material that will not slake in water and will not degrade to soil material. West Virginia proposes to add a provision at subsection 14.14(g)(1)(B) that defines soil material, as used in the definition of durable rock, as material of which at least 50 percent is finer than 0.074 millimeters, which exhibits plasticity, and which meets the criteria for group symbol ML, CL, OL, MH, CH, or OH, as determined by the Unified Soil Classification System (ASTM D–2487). In support of this amendment, the WVDEP submitted to OSM a durable rock testing protocol which the State would implement in applying its proposed regulations (Administrative Record No. WV–932). Under the protocol, rock is first checked for durability by use of standard slake durability tests. If a rock slakes in water, it is defined as non-durable, regardless of whether or not it degrades to soil material. A rock which passes the slake durability test may be further tested under subsection 14.14(g)(1)(B), on a case-by-case basis, to determine whether it would potentially degrade to soil particles exhibiting plasticity and particle size below the specified limit.

The Federal rules do not define soil material in the context of durable rock fills or provide a testing protocol to determine if rock degrades to soil material. Since West Virginia's protocol adds a screening test for durable rock not specifically required under the Federal regulations, the Director finds that the proposed rule when applied in conjunction with the State's protocol is no less effective than 30 CFR 816/817.73(b) and is therefore approved.

### *C. CSR § 38–2–14.14(g)(8) Drainage Control*

WVDEP is proposing to revise subsection 14.14(g)(8) to read as follows:

> Surface water runoff from areas above and adjacent to the fill shall be diverted into properly designed and constructed stabilized diversion channels which have been designed, using best current technology, to safely pass the peak runoff from a 100-year, 24-hour precipitation event. The channel

shall be designed and constructed to ensure stability of the fill, control erosion, and minimize water infiltration into the fill.

The Federal rules at 30 CFR 816/817.73(f) prohibit surface water runoff from areas adjacent to and above the fill to flow onto the fill and require water to be diverted into stabilized diversion channels designed to safely pass the runoff from a 100-year, 6-hour precipitation event. The Federal rule is more restrictive than the proposed rule with regard to the location of surface drainage diversion channels relative to the body of the fill. Under 30 CFR 816/817.73(f), drainage diversion channels must divert surface runoff from areas adjacent to and above the fill away from the fill. Such channels must be located either completely off of the fill or at the interface of the natural slope and the fill. West Virginia's proposed amendment would allow drainage diversion channels to be located anywhere, including on the fill itself, provided that the channels are designed and constructed to ensure the stability of the fill, control erosion, and minimize water infiltration into the fill.

The Federal requirement to divert runoff water away from durable rock fills was adopted on March 13, 1979, as permanent program rule 30 CFR 816.74(d). While there were no specific comments pertaining to diversions of water away from durable rock fills, commenters stated, with regard to head-of-hollow fills, that stabilized diversion channels ''off of the fill'' created an unnecessary disturbance and that channels on the fill could protect that portion of the fill from erosion. In the preamble, OSM justified the requirement by stating that ''Diversion of water away from the fill surface is considered sound engineering practice'' and cited several engineering references. OSM concluded that, while more area will be disturbed where diversions are placed off of the fill area, ''less environmental harm will result from retaining the requirement to build diversions off the fill structures.'' (44 FR 15206).

The intent of the Federal rule prohibiting runoff diversion *onto* the fill, as explained in the preamble, was to prevent water erosion of fill material and infiltration into the fill. West Virginia's proposed rule, while not restricting the location of surface drainage diversion channels, specifically requires control of erosion and minimization of water infiltration, thus preserving the intent of the corresponding Federal regulation. The proposed rule prohibits the diversion of water into or through the fill because diversions must be designed and constructed to minimize water infiltration.

An OSM ad hoc technical committee on excess spoil disposal considered the proposed amendment for technical sufficiency. The committee concluded that appropriate surface drainage control for durable rock fills can be accomplished under the proposed West Virginia amendment. The amendment's proposed language and the other excess spoil provisions of the West Virginia regulatory program provide clear authority for WVDEP to require permit applications containing demonstrations and technical analyses addressing adequate hydraulic design—including channel capacity, erosion control, and minimizing infiltration into the fill mass. The committee also considered that a proper channel design could overcome potential hydraulic problems from intersecting flows at channel and terrace junctions, changes in channel gradient, or anywhere hydraulic jump and/or overtopping would be likely to occur. The committee recommended to WVDEP that a permittee show designs and specifications, based upon maximum design velocities, which would encompass riprap sizing, gradation, bedding, filters, and all channel material placement. The design and specification should also address how infiltration will be minimized (e.g., through channel liners, etc.) and assure that runoff adjacent to the channel can enter the drainage diversion system with a minimum of erosion. The committee underscored the importance that runoff not be allowed over the face of the fill in locations other than the diversion channel. Finally, the committee provided WVDEP a series of recommendations on key areas of the durable rock fill drainage control system that should be inspected during and after fill construction (Administrative Record No. WV–1008).

In the absence of any clear congressional intent, OSM evaluated this amendment by comparing the advantages and disadvantages of locating surface water diversions off of-and-on fills from a public safety and environmental standpoint. The perimeter or groin channels required under the Federal rules would likely result in a larger disturbed area, greater instability of the natural slope adjacent to the fill and require more long-term maintenance when compared to surface water diversions located on the fill itself. However, surface diversions located off the fill are less likely to result in erosion and in surface water infiltration to the fill mass than are diversions located on the fill.

Weighing the advantages and shortcomings of both methods of diversion construction, the Director concludes that neither method is clearly more environmentally preferable than the other. Therefore, the Director finds proposed subsection 14.14(g)(8) to be no less effective than 30 CFR 816/817.73(f) and he is approving it.

*D. CSR § 38–2–14.14(g)(11) Sediment Control*

WVDEP proposes to add a new provision which states that additional storage capacity or sediment control measures may be required through permit revision if sediment removal during operation and construction of the fill is found to be deficient to the point that significant non-compliance with applicable effluent limits and water quality standards results. In support of this amendment WVDEP stated that the term ''significant'' refers to the NPDES permit and enforcement thereof and that any failure to meet effluent limits constitutes a violation and a notice of non-compliance is issued (Administrative Record No. WV–934). The proposed subsection has no Federal counterpart. However, it is consistent with 30 CFR 816/817.71(a)(1) which requires that excess spoil be placed in designated disposal areas in a manner to minimize the adverse affects of leachate and surface water runoff from the fill on surface and ground waters. The Director is hereby approving subsection 14.14(g)(11).

*E. CSR § 38–2–14.14(g)(12) Prohibited Materials*

WVDEP proposes to add a provision which sets forth the materials that can not be placed, deposited, or disposed of in a durable rock fill or durable rock fill area. These prohibited materials include surface soils except for surface soils used to establish vegetation or surface soils placed in the fill if accounted for in design and construction as nondurable materials and not placed in critical zones. Other prohibited materials are mud, silt, or sediment; vegetation or organic materials; non-coal wastes; and coal refuse. There is no similar listing of materials prohibited from placement in durable rock fills in the Federal rules. However, 30 CFR 816/817.73(b) does require that at least 80 percent of the material in a fill be non-acid and non-toxic-forming rock; 30 CFR 816/817.71(e) requires the removal of all vegetation and organic materials from the disposal area prior to placement of excess spoil; and 30 CFR 816/817.89(b) requires the final disposal and noncoal waste in a designated disposal site in the permit area or a

State approved solid waste disposal area. Furthermore, 30 CFR 816/817.71(i) provides for the disposal of coal mine waste in excess spoil fills if approved by the regulatory authority and certain conditions are met. Since West Virginia's proposal does not allow placement in durable rock fills of any material that is prohibited by the Federal regulations, the Director finds that subsection 14.14(g)(12) is no less effective than the Federal rules and he is hereby approving it.

## IV. Summary and Disposition of Comments

*Public Comments*

The Director solicited public comments and provided an opportunity for public hearings on the proposed amendment. A public hearing was held on September 7, 1993, and a public meeting was held on October 27, 1994 (Administrative Records Nos. WV–906 and WV–958). Comments on durable rock fills were received from GAI Consultants, Inc; Hobet Mining; Terra Engineers, Inc.; West Virginia Mining and Reclamation Association; West Virginia Coal Association; West Virginia Highlands Conservancy; Pine Ridge Coal Corporation; Burko Resources and Eastern Association Coal Corporation.

All comments received pertain to the drainage control provisions in CSR § 38–2–14.14(g)(8) as first submitted to OSM on July 30, 1993, and revised on September 1, 1994 (Administrative Record Nos. WV–893 and WV–937). In the July 30, 1993, submission, WVDEP proposed to delete the existing requirement that runoff from areas above and adjacent to durable rock fills be prohibited from flowing onto the fill and to add new language requiring diversions to be designed and constructed to pass runoff ''around and through the fill.'' This language was revised on September 1, 1994, to read ''around or through the fill.'' OSM objected to the design and construction of durable rock fills where surface water runoff would be allowed to be diverted ''through the fill''. However, all public comments received were in support of this provision. OSM, State and industry representatives met and developed new language tentatively acceptable to all parties. This was submitted to OSM on May 16, 1995 (Administrative Record No. WV–979B). When OSM reopened the public comment period on July 5, 1995, only one comment was received on proposed CSR § 38–2–14.14(g)(8) which had been revised to allow drainage diversion channels to be located anywhere, including on the fill itself, so long as the channels were designed and constructed to ensure the stability of the fill, control erosion, and minimize water infiltration into the fill. In the following section, OSM is responding to all comments received, including those submitted in response to WVDEP's July 30, 1993, and September 1, 1994, proposals, even though these proposals were subsequently revised on May 16, 1995.

*History of durable rock performance:* Commenters reported that numerous (up to about 4,000) excess spoil fills (including durable rock fills) have been constructed in West Virginia over the past 20 to 25 years. Many of these are durable rock fills. According to commenters, there are no documented massive or structural failures among the fills. Commenters reported that problems identified have been minor and not unique to subsurface or center drains. The results of a 1994 WVDEP survey of fills revealed no substantive difference in structural integrity among fills with different runoff diversion systems. One commenter's review of recent (1990–94) citizens' complaints and WVDEP and OSM inspection reports (July 1993–June 1994) supported the apparent lack of failures or significant problems with existing fills and fills under construction in the state.

In response, OSM notes that the similarity of earlier excess spoil disposal practices in West Virginia to the present is uncertain. The oldest fills in West Virginia are much smaller than many of those currently under construction, are primarily of the lift type and are influenced by smaller drainage areas. The more recent fills of up to 100,000,000 cubic yards have yet to stand the test of time, are constructed by end-dumping methods, and would typically experience significant runoff discharges from larger drainage areas. Moreover, durable rock fills may experience a greater runoff/sediment influx due to the larger upslope disturbed area found at modern-day mining operations. The WVDEP survey, and the review of inspection records and citizens' complaints would not necessarily reveal long-term subsurface problems. OSM is unaware of any attempts to revisit sites of durable rock fills that are beyond bond release. Therefore, the comparisons drawn by commenters between earlier head-of-hollow fills and present-day durable rock fills have limited value.

Commenters cited evidence for the efficacy and safety of drainage systems on fills based on their successful use on abandoned-mine-land (AML) sites. A direct comparison of diversions on AML coal refuse projects and active excess spoil disposal areas is not possible. AML project drainage control design options are very limited since fills are in-place and site conditions may not be suitable for diversion in natural ground. Excess spoil disposal designs provide greater flexibility since the fill location can be selected and the fill material has not yet been placed. Surface water diversions on AML projects often involve linings of concrete, grouted rip rap, or other less pervious material which minimize surface drainage infiltration into the fill mass. Rarely do mine operators line channels in a similar manner.

*Future stability of durable rock fills:* One commenter expressed hope that ''* * * future generations will put these fills to good use and will maintain surface drainage.'' The objective of the Federal and State rules on excess spoil design and construction is to promote permanent stability for the long term protection of the environment, life, and safety of future generations. The question of permanent stability is a fundamental issue affecting OSM's concerns about subsurface and center drains. Destabilizing subsurface processes such as piping, plugging, and pore-water pressure build-up can take place over long periods of time without being expressed on the surface. A key aspect underscoring this concern is the absence of any fill maintenance following bond release.

Some commenters contended that problems with fill stability are likely to appear during, and are limited to, the period of construction. They claimed that, during construction, fill and foundation-soil consolidation is incomplete; much of the non-durable rock will already have degraded; the outslope is at the angle of repose (i.e. not yet graded to a more stable configuration); and, sediment production is greater than it will be when revegetation becomes established. Problems stemming from inadequate drainage and a rising phreatic surface or free-water elevation will also occur soon enough to be detected and remediated. One commenter also pointed out that future fill failures, if and when they take place, will be limited to slumping of fill material into a more stable configuration. The commenter said that, under steep-slope and poor foundation conditions, flow slides would not occur, since one should not expect liquefaction in drained rock-fill material.

Presently, there is very little use and maintenance of finished excess spoil fills. The postmining land use for approximately 95 per cent of the fills is forest. Future utilization of land downstream of some fills in the form of housing developments, farming, park

grounds, industrial facilities, etc. is possible. However, there is no reason to assume that those using the land will have the knowledge or resources available to address problems that may develop or to perform needed maintenance. What maintenance will occur will partly depend on what will be observed. Problems with surface drainage systems are readily noticeable. This is not true for subsurface drains. Since OSM cannot assume that future generations will assume the liability for diversion maintenance, conservative performance standards maximizing long-term diversion effectiveness are necessary.

There are no guarantees that most fill problems will occur during construction. The benefits of fill/foundation consolidation and regrading can be counteracted by increases in the fill-mass weight (by addition of fill material or moisture during construction); or addition of moisture after bond release. The claim that degradation will be limited to the time of durable-rock-fill construction lacks supporting data. Forces working within the fill during consolidation, and action of water within the fill, can further degrade the fill following construction. Sediment entering internal drainage systems may not be adequately controlled by the amount of vegetation on the fill or mine-site surface following bond release. Sites of natural landslides are commonly considered to be prone to additional slides. The same can be said for initial slumps or slides on a constructed fill. Also, even limited or local slumps could result in more than limited consequences, depending on the concurrent usage of the site. Finally, whether or not massive flow slides will occur will depend on moisture conditions in the fill and long-term strength characteristics of the material. It can take a long time for steady-state seepage levels to occur. Thus, the effects of piping, plugging, and rising pore-water pressure may occur well beyond bond release.

*Perimeter drainage channels:* Several commenters in support of center and subsurface drains for surface runoff control emphasized disadvantages associated with perimeter diversion ditches. Some commenters cited the effects of geologic degradation (weathering and erosion of materials in the channels, filling of the channels from landslides or slumps from adjacent steep slopes); seepage of surface water into the fill mass through underlying colluvium; and, the difficulty in achieving effective positive drainage in very long diversion ditches. Some commenters stated that OSM Directive TSR–6 (Transmittal Number 400, November 10, 1987), which allows perimeter ditches to be in contact with the fill mass, enhances differential settlement and erosion.

One commenter noted the annual maintenance requirements of perimeter ditches around coal refuse embankments as justification for channels on the fill mass. Another compared fills constructed with perimeter drains to those using center drains, claiming that the former fill type experiences more problems with erosion and water penetration into the fill mass.

OSM concurs that perimeter ditches—and other kinds of drainage diversion ditches—can and, in fact, do have maintenance problems. However, the problems are commonly the result of inadequate site investigation, design, or construction and not necessarily an inherent condition of all surface drains. Proper investigation of the proposed diversion location, careful planning and design, along with careful construction should alleviate many problems commonly encountered in the field. As for problems that may not be avoided over the long term (geologic degradation), surface drains still have an important advantage over subsurface drains since problems can be easily detected as they develop. Where a site investigation predicts the establishment of an effective surface drainage system to be prohibitively difficult, rejection of the site may be the best course of action.

OSM Directive TSR–6 permits contact between perimeter drainage channels and fill material. While there is some potential for differential settlement beneath interface channels, OSM does not agree that the risk of this happening is greater than for center drains. The thickness of fill material below the center channel is much greater, and assuming the fill material behaves homogeneously during consolidation, this location is more susceptible to differential settlement than interface diversion channels. Furthermore, center-channel failure could result in more erosion of the fill simply because there is more fill above natural ground at this location than beneath the interface channel. These concerns highlight the importance of design and construction methods that ensure long-term channel stability and mitigate erosion and water penetration into the fill mass.

*Center drainage channels:* Two commenters claimed that significant amounts of seepage into the fill mass should not occur from surface water flowing in center drains. One commenter claimed to have observed standing water in center drains as evidence that infiltration was not occurring. Another maintained that, barring barriers to free drainage, infiltration will always be less than the drainage capacity in a dumped rock fill, especially due to the compaction of near-surface materials during construction. The latter commenter further suggested that ''. . . infiltration from the ditch could be minimized by means of a compacted zone of well-graded rockfill in which the voids are completely choked with rock fines.''

OSM's position, in approval of this amendment, is that center drains are conditionally acceptable. It must be pointed out that barriers to free drainage in a constructed channel are difficult to avoid. Because durable rockfill construction is typified by less-permeable fine material in the upper reaches of the fill mass, OSM agrees that a potentially workable method for minimizing seepage from a center channel is the construction of a compacted zone of well-graded rockfill.

*Subsurface drainage systems:* One commenter cited the results of his flow-through model study in support of the State's original proposal for surface drainage through fills which was subsequently withdrawn from further consideration. The commenter concluded that the laboratory bench-scale test proved that a durable rock fill is capable of internally passing 24-hour, 100-year storm events. The commenter stated that a draw-down of water level occurred in the model as flow approached the toe of the simulated fill. The commenter also pointed out that flow through rock voids seldom exceeds three feet per second but can reach many times this value in surface perimeter ditches. Some commenters have argued against the potential occurrence of plugging in the subsurface drains by claiming that the end-dumping method produces a graded fill that effectively prevents migration of fines. One commenter emphasized the general absence of evidence for plugging, stating that an autopsy of the simulated durable rock fill found only rock dust covering the rock particles and/or a minor accumulation of fines in the bottom of the fill. The commenter stated that there was no evidence that ''* * * fines tended to migrate through the fill.'' Finally, the commenter suggested that fills with internal drains may have the potential effect of flood mitigation via runoff attenuation. The commenter stated that the model outflow was ''* * * a lot less than the peak into it.''

The commenter also responded to OSM's (September–December 1993) reviews of the model study. The reviews

concentrated on comparing the model with actual durable rock fills constructed in the field. The commenter asserted that the model was sufficiently representative of real-life fills with respect to its materials, void ratio, particle gradation, and scale. The commenter also disputed the OSM contention that durable rock fills have yet to be tested by a 24-hour, 100-year storm event. The commenter stated that the 1977 flood ''* * * generally recognized as a 100-year event over much of Southern West Virginia;'' the 1985 flood over eastern and central West Virginia ''* * * considered to be 500+ year event;'' and, localized storms ''* * * equal to or greater than the 100 year 24 hour storm.''

Again, OSM's position on routing surface runoff through subsurface drains is based on the potential, long-term and not-readily-observed effects of piping and plugging. Furthermore, it would appear that the rock dust and minor sediment accumulation in the simulated fill could not have occurred without migration of fine material. The model may not represent actual conditions with respect to fine material. The position that the end-dumping method prevents fines migration by producing a graded fill is conceptually feasible, but scientifically undocumented.

The comments pertaining to precipitation events in West Virginia are at variance with available data. Construction of the earliest West Virginia durable-rock fills commenced around 1980. Hourly data recorded at stations throughout West Virginia since 1980 do not show a 100-year, 24-hour event nor multiples of such events. Also, the suggestion that routing surface runoff into subsurface drains may have a mitigating effect on floods should create as much concern as it might portend a potential advantage. Retained water increases the weight of a fill mass, potentially increasing the driving force for sliding, and may engender sufficient pore water pressures to reduce the fill's resistance to failure.

*Previous studies:* Some comments included references to literature that the commenter believed supports routing surface runoff through subsurface drains. These include: the U.S. Department of Agriculture Soil Conservation Service Engineering Handbook; WVDEP Mining and Reclamation Handbook; OSM Engineering and Design Manual for Disposal of Excess Spoil (1983); recommendations of the Durable Rockfill Committee (1983); 1981 National Academy of Science report; Department of Energy study by Skelly and Loy on excess-spoil disposal in the watersheds of Buffalo Creek, Logan County; several issues of Green Lands Magazine; and ''Embankment-Dam Engineering'' by Casagrande in 1973.

The commenters also reference a 1984 OSM drilling project investigating fills placed in greater than four-foot lifts that reported high calculated factors of safety (2.2–2.5) for these types of fills. Another OSM project mentioned by a commenter is the Crown City Mining Company experimental practice of single-lift fills with structural faces in Gallia and Lawrence Counties, Ohio. According to the commenter, this was reported to be a ''short term success.''

OSM has evaluated the above references and concluded that they do not specifically promote or support the diversion of surface runoff into subsurface drainage systems in durable rock fills. The fills that were drilled by OSM in 1984 were placed in multiple lifts—a practice not comparable to end-dumping methods being considered in this rulemaking. The results of the experimental practice in Ohio are not applicable because the fills involved placement of durable rock in a non-steep-slope area and there was no routing of runoff through the fill.

*Design flexibility:* Several proponents of routing surface runoff into subsurface and center drains have contended that a mine operator needs regulatory flexibility in order to design durable-rock-fill drainage systems appropriate to site-specific conditions. A commenter suggested that the requirement for fills to be designed by a professional engineer experienced with earth and rock fills should be a sufficient safeguard. Commenters said that detailed requirements, or the insistence that a specified ''recipe'' be followed, result in unnecessary costs to the mining industry and an impediment to the development of design improvements.

In response, OSM notes that the only restriction at issue concerns the use of subsurface drains for surface runoff control in durable-rock excess spoil fills. Proposed CSR § 38–2–14.14(g)(8) requires that the fill be designed and constructed with diversion channels that minimize surface water infiltration into the fill. Therefore, the diversion of surface runoff into subsurface drains is prohibited. OSM finds that if this condition is met the proposed rule allows adequate flexibility for the engineer to design a drainage control system that fits site-specific conditions.

*Federal Agency Comments*

Pursuant to section 503(b)(1) of SMCRA and 30 CFR 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the West Virginia program on four different occasions (Administrative Record Nos. WV–891, WV–897, WV–936, and WV–942). Comments were received from the U.S. Bureau of Land Management, the Mine Safety and Health Administration, the U.S. Bureau of Mines, and the U.S. Army Corps of Engineers. These Federal agencies acknowledged receipt of the amendment, but generally had no comment or acknowledged that the revisions were satisfactory.

*Environmental Protection Agency (EPA)*

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

On July 2 and August 3, 1993 (Administrative Record Nos. WV–892 and WV–896), OSM solicited EPA's concurrence with the proposed amendment. On October 17, 1994 (Administrative Record No. WV–949), EPA gave its written concurrence with a condition based on subsection 5.4(b)(4) of West Virginia's regulations. This condition does not pertain to durable rock fills which are the subject of this rulemaking.

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from EPA on four different occasions in 1993 and 1994 (Administrative Record Nos. WV–891, WV–897, WV–936, and WV–942). No comments were received concerning durable rock fills.

## V. Director's Decision

Based on the above findings, the Director is approving the proposed amendment pertaining to durable rock fills as submitted by West Virginia on July 30, 1993, and revised on September 1, 1994 and May 16, 1995.

The Federal regulations at 30 CFR Part 948 codifying decisions concerning the West Virginia program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

## VI. Procedural Determinations

*Executive Order 12866*

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

*Executive Order 12778*

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

*National Environmental Policy Act*

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

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

*Regulatory Flexibility Act*

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

**List of Subjects in 30 CFR Part 948**

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 10, 1995.

**Michael K. Robinson,**

*Acting Regional Director, Appalachian Regional Coordinating Center.*

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

## PART 948—WEST VIRGINIA

1. The authority citation for Part 948 continues to read as follows:

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

2. Section 948.15 is amended by adding paragraph (n) to read:

**§ 948.15 Approval of regulatory program amendments.**

* * * * *

(n) The sections of the amendment submitted by West Virginia to OSM by letter dated July 30, 1993, as revised by submittals dated September 1, 1994, and May 16, 1995, pertaining to durable rock fills are approved effective August 16, 1995.

[FR Doc. 95–20272 Filed 8–15–95; 8:45 am]

BILLING CODE 4310–05–M

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

[PP 4F4395/R2161; FRL–4971–3]

RIN 2070–AB78

## Plant Pesticide Bacillus Thuringiensis CryIA(b) Delta-Endotoxin and the Genetic Material Necessary for its Production (Plasmid Vector pCIB4431) in Corn

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This rule establishes an exemption from the requirement of a tolerance for residues of the plant pesticide active ingredient *Bacillus thuringiensis* CryIA(b) delta-endotoxin and the genetic material necessary for its production (plasmid vector pCIB4431) in corn. A request for an exemption from the requirement of a tolerance was submitted by Ciba-Geigy Corp. (Ciba Seeds). This regulation eliminates the need to establish a maximum permissible level for residues of this plant pesticide in the raw agricultural commodities of field corn, sweet corn, and popcorn.

**EFFECTIVE DATE:** Effective on August 16, 1995.

**ADDRESSES:** Written objections and hearing requests, identified by the document control number, [PP 4F4395/R2161] and may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections 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, [PP 4F4395/R2161]. 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: Michael L. Mendelsohn, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: 5th Floor, CS #1, 2800 Crystal Drive, Arlington, VA 22202, Telephone No.: (703)-308-8715; e-mail: mendelsohn.michael@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** Ciba Seeds has genetically modified corn plants to produce a truncated version of the pesticidal CryIA(b) delta-endotoxin protein (derived from the soil microbe *Bacillus thuringiensis*). EPA issued a notice, published in the **Federal Register** of February 1, 1995 (60 FR 6093), which announced that Ciba-Geigy Corp., P.O. Box 12257, Research Triangle Park, NC 27709-2257, had submitted a pesticide petition, PP 4F4395, to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), establish an exemption from the requirement of a tolerance for the plant pesticide *Bacillus thuringiensis* delta-endotoxin as produced in corn by a CryIA(b) gene and its controlling sequences as found on plasmid vector pCIB4431. EPA has assigned the active ingredient of this product the name *Bacillus thuringiensis* CryIA(b) delta-endotoxin and the genetic material necessary for its production (plasmid vector pCIB4431) in corn. ''Genetic material necessary for its production'' means the genetic material which comprise (1) genetic material encoding the CryIA(b) delta-endotoxin and (2) its regulatory regions. ''Regulatory regions'' are the genetic materials that control the expression of the genetic material encoding the CryIA(b) delta-endotoxin, such as promoters, terminators, and enhancers.

There were no adverse comments or requests for referral to an advisory committee received in response to the notice of filing of the pesticide petition, PP 4F4395.

**Product Analysis**

Ciba Seeds submitted information which adequately described the truncated CryIA(b) delta-endotoxin as expressed in corn, along with data on the genetic material necessary for its production.

Product analysis data were submitted to show that microbially expressed and purified CryIA(b) delta-endotoxin used for mammalian toxicological testing purposes is not significantly different than the delta-endotoxin expressed in the plant. The following assays were used to determine the similarity of the microbially expressed and purified CryIA(b) delta-endotoxin and that produced in corn: SDS-PAGE, western blots, amino acid sequencing, certain tests for post-translational modifications, and insect bioactivity. These assays have demonstrated the truncated CryIA(b) delta-endotoxin expressed in corn and the tryptic digested CryIA(b) delta-endotoxin to be similar. The N-terminal amino acid sequences of both delta-endotoxins were found to be identical except that the plant produced delta-endotoxin had portions at the N-terminus deleted, perhaps due to internal plant proteases and a higher bioactivity. These differences were not considered toxicologically significant since they are not expected to change the activity of the deltaendotoxin in mammalian systems.

**Toxicology Assessment**

The toxicology data provided are sufficient to demonstrate that there are no foreseeable human health hazards likely to arise from the use of *Bacillus thuringiensis* CryIA(b) delta-endotoxin and the genetic material necessary for its production (plasmid vector pCIB4431) when used as a plant pesticide in any corn plant.

The data Ciba Seeds submitted regarding potential health effects include information on the characterization of the expressed CryIA(b) delta-endotoxin in corn, the acute oral toxicity, and *in vitro* digestibility of the delta-endotoxin.

*Toxicity*

The Agency expects that proteins with no significant amino acid homology to known protein toxins and which are readily inactivated by heat or mild acidic conditions would also be readily degraded in an *in vitro* digestibility assay and have little likelihood for displaying oral toxicity.

The data submitted by Ciba Seeds support the prediction that the CryIA(b) protein would be nontoxic to humans. When proteins are toxic, they are known to act via acute mechanisms and at very low dose levels [Sjobald, Roy D., et al. ''Toxicological Considerations for Protein Components of Biological Pesticide Products,'' *Regulatory Toxicology and Pharmacology*, 15, 3-9 (1992)]. Therefore, since no significant acute effects were observed, even at relatively high-dose levels, the CryIA(b) delta-endotoxin is not considered acutely or chronicly toxic. Adequate information was submitted to show that the test materials derived from microbial cultures were biochemically and insecticidally similar to the delta-endotoxin as produced by corn. Production of microbial produced CryIA(b) delta-endotoxin was chosen in order to obtain sufficient material for mammalian testing. In addition, the *in vitro* digestibility studies indicate the delta-endotoxin would be rapidly degraded following ingestion.

The genetic material necessary for the production of the *Bacillus thuringiensis* CryIA(b) delta endotoxin are the nucleic acids (DNA) which comprise (1) genetic material encoding the CryIA(b) delta-endotoxin and (2) its regulatory regions. ''Regulatory regions'' are the genetic material that control the expression of the genetic material encoding the CryIA(b) deltaendotoxin, such as promoters, terminators, and enhancers. DNA is common to all forms of plant and animal life, and the Agency knows of no instance where these nucleic acids have been associated with toxic effects related to their consumption. These ubiquitous nucleic acids as they appear in the subject active ingredient have been adequately characterized by the applicant. Therefore, no mammalian toxicity is expected from dietary exposure to the genetic material necessary for the production of the Bacillus thuringiensis CryIA(b) delta endotoxin in corn.

*Allergenicity*

Current scientific knowledge suggests that common food allergens tend to be resistant to degradation by heat, acid, and proteases and are glycosylated and present at high concentrations in the food. Ciba Seeds has submitted data to indicate that the CryIA(b) delta-endotoxin is rapidly degraded by gastric fluid *in vitro*, is not present as a major component of food (i.e., is not found in corn kernels and is not detectable in finished silage) and is apparently nonglycosylated or otherwise post-translationally modified when produced in plants.

Studies submitted to EPA done in laboratory animals also have not indicated any potential for allergic reactions to *B. thuringiensis* or its components, including the delta-endotoxin in the crystal protein. Recent *in vitro* studies also confirm that the delta endotoxin would be readily digestible *in vivo*, unlike known food allergens that are resistant to degradation.

Despite decades of widespread use of *Bacillus thuringiensis* as a pesticide (it has been registered since 1961), there have been no confirmed reports of immediate or delayed allergic reactions to the delta-endotoxin itself despite significant oral, dermal, and inhalation exposure to the microbial product. Several reports under FIFRA section 6(a)2 have been made for various *Bacillus thuringiensis* products with allergic reactions being reported. However, these reactions were

determined not to be due to *Bacillus thuringiensis* itself or any of the cry toxins.

*Submitted Data*

1. *Acute Oral Toxicity of Bacterially Produced CryIA(b) Delta- endotoxin* Five male and five female mice received a single dose of 3,280 mg/kg of CryIA(b) delta-endotoxin by oral gavage. No animals died, nor were there significant clinical signs as a result of the exposure. One female failed to gain weight between day 7 and day 14. All animals gained weight by the end of the study. Males gained more weight over the study than females. The $LD_{50}$ was therefore greater than 3,280 mg/kg, the highest dose tested.

2. *In-Vitro Digestibility of CryIA(b) Delta-endotoxin*. The CryIA(b) delta-endotoxin from either corn or B.t.k. HD19 is rapidly degraded in the presence of pepsin. Using 1/1000 strength pepsin, a time course study shows that the introduced delta-endotoxin from either source degrades within 10 minutes to fragments that lack any immunorecognition in a western blot assay. While this study provides useful information demonstrating the digestibility of the CryIA(b) delta-endotoxin produced in corn, it is not yet a validated study for assessing protein toxicology. It is not clear whether lack of toxicity correlates with *in vitro* digestibility under the conditions of the assay. EPA was relying on this study to demonstrate rapid degradation of the delta-endotoxin.

3. *Acute Oral Toxicity of Corn Leaf Protein Extracted from Bt Corn*. Application of this study to dietary risk assessment is not possible because of extremely low doses administered, small test populations, and unexplained deaths occurring in both control and treated groups. Therefore, EPA is not relying on this study to support the tolerance exemption.

**Residue Chemistry Data**

Residue chemistry data were not required because of the lack of mammalian toxicity of this active ingredient. In the acute mouse oral toxicity study, the CryIA(b) delta-endotoxin was shown to have an $LD_{50}$ greater than 3,280 mg/kg. When proteins are toxic, they are known to act via acute mechanisms and at very low dose levels [Sjobald, Roy D., et al. ''Toxicological Considerations for Protein Components of Biological Pesticide Products,'' *Regulatory Toxicology and Pharmacology*, 15, 3-9 (1992)]. Therefore, since no significant acute effects were observed, even at relatively high dose levels, the CryIA(b) delta-endotoxin is not considered acutely or chronicly toxic. This is similar to the Agency position regarding toxicity and the requirement of residue data for the microbial *Bacillus thuringiensis* products from which this plant pesticide was derived. [See 40 CFR 158.740(b)] For microbial products, further toxicity testing to verify the observed effects and clarify the source of the effects (Tiers II and III) and residue data are triggered by significant acute effects in studies such as the mouse oral toxicity study.

The genetic material necessary for the production of the *Bacillus thuringiensis* CryIA(b) delta endotoxin are the nucleic acids (DNA) which comprise: (1) genetic material encoding the CryIA(b) delta-endotoxin and (2) its regulatory regions. ''Regulatory regions'' are the genetic materials that control the expression of the genetic material encoding the CryIA(b) deltaendotoxin, such as promoters, terminators, and enhancers. As stated above, no mammalian toxicity is expected from dietary exposure to the genetic material necessary for the production of the *Bacillus thuringiensis* CryIA(b) delta endotoxin in corn. Therefore, no residue data are required in order to grant an exemption from the requirements of a tolerance for the plant pesticide, *Bacillus thuringiensis* CryIA(b) delta-endotoxin and the genetic material necessary for its production (plasmid vector pCIB4431) in corn.

**Conclusions**

Based on the information considered, the Agency concludes that establishment of a tolerance is not necessary to protect the public health. Therefore, the exemption from tolerance 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 to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed 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 rule making. 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 as well as the other materials required by 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 genuine and substantial issue of fact; there is 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 [PP 4F4395/R2161] (including 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 [PP 4F4395/R2161], 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, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines ''significant'' as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known 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 (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, 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 record keeping requirements.

Dated: August 7, 1995.

**Penelope A. Fenner-Crisp,**

*Acting Director, Office of Pesticide Programs.*

## PART 180—[AMENDED]

Therefore, 40 CFR part 180 is amended as follows:

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a and 371.

2. In subpart D, by adding new § 180.1152, to read as follows:

**§ 180.1152 Bacillus thuringiensis CryIA(b) delta-endotoxin and the genetic material necessary for its production (plasmid vector pCIB4431) in corn; exemption from the requirement of a tolerance.**

*Bacillus thuringiensis* CryIA(b) delta-endotoxin and the genetic material necessary for its production (plasmid vector pCIB4431) in corn is exempt from the requirement of a tolerance when used as a plant pesticide in the raw agricultural commodities of field corn, sweet corn, and popcorn. ''Genetic material necessary for its production'' means the genetic materials which comprise genetic material encoding the CryIA(b) delta-endotoxin and its regulatory regions. ''Regulatory regions'' are the genetic materials that control the expression of the genetic material encoding the CryIA(b) delta-endotoxin, such as promoters, terminators, and enhancers.

[FR Doc. 95–20014 Filed 8–15–95; 8:45 am]

BILLING CODE 6560–50–F

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### 40 CFR Part 180

**[OPP–300390A; FRL–4967–6]**

**RIN 2070–AB78**

## Dimethoate; Pesticide Tolerance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This document establishes an import tolerance for total residues of the insecticide dimethoate including its oxygen analog in or on the raw agricultural commodity blueberries. EPA is issuing this regulation on its own initiative pursuant to a project to harmonize certain tolerances with those established by the Canadian government.

**EFFECTIVE DATE:** This regulation becomes effective August 16, 1995.

**ADDRESSES:** Written objections and hearing requests, identified by the document control number, [OPP-300390A], 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-300390A]. 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: Robert Forrest, Product Manager (PM) 14, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 259, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6600; e-mail: forrest.robert@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of June 23, 1995 (60 FR 32641), EPA issued a proposed rule that gave notice that on its own initiative and pursuant to section 408(e) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), EPA proposed to amend 40 CFR 180.204 by establishing an import tolerance for total residues of the insecticide dimethoate including its oxygen anaolog in or on the raw agricultural commodity blueberries at 1 part per million (ppm). As part of the Canada-U.S. Trade Agreement (CUSTA), and through the Pesticides Technical Working Group's Maximum Residue Limit (MRL) Harmonization Pilot Project, the Canadian government has requested that the U.S. establish a tolerance of 1 ppm for residues of dimethoate in or on blueberries. The insecticide is registered for use on blueberries in Canada, but not in the U.S. The Canadian tolerance is 1 ppm. The Agency has reviewed Canadian crop field trial residue data and determined that they are adequate to support an import tolerance.

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 will protect the public health. Therefore, the tolerance 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-300390A] (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-300390A], 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: July 25, 1995.

**Stephen L. Johnson,**

*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. In § 180.204, by amending paragraph (a) by adding and alphabetically inserting the following commodity, to read as follows:

**§ 180.204 Dimethoate including its oxygen analog; tolerances for residues.**

(a) * * *

| Commodity | Parts per million |
|---|---|
| * * * * * | |
| Blueberries[1] ..... | 1 |
| * * * * * | |

[1]There are no U.S. registrations as of August 16, 1995.

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[FR Doc. 95–20013 Filed 8–15–95; 8:45 am]
BILLING CODE 6560–50–F

## 40 CFR Part 180

**[OPP–300382A; FRL–4958–3]**

**RIN 2070–AB78**

## Summer Squash; Definitions and Interpretations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This document amends 40 CFR 180.1(h) to expand EPA's interpretation for the application of

tolerances and exemptions from the requirement of a tolerance established for pesticide chemicals in or on the raw agricultural commodity summer squash to include chayote fruit. The amendment is based, in part, on recommendations of the Interregional Research Project No. 4 (IR-4).

**EFFECTIVE DATE:** This regulation becomes effective August 16, 1995.

**FOR FURTHER INFORMATION CONTACT:** By mail: Hoyt L. Jamerson, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 1800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8783; e-mail: jamerson.hoyt@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of April 26, 1995 (60 FR 20470), EPA issued a proposed rule that gave notice of a proposed amendment to 40 CFR 180.1(h). Paragraph (h) of 40 CFR 180.1 provides a listing of general commodity terms and EPA's interpretation of those terms as they apply to tolerances and exemptions from the requirement of a tolerance for pesticide chemicals under section 408 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 346a). General commodities are listed in column A of 40 CFR 180.1(h), and the corresponding specific commodities, for which tolerances and exemptions from the requirement of a tolerance established for the general commodity apply, are listed in column B. The Interregional Research Project No. 4 (IR-4), New Brunswick, NJ 08903, had requested that 40 CFR 180.1(h) be amended by revising the current interpretation for the general commodity term ''summer squash,'' which is listed in column A, by adding the specific commodity term ''chayote'' to column B. The Agency concluded that it is appropriate that the general commodity ''summer squash'' should be interpreted for tolerance purposes to include the corresponding specific commodity chayote fruit.

There were no comments 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 expanded definition and interpretation for summer squash to include chayote fruit is appropriate. Therefore, the expanded definition is established as set forth below.

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).

Although this regulation does not establish or raise a tolerance level or establish an exemption from the requirement of a tolerance, the impact of the regulation would be the same as establishing new tolerances or exemptions from the requirement of a tolerance. Therefore, the Administrator concludes that this rule would not have a significant economic impact on a substantial number of small entities.

### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 28, 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. In § 180.1(h), by amending the table therein by revising the entry for summer squash, to read as follows:

**§ 180.1 Definitions and interpretations.**

* * * * *

(h) * * *

| A | B |
|---|---|
| | * * * * * |
| Summer squash ..... | Fruits of the gourd (*Cucurbitaceae*) family that are consumed when immature, 100% of the fruit is edible either cooked or raw, once picked it cannot be stored, has a soft rind which is easily penetrated, and if seeds were harvested they would not germinate; e.g., *Cucurbita pepo* (i.e., crookneck squash, straightneck squash, scallop squash, and vegetable marrow); *Lagenaria* spp. (i.e., spaghetti squash, hyotan, cucuzza); *Luffa* spp. (i.e., hechima, Chinese okra); *Momordica* spp. (i.e., bitter melon, balsam pear, balsam apple, Chinese cucumber); *Sechium edule* (chayote); and other cultivars and/or hybrids of these. |
| | * * * * * |

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[FR Doc. 95–19797 Filed 8–15–95; 8:45 am]
BILLING CODE 6560–50–F

## 40 CFR Part 180

**[PP 2F4090/R2154; FRL–4966–9]**

**RIN 2070–AB78**

## Occlusion Bodies of the Granulosis Virus of Cydia Pomenella; Exemption from the Requirement of a Tolerance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This rule establishes an exemption from the requirement of a pesticide tolerance for residues of the microbial pest control agent Occlusion Bodies of the Granulosis Virus of *Cydia pomenella* (codling moth) in or on all raw agricultural commodities. The University of California at Berkley requested this tolerance exemption in a petition submitted under the Federal Food, Drug and Cosmetic Act (FFDCA). This regulation eliminates the need to establish a maximum permissible level for residues of *Cydia pomenella* Granulosis Virus.

**EFFECTIVE DATE:** This regulation becomes effective on August 16, 1995.

**ADDRESSES:** Written objections and hearing requests, identified by the document control number, [PP 2F4090/R2154], 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 [PP 2F4090/R2154]. 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: Linda Hollis, Biopesticides and Pollution Prevention Division (7501W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 259, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8733; e-mail: hollis.linda@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of June 10, 1992 (57 FR 24645), EPA issued a notice that The University of California, Berkley, CA 94720, had petitioned EPA under section 408 of the FFDCA, 21 U.S.C. 346a, to establish an exemption from the requirement of a tolerance for residues of the microbial pest control agent *Cydia pomonella* Granulosis Virus in or on all raw agricultural commodities when used to control the codling moth.

There were no comments received in response to the notice of filing.

The data submitted in the petition and all other relevant material have been evaluated. The toxicological data considered in support of the exemption from the requirement of a tolerance include the following: an acute toxicity/pathogenicity study, an acute dermal toxicity study, an acute intravenous toxicity study, a primary eye irritation study, and a cell culture assay.

1. *Acute Oral Toxicity/Pathogenicity in Rats, Guideline No. 152A-10.* Eighteen male and female rats were dosed by oral gavage with 5.0 mL *Cydia pomonella* granulosis inclusion bodies at a potency of 4 X $10^{11}$ GIBs/mL. No abnormalities or toxicity were observed. A distinct clearance pattern was evident in the feces and heart/lungs through day 7 of the study. TOX CATEGORY IV.

2. *Acute Dermal Toxicity in Rabbits, Guideline No. 152A-11.* Five male and female New Zealand rabbits were tested. One test animal displayed mild erythema and edema within 24 hours postdosing. No other signs of dermal irritation were noted. TOX CATEGORY IV.

3. *Acute Pulmonary Toxicity/Infectivity in Rats, Guideline No. 152A-13.* Thirty-four male and female Sprague-Dawley rats were dosed via intratracheal injection with 1.2 mL/kg GIBs/mL. Baculovirus *Cydia pomonella* was not toxic, infectious, or pathogenic to rats. TOX CATEGORY IV

4. *Primary Eye Irritation in Rabbits, Guideline No. 152A-14.* Six New Zealand white rabbits were administered in a single dose of 0.1 mL Baculovirus *Cydia pomonella* into the conjunctival sac of both eyelids. Baculovirus *Cydia pomonella* was not irritating to rabbit eyes when compared to rabbits treated with sterile distilled water. Ocular irritation dissipated in both control and treated eyes by day 21. TOX CATEGORY II.

5. *Cell Culture Toxicity/Infectivity, Guideline No. 152A-16.* Three human cell lines WI-38, WS1, and HepG2 were challenged with 2 X $10^9$ particles/mL of *Cydia pomonella* Granulosis Virus (CpGV) over a 1-hour exposure and rinsed. No significant cytopathic or toxic effects were observed.

The toxicology data provided are sufficient to demonstrate that there are no foreseeable human health hazards likely to arise from the *Cydia pomonella* Granulosis Virus in or on all raw agricultural commodities when applied in accordance with good agricultural practices.

*Residue Chemistry Data*

Residue chemistry data are necessary only if the submitted toxicology studies indicate that additional Tier II or II toxicology data would be required as specified in 40 CFR 158.165(e). The submitted toxicology data for this use indicate that the product is of low mammalian toxicity; therefore, Tier II or III data were not required.

Acceptable chemistry data are necessary only if the submitted toxicology studies indicate that additional Tier II or III toxicology data would be required as specified in 40 CFR 158.165(e). The submitted toxicology data for this use indicate that the product is of low mammalian toxicity; therefore, Tier II or III data were not required.

Based on the information considered, the Agency concludes that the establishment of a tolerance for the active ingredient Occlusion Bodies of the Granulosis Virus of *Cydia pomonella* is not necessary to protect the public health. Therefore, 40 CFR part 180 is amended 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 [PP 2F4090/R2154] (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 [PP 2F4090/R2154], 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: July 21, 1995.

**Daniel M. Barolo,**

*Director, 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. In subpart D, by adding new § 180.1148, to read as follows:

**§ 180.1148 Occlusion Bodies of the Granulosis Virus of Cydia pomenella; tolerance exemption.**

An exemption from the requirement of a tolerance is established for residues of the microbial pest control agent Occlusion Bodies of the Granulosis Virus of *Cydia pomonella* (codling moth) in or on all raw agricultural commodities.

[FR Doc. 95–20307 Filed 8–15–95; 8:45 am]
BILLING CODE 6560–50–F

## 40 CFR Part 180

**[PP 4E4410/R2160; FRL–4971–2]**

**RIN 2070–AB78**

## Plant Pesticide Inert Ingredient Phosphinothricin Acetyltransferase (PAT) and the Genetic Material Necessary for Its Production (Plasmid Vector pCIBP3064) in Corn; Tolerance Exemption

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This rule establishes an exemption from the requirement of a tolerance for residues of the plant pesticide inert ingredient phosphinothricin acetyltransferase and the genetic material necessary for its production (plasmid vector pCIB3064) in corn. A request for an exemption from the requirement of a tolerance was submitted by the Ciba-Geigy Corp. (Ciba Seed). This regulation eliminates the need to establish a maximum permissible level for residues of this plant pesticide inert ingredient in the raw agricultural commodities of field corn, sweet corn, and popcorn.

**EFFECTIVE DATE:** Effective on August 16, 1995.

**ADDRESSES:** Written objections and hearing requests, identified bythe document control number [PP 4E4410/R2160], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW.,

Washington, DC 20460. Fees accompanying objections 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, [PP 4E4410/R2160]. 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: Michael L. Mendelsohn, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 5th Floor, CS #1, 2800 Crystal Drive, Arlington, VA 22202, Telephone No.: (703)-308-8715; e-mail: mendelsohn.michael@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** EPA issued a notice, published in the **Federal Register** of February 1, 1995 (60 FR 6093), which announced that Ciba-Geigy Corp., P.O. Box 12257, Research Triangle Park, NC 27709-2257, had submitted a pesticide petition (PP) 4E4410 to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), establish an exemption from the requirement of a tolerance for the plant pesticide inert ingredient phosphinothricin acetyltransferase (PAT) as produced in corn by the bar gene and its controlling sequences as found on plasmid vector pCIB3064. EPA has assigned the inert ingredient of this product the name phosphinothricin acetyltransferase and the genetic material necessary for its production (plasmid vector pCIB3064) in corn. ''Genetic material necessary for its production'' means the genetic materials which comprise genetic material encoding the phosphinothricin acetyltransferase (2) its regulatory regions. ''Regulatory regions'' are the genetic materials that control the expression of the genetic material encoding the phosphinothricin acetyltransferase, such as promoters, terminators, and enhancers.

There were no adverse comments or requests for referral to an advisory committee received in response to the notice of filing of the pesticide petition 4E4410.

**Toxicology Assessment**

EPA evaluated an acute oral toxicity study and an *in vitro* digestibility study. In the acute mouse oral toxicity study, a 51% PAT protein mixture was shown to have an $LD_{50}$ greater than 5,050 mg/kg. The Agency also expects that enzymes with no significant amino acid homology to known protein toxins and which are readily inactivated by heat or mild acidic conditions would also be readily degraded in an *in vitro* digestibility assay and have little likelihood for displaying oral toxicity. The PAT enzyme meets all the above criteria and, as predicted, submitted data show that no toxicity results when high doses of this protein are administered orally to laboratory rodents. When proteins are toxic, they are known to act via acute mechanisms and at very low dose levels [Sjobald, Roy D., et al., ''Toxicological Considerations for Protein Components of Biological Pesticide Products,'' *Regulatory Toxicology and Pharmacology*, 15, 3-9 (1992)]. Therefore, since no significant acute effects were observed, even at relatively high dose levels, the PAT protein is not considered acutely or chronicly toxic. The PAT acute oral toxicity study together with data indicating that the PAT protein is rapidly degraded in the gastric environment and is also readily denatured by heat or low pH are sufficient to support a finding of no acute mammalian oral toxicity for the PAT protein.

The genetic materials necessary for the production of the PAT protein are the nucleic acids (DNA) which comprise the (1) genetic material encoding the phosphinothricin acetyltransferase and (2) its regulatory regions. ''Regulatory regions'' are the genetic materials that control the expression of the genetic material encoding the phosphinothricin acetyltransferase, such as promoters, terminators, and enhancers. DNA is common to all forms of plant and animal life, and the Agency knows of no instance where these nucleic acids have been associated with toxic effects related to their consumption. These ubiquitous nucleic acids as they appear in the subject inert ingredient have been adequately characterized by the applicant. Therefore, no mammalian toxicity is expected from dietary exposure to the genetic material necessary for the production of the PAT protein in corn.

**Allergenicity**

Current scientific knowledge suggests that common food allergens tend to be resistant to degradation by heat, acid, and proteases, are glycosylated and are present at high concentrations in the food. Ciba-Geigy has submitted data which indicates the PAT protein is rapidly degraded in the gastric environment and is also readily denatured by heat or low pH.

*Submitted Data*

1. *Acute Oral Toxicity of Bacterially Produced PAT Protein.* A white powder (PAT-0195) containing 51% PAT enzyme by weight was obtained by purification from an *E. coli* fermentation and dosed at 5,050 mg/kg to mice. No treatment-related significant toxic effects were seen 14 days after oral gavage of high levels of the purified PAT marker protein.

2. *In-Vitro Digestibility of PAT Protein.* The 22,000 M. W. PAT enzyme is rapidly degraded in the presence of pepsin or low pH so that it loses enzymatic activity and is not detected by SDS-PAGE. The enzyme also loses activity if subject to temperatures over 35 degrees C. EPA was relying on this study to demonstrate rapid degradation of the protein.

3. *Acute Oral Toxicity of Corn Leaf Protein Extracted from Bt/PAT Corn.* Application of this study to dietary risk assessment is not possible because of extremely low doses administered, small test populations, and the unexplained deaths occurring in both control and treated groups. Therefore, EPA is not relying on this study to support the tolerance exemption.

**Residue Chemistry Data**

Residue chemistry data were not required because of the lack of mammalian toxicity of this active

ingredient. When proteins are toxic, they are known to act via acute mechanisms and at very low dose levels [Sjobald, Roy D., et al. ''Toxicological Considerations for Protein Components of Biological Pesticide Products,'' *Regulatory Toxicology and Pharmacology*, 15, 3-9 (1992)]. Therefore, since no significant acute effects were observed, even at relatively high dose levels, the PAT protein is not considered acutely or chronicly toxic. This is similar to the Agency position regarding toxicity and the requirement of residue data for the microbial *Bacillus thuringiensis* products. [See 40 CFR 158.740(b)] For microbial products, further toxicity testing to verify the observed effects and clarify the source of the effects (Tiers II & III) and residue data are triggered by significant acute effects in studies such as the mouse oral toxicity study.

The genetic material necessary for the production of the PAT protein are the nucleic acids (DNA) which comprise (1) genetic material encoding the phosphinothricin acetyltransferase and (2) its regulatory regions. ''Regulatory regions'' are the genetic materials that control the expression of the genetic material encoding the phosphinothricin acetyltransferase, such as promoters, terminators, and enhancers. As stated above, no mammalian toxicity is expected from dietary exposure to the genetic material necessary for the production of the PAT protein corn. Therefore, no residue data are required in order to grant an exemption from the requirement of a tolerance for the plant pesticide inert ingredient: phosphinothricin acetyltransferase (PAT) and the genetic material necessary for its production (plasmid vector PCIB3064) in corn.

**Conclusions**

Based on the information considered, the Agency concludes that establishment of a tolerance is not necessary to protect the public health. Therefore, the exemption from tolerance 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 to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed 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, a summary of any evidence relied upon by the objector as well as the other materials required by 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 genuine and substantial issue of fact; there is 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 [PP 4E4410/R2160] (including 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 [PP 4E4410/R2160], 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, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines ''significant'' as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known 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 (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, 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: August 7, 1995.

**Penelope A. Fenner-Crisp,**

*Acting Director, Office of Pesticide Programs.*

## PART 180—[AMENDED]

Therefore, 40 CFR part 180 is amended as follows:

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a and 371.

2. In subpart D, by adding new § 180.1151, to read as follows:

**§ 180.1151 Phosphinothricin acetyltransferase and the genetic material necessary for its production (plasmid vector pCIB3064) in corn; exemption from the requirement of a tolerance.**

Phosphinothricin acetyltransferase and the genetic material necessary for its production (plasmid vector pCIB3064) in corn is exempt from the requirement of a tolerance when used as a plant pesticide inert ingredient in the raw agricultural commodities of field corn, sweet corn, and popcorn. ''Genetic material necessary for its production'' means the genetic materials which comprise genetic material encoding the phosphinothricin acetyltransferase and its regulatory regions. ''Regulatory regions'' are the genetic materials that control the expression of the genetic material encoding the phosphinothricin acetyltransferase, such as promoters, terminators, and enhancers.

[FR Doc. 95–20010 Filed 8–15–95; 8:45 am]

BILLING CODE 6560–50–F

## 40 CFR Parts 180 and 185

**[PP 2F4055 and FAP 5H5719/R2151; FRL–4966–3]**

**RIN 2070–AB78**

## Deltamethrin; Pesticide Tolerance and Food Additive Regulation

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This document establishes time-limited tolerances for residues of the pyrethroid deltamethrin in or on the raw agricultural commodity (RAC) cottonseed at 0.04 part per million (ppm) and the processed food cottonseed oil at 0.2 ppm. The Hoechst-Roussel Agri-Vet Co. requested this tolerance and food additive regulation in petitions submitted pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA).

**EFFECTIVE DATE:** This regulation becomes effective August 16, 1995.

**ADDRESSES:** Written objections and hearing requests, identified by the document control number, [PP 2F4055 and FAP 5H5719/R2151], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections 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 [PP 2F4055 and FAP 5H5719/R2151]. 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: George T. LaRocca, Product Manager (PM) 13, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 204, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6100; e-mail: larocca.george@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** EPA issued a notice, published in the **Federal Register** of March 11, 1992 (57 FR 8659), which announced that Hoechst-Roussel Agri-Vet Co. (HRAVC) had submitted pesticide petition (PP) 2F4055 to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), amend 40 CFR part 180 by establishing a regulation to permit residues of the insecticide deltamethrin (*S*)-*alpha*-cyano-3-phenoxybenzyl-(1*R*,3*R*)-3-(2-2-dibromovinyl)-2,2-dimethyl-cyclopropanecarboxylate and its major metabolites, *trans*-deltamethrin [(*S*)-*alpha*-cyano-*m*-phenoxybenzyl-(1*R*,3*S*)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropane-carboxylate] and *alpha-R*-deltamethrin [(*R*)-*alpha*-cyano-*m*-phenoxybenzyl-(1*R*,3*R*)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate] in or on cottonseed at 0.02 ppm. After evaluation of metabolism, residue, and cottonseed processing data, EPA concluded that the tolerance proposed for cottonseed should be increased to 0.04 ppm and that a food additive regulation permitting residues of 0.20 ppm in cottonseed oil was necessary. HRAVC submitted a food additive petition to EPA requesting that the Administrator, pursuant to section 409(b) of FFDCA establish a regulation permitting residues of deltamethrin on the food commodity cottonseed oil at 0.2 ppm and amended the initial notice of filing to reflect an increase in tolerance for cottonseed to 0.04 ppm. Notice of these changes was published in the **Federal Register** of March 15, 1995 (60 FR 13979).

No comments were received in response to the notices of filing.

Tolerances of 0.2 ppm and 1.0 ppm had been previously established for the combined residues of deltamethrin and its major metabolite *trans*-deltamethrin on tomatoes imported from Mexico under 40 CFR 180.435 and tomato products (concentrated) under 40 CFR 185.1580, respectively. Based upon the review of plant metabolism data, EPA has determined that the residue to be regulated is deltamethrin and its metabolites *trans*-deltamethrin and *alpha-R*-deltamethrin. Regulation of this additional metabolite will be reflected in the tolerance expression.

Because pyrethroids are toxic to fish and other aquatic organisms, the Agency is concerned about adverse impacts on aquatic ecosystems related to this use of the pyrethroids. In November 1990, the Agency and five registrants of pyrethroid cotton insecticides (collectively, the Pyrethroid Working Group (PWG)) in collaboration with the National Cotton Council agreed to interim risk-reduction measures designed to reduce the potential for exposure of aquatic habitats of concern to pyrethroids applied to cotton. The interim risk reduction measures included user surveys to assess current pyrethroid use practices on cotton, label changes aimed at reducing the aquatic environmental exposure to pyrethroids, and a program of data generation to estimate the effectiveness of the steps taken. As part of this interim risk-

reduction program, the Agency agreed to extend the registration and tolerances of these cotton pyrethroids to November 15, 1993, and November 15, 1994, respectively. The registrations and time-limited tolerances on cottonseed were extended once again to November 15, 1996, and November 15, 1997, respectively (see the **Federal Register** of February 22, 1995 (60 FR 9784)). These extensions were granted to allow time for submission and evaluation of additional environmental effects data. In order to evaluate effects of pyrethroid on fish and aquatic organisms and its fate in the environment, additional data were required to be collected and submitted during the period of conditional registration. Such requirements included a sediment bioavailability and toxicity study and a small-plot runoff study that must be submitted to the Agency by July 1, 1996.

To be consistent with the conditional registration and extension of pyrethroids on cottonseed, the Agency is issuing a conditional registration for deltamethrin on cotton with an expiration date of November 15, 1996, and establish a time-limited tolerance on cottonseed and cottonseed oil with an expiration date of November 15, 1997, to cover residues expected to result from use during the period of conditional registration.

With respect to the use of deltamethrin on cotton, the Agency concluded that use of deltamethrin would not cause a significant increase in the risk of adverse effects to the environment. This conclusion was premised mainly on the following:

1. The short period of time the registration would be in effect before the Agency completes its final regulatory and risk reviews of cotton use of the pyrethroids.

2. HRAVC's commitment to agree to the terms and conditions stipulated by the Agency for continued registration of current cotton pyrethroid products. These conditions include aquatic risk mitigation language for the cotton use labeling and conditional registration subject to an Agency determination of aquatic risk.

3. The total number of treated acres of cotton is essentially the same and the registration of new pyrethroid on cotton, such as deltamethrin, would result in no significant increase in the number of acres treated. Instead, it would result in only changes in market share, i.e., the percentage of acres that are treated with any particular cotton pyrethroid.

Residues remaining in or on the above commodities after expiration of these tolerances will not be considered actionable if the pesticide is legally applied during the term of and in accordance with provisions of conditional registration.

The scientific data submitted in support of these petitions and other relevant material have been evaluated. The toxicology data considered in support of these tolerances include:

1. Chronic 2-year feeding in dogs with a systemic NOEL greater than 40 ppm (highest does treated (HDT)).

2. A 24-month chronic feeding/carcinogenicity study in rats with a systemic NOEL of 20 ppm (1 mg/kg/day) and LEL of 50 mg/kg/day based on decreased body weight. No carcinogenic effects were observed in the study.

3. A carcinogenicity study in mice in which no evidence of carcinogenicity was noted up to and including 100 ppm (HDT).

4. An oral development toxicity study in rats with a developmental NOEL of 11 mg/kg/day (highest dose tested). The maternal NOEL was 3.3 mg/kg/day with the LEL of 7 mg/kg/day based on one death and excessive salivation. An oral developmental toxicity study in rabbits with a maternal NOEL of 10 mg/kg/day and a maternal LEL of 25 mg/kg/day based on decreased defecation. The developmental NOEL was 25 mg/kg/day with a developmental LEL of 100 mg/kg/day based on statistically significant increase in fetal incidence of unossification of pubic bone and tail bone. These skeletal variations were not considered to be statistically significant.

5. A three-generation reproduction study in rats noted no parental or fetal effects up to and including 50 ppm (HDT).

6. A metabolism study in rats demonstrates that deltamethrin is relatively well absorbed and excreted. Urine and fecal excretions were almost complete at 48 hours post dose.

7. Mutagenicity tests included a reverse mutation Ames assay, a structural chromosomal aberration assay in Chinese hamster ovary (CHO) cells, and an unscheduled DNA synthesis assay in rat hepatocytes. All tests were negative for genotoxicity.

A chronic dietary exposure/risk assessment was performed for deltamethrin using a reference dose (RfD) of 0.01 mg/kg bwt/day based on a NOEL of 1.00 mg/kg bwt/day from a 2-year rat feeding study with an uncertainty factor of 100. The end-point effect of concern was decreased body weight. The Theoretical Maximum Residue Contribution from established tolerances utilizes 3.7% of the RfD for the U.S. population and 7.3% in children ages 1 to 6 years old, the subgroup with the highest estimated exposure to deltamethrin residues. The use on cotton does not contribute any more to the dietary exposure for the general population of children ages 1 to 6 years. Generally speaking, EPA has no cause for concern if total residue contribution for published tolerances is less than the RfD. EPA concludes that the chronic dietary risk of deltamethrin, as estimated by the dietary risk assessment, does not appear to be of concern.

The nature of the deltamethrin residue in plants and animals for this use is adequately understood. The residues of concern are combined residues of deltamethrin and its metabolites *trans*-deltamethrin and *alpha-R*-deltamethrin. There is no reasonable expectation of secondary residues in eggs, meat, milk, or poultry from the proposed use as delineated in 40 CFR 180.6(a)(3).

An adequate analytical method involving gas-liquid chromatography is available for enforcement purposes. The enforcement methodology has been submitted to the Food and Drug Administration, and published in the Pesticide Analytical Manual, Vol. II (PAM II).

There are currently no actions pending against the continued registration of this chemical.

The pesticide is considered useful for the purposes for which it is sought and capable of achieving its intended physical or technical effect. Based on the information and data considered, the Agency has determined that the tolerances established by amending 40 CFR part 180 would protect the public health and that use of the pesticide in accordance with the tolerance established by amending 40 CFR part 185 would be safe. Therefore, the tolerances and food additive regulations are 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 to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed 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 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 [PP 2F4055 and FAP 5H5719/R2151] (including 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 [PP 2F4055 and FAP 5H5719/R2151], 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, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines ''significant'' as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known 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 (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, 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, or establishing or raising food additive regulations 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 Parts 180 and 185

Environmental protection, Administrative practice and procedure, Agricultural commodities, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 27, 1995.

**Daniel M. Barolo,**

*Director, Office of Pesticide Programs.*

Therefore, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

## PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a and 371.

b. By revising § 180.435, to read as follows:

### § 180.435 Deltamethrin; tolerances for residues.

A tolerance is established for residues of the insecticide deltamethrin [(*S*)-*alpha*-cyano-3-phenoxybenzyl-(1*R*,3*R*)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate] and its major metabolites, *trans*-deltamethrin [(*S*)-*alpha*-cyano-*m*-phenoxybenzyl(1*R*,3*S*)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate] and *alpha-R*-deltamethrin [(*R*)-*alpha*-cyano-*m*-phenoxybenzyl-(1*R*,3*R*)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate] in or on the following raw agricultural commodities:

| Commodity | Parts per million | Expiration date |
|---|---|---|
| Cottonseed ..... | 0.04 | Nov. 15, 1997 |
| Tomatoes ..... | 0.2 | None |

## PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

**Authority:** 21 U.S.C. 346a and 348.

b. By revising § 185.1580, to read as follows:

### § 185.1580 Deltamethrin.

Tolerances are established for residues of the insecticide deltamethrin [(*S*)-*alpha*-cyano-3-phenoxybenzyl-(1*R*,3*R*)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate] and its major metabolites, *trans*-deltamethrin [(*S*)-*alpha*-cyano-*m*-phenoxybenzyl(1*R*,3*S*)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate] and *alpha-R*-deltamethrin [(*R*)-*alpha*-cyano-*m*-phenoxybenzyl-(1*R*,3*R*)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate] in or on the following food commodities:

| Commodity | Parts per million | Expiration date |
|---|---|---|
| Cottonseed oil ... | 0.2 | Nov. 15, 1997 |
| Tomato (products) concentrated ..... | 1.0 | None |

[FR Doc. 95–19796 Filed 8–15–95; 8:45 am]
BILLING CODE 6560–50–F

**40 CFR Parts 180 and 185**

**[PP 4F4342 and FAP 4H5711/R2153; FRL–4966–8]**

**RIN 2070–AB78**

## Flutolanil; Pesticide Tolerances

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This rule establishes tolerances for combined residues of flutolanil (*N*-(3-(1-methylethoxy)phenyl)-2-(trifluoromethyl)benzamide) and its metabolites converted to 2-(trifluoromethyl) benzoic acid and calculated as flutolanil in or on peanut nutmeats at 0.5 part per million (ppm), peanut hulls at 5.0 ppm, peanut hay at 15.0 ppm, meat, meat byproducts (mbyp) and milk of cattle, goats, hogs, horses, and sheep at 0.05 ppm, fat of cattle, goats, hogs, horses, and sheep at 0.10 ppm, liver of cattle, goats, hogs, horses, and sheep at 2.0 ppm, kidney of cattle, goats, hogs, horses, and sheep at 1.0 ppm, and poultry (including turkeys) meat, mbyp, fat, and eggs at 0.05 ppm; and in or on the processed food commodity peanut meal at 1.0 ppm when present therein as a result of application of the fungicide to growing crops. AgrEvo USA Co. submitted a petition pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA) for the regulation to establish a maximum permissible level for residues of the fungicide.

**EFFECTIVE DATE:** This regulation becomes effective August 16, 1995.

**ADDRESSES:** Written objections and hearing requests, identified by the document control number, [PP 4F4342 and FAP 4H5711/R2153], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections 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 any 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 document number [PP 4F4342 and FAP 4H5711/R2153]. 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: Connie B. Welch, Product Manager (PM) 21, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6226; e-mail: welch.connie@.epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** EPA issued a notice, published in the **Federal Register** of February 8, 1995 (60 FR 7540), which announced that AgrEvo USA Co. had submitted pesticide petitions (PP) 4F4342 and 4H5711 to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), establish tolerances for combined residues of flutolanil (*N*-(3-(1-methylethoxy)phenyl)-2-(trifluoromethyl)benzamide) and its metabolites converted to 2-(trifluoromethyl) benzoic acid and calculated as flutolanil in or on peanut nutmeats at 0.5 part per million (ppm), peanut hulls at 5.0 ppm, peanut hay at 15.0 ppm, meat, mbyp, and milk of cattle, goats, hogs, horses, and sheep at 0.05 ppm, fat of cattle, goats, hogs, horses, and sheep at 0.10 ppm, liver of cattle, goats, hogs, horses, and sheep at 2.0 ppm, kidney of cattle, goats, hogs, horses, and sheep at 1.0 ppm, and poultry meat, mbyp, fat and eggs (including turkeys) at 0.05 ppm; and in or on the processed food commodity peanut meal at 1.0 ppm, when present therein as a result of application of the fungicide to growing crops.

There were no comments received in response to the notice of filing. The scientific data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the tolerance include:

1. Several acute toxicity studies that place technical flutolanil in Toxicity Category III (Caution). Data show minimal-to-slight irritation to the eye.

2. A 90-day rat feeding study with a systemic no-observed-effect level (NOEL) of 37 mg/kg/day for males and 44 mg/kg/day for females and a systemic lowest-effect-level (LEL) of 299 mg/kg/day for males and 339 mg/kg/day for females based on increased absolute and relative liver weights in both the 299-mg/kg/day males and the 339-mg/kg/day females and the 1,512-mg/kg/day males and the 1,743-mg/kg/day females, along with a slight decrease in body weight in the 1,512-mg/kg/day males.

3. A 90-day oral study in dogs with a systemic NOEL of 80 mg/kg/day and a systemic LEL of 400 mg/kg/day based on enlarged livers and increased glycogen deposition in the livers of both males and females. High-dose (2,000 mg/kg/day) males and females showed increased alkaline phosphatase levels and cholesterol thyroid/parathyroid organ weights.

4. A 2-year feeding/carcinogenicity study in rats with a systemic NOEL of 86.9 mg/kg/day for males and 103.1 mg/kg/day for females and a systemic LEL of 460.5 mg/kg/day for males and 535.8 mg/kg/day for females based on reduced body weight and body weight gain in males along with decreased and absolute relative weights in females. Flutolanil was not carcinogenic under the conditions of this study.

5. A carcinogenicity study in mice with a systemic NOEL of 735 mg/kg/day for males and 1,168 mg/kg/day for females and a systemic lowest-observed-effect level (LEL) of 13,333 mg/kg/day for males and 1,839 mg/kg/day for females based on body weight gains in the high-dose females which were significantly lower than those of controls during the first 24 weeks of treatment. There were no effects of biological importance on survival, clinical signs, food intake, hematology, gross pathology, or histopathology. Flutolanil was not carcinogenic under the conditions of this study.

6. A 2-year oral feeding study in dogs with a systemic NOEL of 50 mg/kg/day for males and females and a systemic LEL of 250 mg/kg/day based on increased incidence of clinical signs (emesis, salivation, soft stools, lower body weight gains and decreased food consumption in the 250- and 1,250-mg/kg group males and females).

7. A rat developmental toxicity study with a maternal NOEL of 1,000 mg/kg/day (limit dose) and a developmental toxicity NOEL of 1,000 mg/kg/day (limit dose). Developmental toxicity was not observed at any dose level.

8. A rabbit developmental toxicity study with a maternal NOEL of 40 mg/kg/day and a maternal LEL of 200 mg/kg/day based on increased resorptions in the 200- and 1,000-mg/kg group. A developmental NOEL of 40 mg/kg/day, and a developmental LEL of 200 mg/kg/day were based on increased resorptions in the 200- and 1,000-mg/kg/day group.

9. A two-generation rat reproduction study with a parental toxicity NOEL of 1,936 mg/kg/day (limit dose) and a reproductive toxicity NOEL of 1,936 mg/kg/day (limit dose).

10. Mutagenicity studies included: An Ames Assay which was negative; Chromosome Aberration studies which showed flutolanil induced chromosomal aberrations in cultured Chinese hamster lung cells in the presence of metabolic activation; reverse data which showed that flutolanil did not cause an increase in revertant colonies using *Salmonella* and *E. coli* strains; micronucleus assay data which indicated that flutolanil, up to a dose of 10 gm/kg, did not induce micronuclei in the bone marrow erythrocytes of male and female mice; unscheduled DNA synthesis (UDS) data which showed that flutolanil did not induce UDS because the test compound failed to induce a genotoxic response in the *in vitro* assay; and lymphoma mutation test data which showed that flutolanil was found to be nonmutagenic in the Mammalian Cell Gene Mutation Assay.

The Reference Dose (RfD) used in the analysis is 0.2 mg/kg bwt/day, based on an LEL of 63.7 mg/kg bwt/day from a three generation rat reproductive study with an uncertainty factor of 300 that demonstrated decreased body weight gains and increased liver weights at the high dose of 661.8 mg/kg. Flutolanil is classified as a group E carcinogen, showing no evidence of cancer in rats or mice. The Theoretical Maximum Residue Contribution (TMRC) from the current action is estimated at 0.000810 mg/kg bwt/day and utilizes less than 1 percent of the RfD for the general population of the lower 48 States. The TMRCs for the most highly exposed subgroups, children (1 to 6 years old) is 0.003577 mg/kg bwt/day (1.8% of the RfD).

As the first food use of this chemical, tolerances for flutolanil have yet to be published in the CFR. Tolerance level residues and 100-percent-crop- treated assumptions were made for the proposed commodities. Anticipated residues and percent crop treated information were not available for this analysis.

The residue analytical method will not be forwarded to FDA for publication at this time. This method is available for limited distribution from Calvin Furlow, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5232. It has the following disclaimer: The method is for use only by experienced chemists who have demonstrated knowledge of the principles of trace organic analysis; and have proven skills and abilities to run a complex residue analytical method obtaining accurate results at the part-per-billion level. Users of this method are expected to perform additional method validation prior to using the method for either monitoring or enforcement. The method can detect gross misuse.

There are currently no actions pending against the continued registration of this chemical.

Based on the information and data considered, the Agency has determined that the tolerances established by amending 40 CFR parts 180 and 185 will protect the public health. Therefore, the tolerances are 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 to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed 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 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, [PP 4F4342 and FAP 4H5711/R2153] (including 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 Rm. 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, [PP 4F4342 and 4H5711/R2153], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests can be sent directly to EPA at:

opp-docket@epamail.epa.gov.

A copy of electronic objections and hearing requests may be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, 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, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines ''significant'' as those actions likely to

lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known 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 (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, 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: July 31, 1995.

**Daniel M. Barolo,**

*Director, Office of Pesticide Programs.*

Therefore, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

## PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a and 371.

b. By adding new § 180.484, to read as follows:

**§ 180.484 Flutolanil (N-(3-(1-methylethoxy)phenyl)-2-(trifluoromethyl)benzamide); tolerances for residues.**

Tolerances are established for residues of flutolanil, *N*-(3-(1-methylethoxy)phenyl)-2-(trifluoromethyl)benzamide, and its metabolites converted to 2-(trifluoromethyl) benzoic acid and calculated as flutolanil in or on the following raw agricultural commodities:

| Commodity | Parts per million |
|---|---|
| Cattle, fat | 0.10 |
| Cattle, kidney | 1.00 |
| Cattle, liver | 2.00 |
| Cattle, mbyp | 0.05 |
| Cattle, meat | 0.05 |
| Cattle, milk | 0.05 |
| Eggs | 0.05 |
| Goats, fat | 0.10 |
| Goats, kidney | 1.00 |
| Goats, liver | 2.00 |
| Goats, mbyp | 0.05 |
| Goats, meat | 0.05 |
| Goats, milk | 0.05 |
| Hogs, fat | 0.10 |
| Hogs, kidney | 1.00 |
| Hogs, liver | 2.00 |
| Hogs, mbyp | 0.05 |
| Hogs, meat | 0.05 |
| Hogs, milk | 0.05 |
| Horses, fat | 0.10 |
| Horses, kidney | 1.00 |
| Horses, liver | 2.00 |
| Horses, mbyp | 0.05 |
| Horses, meat | 0.05 |
| Horses, milk | 0.05 |
| Peanuts | 0.5 |
| Peanut hay | 15.0 |
| Peanut hulls | 5.0 |
| Poultry (including turkerys), fat | 0.05 |
| Poultry (including turkeys), mbyp | 0.05 |
| Poultry (including turkeys), meat | 0.05 |
| Sheep, fat | 0.10 |
| Sheep, kidney | 1.00 |
| Sheep, liver | 2.00 |
| Sheep, meat | 0.05 |
| Sheep, mbyp | 0.05 |
| Sheep, milk | 0.05 |

## PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

**Authority:** 21 U.S.C. 346a and 348.

b. By adding new § 185.3385, to read as follows:

**§ 185.3385 Flutolanil (N-(3-(1-methylethoxy)phenyl)-2-(trifluoromethyl)benzamide).**

A food additive regulation is established permitting the combined residues of the insecticide flutolanil, *N*-(3-(1-methylethoxy)phenyl)-2-(trifluoromethyl)benzamide, and its metabolites converted to 2-(trifluoromethyl) benzoic acid and calculated as flutolanil in or on the following processed food commodity:

| Commodity | Parts per million |
|---|---|
| Peanut meal | 1.0 |

[FR Doc. 95–20015 Filed 8–15–95; 8:45 am]
BILLING CODE 6560–50–F

## 40 CFR Parts 180 and 185

**[OPP–300389A; FRL–4967–9]**

**RIN 2070–AB78**

## Sodium Propionate, Methoprene, and Heliothis zea NPV; Tolerance Actions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** For each of the pesticides subject to the actions listed in this rule, EPA has completed the reregistration process and issued a Reregistration Eligibility Document (RED). In the reregistration process, all information to support a pesticide's continued registration is reviewed for adequacy and, when needed, supplemented with new scientific studies. Based on the RED tolerance assessments for the pesticide chemicals subject to this rule, EPA is taking the following tolerance actions: amending the exemptions from the requirement of a tolerance for methoprene; revoking exemptions for sodium propionate; and making wording changes to the exemption from the requirement of a tolerance for *Heliothis zea* NPV. With this rule to amend the exemptions from the requirement of tolerances for methoprene, the Agency is correcting its position in the RED, which stated that the exemptions should be revoked. The Agency believes that exemptions from the requirement of tolerances for these uses are appropriate.

**EFFECTIVE DATE:** This regulation becomes effective on August 16, 1995.

**ADDRESSES:** Written objections and hearing requests, identified by the document control number, [OPP-300389A], 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-300389A]. 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: Philip Poli, Special Review and Reregistration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Crystal Station #1, 3rd Floor, 2800 Crystal Drive, Arlington, VA 22202, (703)-308-8038; e-mail: poli.philip@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of June 28, 1995 (60 FR 33383), EPA issued a proposed rule (FRL-4960-5) affecting 40 CFR 180.2, 180.1015, 180.1027, 180.1033, and 185.4150 regarding various chemicals and tolerance actions the Agency proposed to take. Specifically, EPA proposed actions regarding the following chemicals: Methoprene, the revision of the methoprene regulation in 40 CFR 180.1033 to reflect changed uses and the revocation of the methoprene regulation in 40 CFR 185.4150; sodium propionate, the revocation of exemptions under 40 CFR 180.2(a) and 180.1015; and *Heliothis zea* NPV, the amendment of 40 CFR 180.1027 to better reflect the current viral identification and testing technology.

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 regulations issued in this document will protect the public health. Therefore, the regulations are 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-300389A] (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-300389A], 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 Parts 180 and 185**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 8, 1995.

**Lois Rossi,**

*Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

Therefore, 40 CFR, chapter I, 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 180.2 is revised to read as follows:

**§ 180.2 Pesticide chemicals considered safe.**

(a) As a general rule, pesticide chemicals other than benzaldehyde (when used as a bee repellant in the harvesting of honey), ferrous sulfate, lime, lime-sulfur, potassium carbonate, potassium polysulfide, potassium sorbate, sodium carbonate, sodium chloride, sodium hypochlorite, sodium polysulfide, sodium sesquicarbonate, sorbic acid, sulfur, and when used as plant desiccants, sodium metasilicate (not to exceed 4 percent by weight in aqueous solution) and when used as postharvest fungicide, citric acid, fumaric acid, oil of lemon, oil of orange, and sodium benzoate are not for the purposes of section 408(a) of the Act generally recognized as safe.

(b) Upon written request, the Registration Division will advise interested persons whether a pesticide chemical should be considered as poisonous or deleterious, or one not generally recognized by qualified experts, as safe.

(c) The training and experience necessary to qualify experts to evaluate the safety of pesticide chemicals for the purposes of section 408(a) of the Act are essentially the same as training and experience necessary to qualify experts to serve on advisory committees prescribed by section 408(g) of the Act. (See § 180.11.)

**§ 180.1015 [Removed]**

c. Section 180.1015 is removed.

d. Section 180.1027 is revised to read as follows:

**§ 180.1027 Nuclear polyhedrosis virus of Heliothis zea; exemption from the requirement of a tolerance.**

(a) For the purposes of this section, the viral insecticide must be produced with an unaltered and unadulterated inoculum of the single-embedded *Heliothis zea* nuclear polyhedrosis virus (HzSNPV). The identity of the seed virus must be assured by periodic checks.

(b) Each lot of active ingredient of the viral insecticide shall have the following specifications:

(1) The level of extraneous bacterial contamination of the final unformulated viral insecticide should not exceed $10^7$ colonies per gram as determined by an aerobic plate on trypticase soy agar.

(2) Human pathogens, e.g., Salmonella, Shigella, or Vibrio, must be absent.

(3) Safety to mice as determined by an intraperitoneal injection study must be demonstrated.

(4) Identity of the viral product, as determined by the most sensitive and standardized analytical technique, e.g., restriction endonuclease and/or SDS-PAGE analysis, must be demonstrated.

(c) Exemptions from the requirement of a tolerance are established for the residues of the microbial insecticide *Heliothis zea* NPV, as specified in paragraphs (a) and (b) of this section, in or on all agricultural commmodities including: corn, cottonseed, beans, lettuce, okra, peppers, sorghum, soybeans, and tomatoes.

e. Section 180.1033 is revised to read as follows:

**§ 180.1033 Methoprene; exemption from the requirement of a tolerance.**

Methoprene is exempt from the requirement of a tolerance in or on all raw agricultural commodities when used to control mosquito larvae including pastures, rice fields, vineyards, date palm orchards, nut orchards, berry orchards, and fruit orchards.

## PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

**Authority**: 21 U.S.C. 348.

b. Section 185.4150 is revised to read as follows:

**§ 185.4150 Methoprene.**

A tolerance of 10 parts per million is established for residues of isopropyl (E,E)-11-methoxy-3,7,11-trimethyl-2,4-dodecadienoate) in or on the food additive commodity cereal grain milled fractions (except flour and rice hulls).

[FR Doc. 95–20305 Filed 8–15–95; 8:45 am]

BILLING CODE 6560–50–F

## 40 CFR Parts 185 and 186

**[PP 4H5683/R2156; FRL–4968–1]**

**RIN 2070–AB78**

## Hexazinone; Food/Feed Additive Regulations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This document establishes food and feed additive regulations for residues of the herbicide hexazinone (3-cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4(1*H*,3*H*)-dione) and its metabolites (calculated as hexazinone) in sugarcane molasses. E.I. du Pont de Nemours & Co., Inc., petitioned for these regulations under the Federal Food, Drug and Cosmetic Act (FFDCA).

**EFFECTIVE DATE:** This regulation becomes effective August 16, 1995.

**ADDRESSES:** Written objections and hearing requests, identified by the document control number, [PP 4H5683/R2156], 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 [PP 4H5683/R2156]. 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: Joanne I. Miller, Product Manager (PM) 23, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6224; e-mail: miller.joanne@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of June 28, 1995 (60 FR 33387), EPA issued a proposed rule (FRL-4968-1) that gave notice that E.I. du Pont de Nemours & Co., Inc., had petitioned EPA under sections 408 and 409 of the FFDCA, 21 U.S.C. 346a and 348, to amend 40 CFR 185.3575 and 186.3575 to establish food and feed additive regulations, respectively, for combined residues of the herbicide hexazinone (3-cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4-(1*H*,3*H*)-dione) and its metabolites (calculated as hexazinone) in or on the food and feed additive commodity sugarcane molasses at 5.0 parts per million (ppm).

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 food and feed additive regulations will protect the public health. Therefore, the regulations are 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 [FAP 4H5683/R2156] (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 [FAP 4H5683/R2156], 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 Parts 185 and 186**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 31, 1995.

**Stephen L. Johnson,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR parts 185 and 186 are amended as follows:

## PART 185—[AMENDED]

1. In part 185:

a. The authority citation for part 185 continues to read as follows:

**Authority:** 21 U.S.C. 346a and 371.

b. By revising § 185.3575, to read as follows:

### § 185.3575 Hexazinone.

A food additive tolerance with regional registration, as defined in § 180.1(n) and which excludes use of hexazinone on sugarcane in Florida, is established for combined residues of the herbicide hexazinone (3-cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4(1*H*,3*H*)-dione) and its metabolites (calculated as hexazinone) in or on the following food commodity:

| Commodity | Parts per million |
|---|---|
| Sugarcane, molasses ..... | 5.0 |

## PART 186—[AMENDED]

2. In part 186:

a. The authority citation for part 186 continues to read as follows:

**Authority:** 21 U.S.C. 348.

b. By revising § 186.3575, to read as follows:

### § 186.3575 Hexazinone.

A feed additive tolerance with regional registration, as defined in § 180.1(n) and which excludes use of hexazinone on sugarcane in Florida, is established for combined residues of the herbicide hexazinone (3-cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4(1*H*,3*H*)-dione) and its metabolites (calculated as hexazinone) in or on the following feed commodity:

| Commodity | Parts per million |
|---|---|
| Sugarcane, molasses ..... | 5.0 |

[FR Doc. 95–20012 Filed 8–15–95; 8:45 am]

BILLING CODE 6560–50–F

## FEDERAL EMERGENCY MANAGEMENT AGENCY

## 44 CFR Part 64

**[Docket No. FEMA–7623]**

## List of Communities Eligible for the Sale of Flood Insurance

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Final rule.

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

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

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

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

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

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

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

### National Environmental Policy Act

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

### Regulatory Flexibility Act

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

### Regulatory Classification

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

### Paperwork Reduction Act

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

### Executive Order 12612, Federalism

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

### Executive Order 12778, Civil Justice Reform

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

### List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

## PART 64—[AMENDED]

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

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

**§ 64.6 [Amended]**

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

| State/Location | Community No. | Effective date of eligibility | Current effective map date |
|---|---|---|---|
| **New Eligibles—Emergency Program** | | | |
| Illinois: Muncie, village of, Vermilion County | 170963 | July 11, 1995 | Feb. 23, 1979. |
| Maine: Littleton, town of, Aroostook County | 230428 | .....do | Mar. 21, 1975. |
| Michigan: Concord, township of, Jackson County | 260946 | .....do | |
| Montana: Superior, town of, Mineral County | 300128 | .....do | |
| South Dakota: Big Stone City, city of, Grant County | 460156 | .....do | Nov. 12, 1976. |
| Texas: Taft, city of, San Patricio County | 481506 | .....do | |
| North Dakota: Clifford, city of, Traill County | 380684 | July 19, 1995. | |
| South Carolina: Fairfax, town of, Allendale County | 450010 | .....do | Apr. 23, 1976. |
| Michigan: | | | |
| Holmes, township of, Menominee County | 260457 | July 28, 1995 | |
| Spalding, township of, Menominee County | 260461 | .....do | |
| Georgia: Coolidge, city of, Thomas County | 130169 | .....do | Apr. 2, 1976. |
| Louisiana: Epps, village of, West Carroll County | 220283 | .....do | May 29, 1979. |
| **New Eligibles—Regular Program** | | | |
| Kentucky: Vine Grove, city of, Hardin County | 210096 | July 18, 1995 | Nov. 4, 1988. |
| South Carolina: Pelion, town of, Lexington County | 450135 | July 17, 1995 | July 17, 1995. |
| Maryland: Church Creek, town of, Dorchester County | 240101 | July 25, 1995 | Oct. 18, 1988. |
| **Reinstatements** | | | |
| Mississippi: Stone County, unincorporated areas | 280300 | Apr. 23, 1980, Emerg; Sept. 1, 1987, Reg; Sept. 1, 1987, Susp; July 11, 1995, Rein. | Sept. 1, 1987. |
| Massachusetts: Richmond, town of, Berkshire County | 250038 | July 25, 1975, Emerg; Dec. 4, 1985, Reg; Dec. 4, 1985, Susp; July 11, 1995, Rein. | Dec. 4, 1985. |
| Pennsylvania: Point Marion, borough of, Fayette County. | 421617 | July 3, 1974; Emerg; July 4, 1988, Reg; July 4, 1988, Susp; July 26, 1988, Rein; June 16, 1995, Susp; July 21, 1995 Rein. | June 16, 1995. |
| Nebraska: Paxton, village of, Keith County | 310130 | Oct. 20, 1975, Emerg; Sept. 27, 1985, Reg; June 19, 1989, Susp; July 5, 1995, Rein. | Sept. 27, 1985. |
| **Regular Program Conversions** | | | |
| **Region II** | | | |
| New York: Evans, town of, Erie County | 360240 | July 3, 1995, suspension withdrawn | July 3, 1995. |
| **Region III** | | | |
| Virginia: Hampton, independent city | 515527 | .....do | Do. |
| **Region V** | | | |
| Ohio: Malvern, village of, Carroll County | 390052 | .....do | Do. |
| **Region X** | | | |
| Oregon: Fairview, city of, Multnomah County | 410180 | .....do | Do. |
| **Region II** | | | |
| New York: | | | |
| Oswego, town of, Oswego County | 360657 | July 17, 1995, suspension withdrawn | July 17, 1995. |
| Richland, town of, Oswego County | 360660 | .....do | Do. |
| **Region IV** | | | |
| Georgia: Glynn County, unincorporated areas | 130092 | .....do | Do. |
| South Carolina: | | | |
| Cayce, city of, Lexington County | 450131 | .....do | Do. |
| Lexington County, unincorporated areas | 450129 | .....do | Do. |
| West Columbia, city of, Lexington County | 450140 | .....do | Do. |
| **Region V** | | | |
| Minnesota: Andover, city of, Anoka County | 270689 | .....do | Do. |
| Ohio: Miami County, unincorporated areas | 390398 | .....do | Do. |
| **Region VI** | | | |
| Texas: | | | |
| Comal County, unincorporated areas | 485463 | .....do | Do. |
| Schertz, city of, Bexar County | 480269 | .....do | Do. |
| Sherman, city of, Grayson County | 485509 | .....do | Do. |
| **Region VII** | | | |
| Missouri: Hayti Heights, city of, Pemiscot County | 290277 | .....do | Do. |
| Nebraska: Blair, city of, Washington County | 310228 | .....do | Do. |
| **Region X** | | | |
| Idado: Coeur d'Alene, city of, Kootenai County | 160078 | .....do | Do. |

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension, Rein.—Reinstatement.

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

Issued: August 10, 1995.

**Robert H. Volland,**

*Acting Deputy Associate Director, Mitigation Directorate.*

[FR Doc. 95–20271 Filed 8–15–95; 8:45 am]

**BILLING CODE 6718–21–P**

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### 45 CFR Part 1160

**RIN 3154–AAoo**

### Indemnities Under the Arts and Artifacts Indemnity Act

**AGENCY:** Federal Council on the Arts and the Humanities.

**ACTION:** Final rule.

**SUMMARY:** The Federal Council on the Arts and Humanities is adopting as a final rule, without change, the provisions of a proposed rule that revises the regulations implementing the Arts and Artifacts Indemnity Act, as amended (20 U.S.C. 971–977) (the ''Act''). The final rule permits the indemnification of eligible items from the United States while on exhibition in this country in connection with an exhibition of eligible items from outside of the United States. The final rule also includes illustrations of exhibitions eligible for indemnification which are intended to provide further guidance to persons considering applying for the indemnification of an international exhibition. The final rule is not intended to bring about a major shift in emphasis of the current policy or practice of the indemnity program.

**EFFECTIVE DATE:** September 15, 1995.

**FOR FURTHER INFORMATION CONTACT:** Alice Whelihan, Indemnity Administrator, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202–682–5442.

**SUPPLEMENTARY INFORMATION:**

## I. Background

### *A. Statutory Background*

In 1975, the United States Congress enacted the Arts and Artifacts Indemnity Act which established an indemnity program administered by the Federal Council on the Arts and the Humanities (the ''Federal Council''). 20 U.S.C. Sections 971–977. The Federal Council is composed of the heads of nineteen federal agencies and was established by Congress, among other things, to coordinate the policies and operations of the National Endowment for the Arts, the National Endowment for the Humanities, and the Institute of Museum Services, including the joint support of activities. 20 U.S.C. Section 971.

Under the indemnification program, the United States Government guarantees to pay loss or damage claims, subject to certain limitations, arising out of exhibitions containing items determined by the Federal Council to be of educational, cultural, historical or scientific value the exhibition of which must be certified by the Director of the United States Information Agency as being in the national interest. In order to be eligible for indemnification, the objects must be on exhibition in the United States, or if outside this country preferably as part of an exchange of exhibitions.

### *B. Legislative History*

On May 21, 1975, Senators Claiborne Pell (D, RI) and Jacob Javits (R, NY) introduced the Arts and Artifacts Indemnity Act as an amendment to the reauthorization of the National Foundation on the Arts and Humanities Act of 1965. According to the House Committee report, the purpose of the statute was ''to provide indemnities for exhibitions of artistic and humanistic endeavors, and for other purposes.'' [1] The Senate Committee stated that it believed that this purpose could be advanced ''through the exchange of cultural activities and sharing by nations of the world of their cultural institutions and national wealth and treasure.'' [2]

The broad purpose of the Act is echoed throughout the Act's language and legislative history. For example, in testifying at joint hearings before the House Subcommittee on Select Education and the Senate Special Subcommittee on Arts and Humanities, Nancy Hanks, Chairman, National Endowment for the Arts, stated:

> Cultural exhibitions and exchanges of high quality should be encouraged by the laws and policies of the United States Government. They are in the national interest because of the personal, aesthetic, intellectual, and cultural benefits accruing to every man, woman and child of this nation who has the opportunity to experience these beautiful and enlightening presentations. We believe that this country should do as much as any nation in the world to insure that these vitally important programs are strengthened.[3]

There was concern in Congress that such exchanges were impeded by prohibitively high insurance costs. The Senate noted that ''anywhere from half to two-thirds of the cost of an international exhibition is the cost of insuring the material to be exhibited.'' [4] Ronald Berman, Chairman of the Federal Council, testified that without indemnification provided in special legislation enacted by the 93rd Congress, the insurance costs in connection with several widely attended exhibitions would have been prohibitive.[5]

### *C. Regulatory Background*

The Federal Council is the agency charged by Congress with the responsibility to administer the Arts and Artifacts Indemnity Act. In practice, the Indemnity Program is administered for the Federal Council by the Museum Program of the National Endowment for the Arts under the ''Indemnities Under the Arts and Artifacts Indemnity Act'' regulations (the ''Regulations''), which are set forth at 45 CFR Part 1160.

These Regulations have been promulgated, and amended from time to time, by the Federal Council pursuant to the express and implied rulemaking authorities granted by Congress to make and amend rules needed for the effective administration of the indemnity program. Among other things, Congress expressly granted the Federal Council the authorities to establish the terms and conditions of indemnity agreements; to set application procedures; and to establish claim adjustment procedures. 20 U.S.C. Sections 971(a)(2), 973(a), 975(a).

For a number of years, the Federal Council has considered the desirability of amending the Regulations to permit the indemnification of U.S.-owned loans on exhibition in the United States in connection with certified international exhibitions. As currently drafted, the Regulations do not cover domestic objects on loan to an international exhibition in the United States. The Regulations provide, in pertinent part:

> An indemnity agreement made under these regulations shall cover:
>
> (1) Eligible items from outside the United States while on exhibition in the United States or
>
> (2) Eligible items from the United States while on exhibition outside this country, preferably when they are part of an exchange of exhibitions. 45 CFR Section 1160.1.

On February 25, 1993, during a lengthy discussion of the application of the National Gallery of Art for the indemnification of the exhibition ''Great French Paintings from the Barnes

[1] *Id.*

[2] *Id.*

[3] H.R. Rep. No. 680, 94th Cong., 1st Sess., at 5.

[4] S. Rep. No. 289, 94th Cong., 1st Sess., at 1.

[5] H.R. Rep. No. 680, 94th Cong., 1st Sess., at 5.

Foundation: Impressionist, Post-Impressionist and Early Modern,'' the Federal Council concluded that the eligibility criteria set forth in the Regulations were more narrowly drawn than required under the Act. While the Council approved the indemnification of the Barnes exhibition, which consisted of one foreign-owned object and 80 domestically owned objects, a Certificate of Indemnity ultimately did not issue because of legal uncertainties related to the Council's action under its current Regulations. To clarify eligibility issues for future actions, the Federal Council voted to amend its regulations.

After extensive discussion of the issue, the Federal Council resolved that the proposed amendment to the Regulations would significantly enhance its ability to provide the American public with the benefits to a high quality program of international exhibitions while not significantly increasing the exposure of the Federal government to pay loss or damage claims nor significantly adding to the administrative burdens or costs of the program.

The Federal Council concluded that widening the eligibility criteria under the Indemnity Program to include coverage of U.S.-owned objects in exhibitions that also include foreign-owned loans would provide an important benefit to U.S. cultural institutions and to the American public. Under the current guidelines, U.S.-owned loans may be indemnified only when exhibited abroad. The Federal Council concluded that if items from abroad are of educational, cultural, historical or scientific value, and their exhibition has been certified by the Director of the United States Information Agency as being in the national interest, thereby making them eligible for indemnification coverage, the U.S.-owned loans to the exhibition also should be eligible for indemnification.

The Federal Council stressed that the amendment is not intended to bring about a major shift in the emphasis of the current policy or practice of the indemnity program. Under the amended Regulations, indemnity coverage will continue to be available primarily for the exhibition of items coming from outside the United States. In determining whether to indemnify international exhibitions that also include U.S. loans, the Federal Council will continue to apply the same general standard of review—whether the exhibition taken as a whole is of educational, cultural, historical or scientific significance. However, to guard against potential abuses, the Federal Council will require that the foreign loans be an integral or essential component of the exhibition. Exhibitions consisting solely of domestic items will continue to be ineligible for indemnification.

The Federal Council concluded that because of the overall statutory cap on the program the proposed modification would not significantly increase the exposure of the Federal government to claims for loss or damage while providing important additional relief for U.S. borrowing institutions. Under the statutory cap, the Federal Council may not issue indemnity agreements covering losses of more than an aggregate of $3,000,000,000 at any one time. The cap—and thereby the total government exposure—remains the same whether the indemnity agreements cover foreign or domestic content. Moreover, the fact that coverage during international transit, the time of greatest risk, would not be required for loans from U.S. lending institutions greatly reduces the risk of additional losses.

The Federal Council further concluded that the proposed amendment would not cause a significant increase in either the number of applications to the program or the administrative burdens associated with applying or reviewing indemnification applications. This is the case because under the current practice, applicants already are required to include information on domestic loans in their applications, and indemnity panels consider the educational, cultural, historical or scientific value of both the domestic and foreign items in determining whether to indemnify an exhibition.

While the need to determine whether indemnification of the domestic content is appropriate will require an additional judgment made by the Federal Council, it is similar in character to the determinations already made by the Federal Council in determining the appropriateness of indemnification of foreign content. Moreover, the same options for technical assistance and resubmission will be available for a rejected applicant as are currently available.

On June 16, 1993, on the basis of these conclusions, the Federal Council reaffirmed its vote of February 25, 1993 to amend the Regulations to permit the coverage of domestic items in connection with international exhibitions in the United States. Specifically, the Federal Council approved a motion to promulgate regulations revising 45 CFR 1160.1 (''Purpose and Scope'') by adding the following language:

(3) eligible items from the United States while on exhibition in the United States if the exhibition includes other eligible items from outside the United States.

On April 6, 1994, the Federal Council published in the **Federal Register** an advance notice of proposed rulemaking (ANPR) regarding the indemnification of eligible items from the United States while on exhibition in this country in connection with an exhibition of items from outside the United States. 59 FR 16162–64, April 6, 1994. On July 6, 1995, the Federal Council published in the **Federal Register** a notice of proposed rulemaking which included the Federal Council's responses to the comments received in response to the ANPR. 60 FR 35162–66, July 6, 1995.

### II. Discussion of Comments Received

The Federal Council did not receive any comments in response to its notice of proposed rulemaking.

### III. Regulatory Anlayses

This rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 20, 1993.

As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities.

The Catalogue of Federal Domestic Assistance number for the Arts and Artifacts Indemnity Program is 45–201.

For the Federal Council on the Arts and the Humanities.

**Michael S. Shapiro,**

*Counsel to the Federal Council on the Arts and the Humanities.*

For the reasons set forth in the preamble, 45 CFR Part 1160 is amended as follows:

## PART 1160—INDEMNITIES UNDER THE ARTS AND ARTIFACTS INDEMNITY ACT

1. The authority citation for part 1160 continues to read as follows:

**Authority:** 20 U.S.C. 971–977.

2. Section 1160.1 is amended by revising paragraph (a) as follows:

### § 1160.1 Purpose and scope.

(a) This part sets forth the exhibition indemnity procedures of the Federal Council on the Arts and Humanities under the Arts and Artifacts Indemnity Act (Pub. L. 94–158) as required by section 2(a)(2) of the Act.

* * * * *

3. Sections 1160.4 through 1160.11 are redesignated as §§ 1160.5 through

1160.12 and a new Section 1160.4 is added to read as follows:

**§ 1160.4 Eligibility.**

An indemnity agreement made under these regulations shall cover:

(a) Eligible items from outside the United States while on exhibition in the United States;

(b) Eligible items from the United States while on exhibition outside this country, preferably when they are part of an exchange of exhibitions; and

(c) Eligible items from the United States while on exhibition in the United States, in connection with other eligible items from outside the United States which are integral to the exhibition as a whole.

**Example 1**

Museum A, an American art museum, is organizing a retrospective exhibition which will include more than 150 works of art by the Impressionist painter Auguste Renoir. The exhibition will present the full range of Renoir's production for the first time ever in an American museum. Museums B and C, large national museums in Paris and London, have agreed to lend 125 major works of art illustrating every aspect of Renoir's career. Museum A is also planning to include related works from other American public and private collections which have not been seen together since the artist's death in 1919. Museums D and E, major east coast American art museums, have agreed to lend 25 masterworks by Renoir. The exhibition will open in Chicago and travel to San Francisco and Washington.

**Discussion**

Example 1 is a straightforward application of the amended indemnity regulations. Under the old regulations, only the works of art from Museums B and C, the foreign museums, would have been eligible for indemnification. Under the proposed Regulations, the works of art from American museums and other public and private collections also would be eligible for indemnification. In determining whether to indemnify the entire exhibition, the Federal Council will evaluate the exhibition as a whole and whether the foreign loans are integral to the educational, cultural, historical or scientific significance of the exhibition. In this example, the Federal Council would likely approve indemnification of the entire exhibit.

**Example 2**

Museum A in Massachusetts is organizing an exhibition celebrating 250 Years of Decorative Arts in America, to be held in conjunction with the state's celebration of the millennium. Included among the objects to be borrowed from museums and historical societies in the United States are furniture, textiles, metalwork, ceramics, glass and jewelry, illustrating the best examples of American design from colonial times to the present. The curator traveled abroad recently and saw an exhibition of American quilts which have been acquired by a British decorative arts museums. He intends to borrow several of the quilts for the exhibition.

**Discussion**

Example 2 raises the question as to whether the American museum organizing the exhibition has included the British-owned American quilts merely to obtain insurance relief. In determining whether to indemnify the entire exhibition, the Federal Council will evaluate the exhibition as a whole and whether the foreign loans are integral to achieving its educational, cultural and historical purposes. Here, it is likely that the Federal Council will conclude that the foreign work are not an essential component of the exhibition. The Federal Council also may seek additional information from the applicant to determine whether the objectives of the exhibition could have been accomplished as satisfactorily by borrowing American quilts from U.S. collections. On these facts, the Federal Council in all likelihood would deny indemnification for the entire exhibition.

**Example 3**

Museum A, an American museum, is organizing an exhibition of the works of James Watkins, a nineteenth century American painter, focusing on his studies of human anatomy. Museum A has the foremost collection of preparatory drawings related to Watkins' major painting, ''The Surgeon and His Students.'' The painting is in the permanent collection of Museum B, located in the south of France, which has agreed to lend the painting for the exhibition. The exhibition will be shown at Museum B after the U.S. tour. American Universities, C and D, have also agreed to lend anatomical illustrations and drawings which show Watkins' development as a draughtsman. The exhibition and accompanying catalogue are expected to shed new light on Watkins contributions to art and scientific history.

**Discussion**

Example 3 addresses the issue of whether the Federal Council will indemnify an exhibition even where the U.S. objects outnumber the foreign works. In determining whether to indemnify the entire exhibition, the Federal Council will evaluate the exhibition as a whole and the relationship of the foreign loans to the educational, cultural, historical and scientific significance of the exhibition. In this example, the exhibition promises to make important contributions not only to the history of art but also to the history of science. While there is only a single foreign work of art, it is clearly an essential component of the exhibition as a whole. The case for indemnification of the entire exhibition is further strengthened by the fact that a foreign masterpiece, which is closely related to the preparatory drawings and anatomical illustrations and drawings owned by American institutions, will be made available to the American public. Thus, the mere fact that the U.S. loans outnumber the foreign works will not in itself disqualify the entire exhibition for indemnification.

[FR Doc. 95–20189 Filed 8–15–95; 8:45 am]

BILLING CODE 7536–01–M

## DEPARTMENT OF TRANSPORTATION

## Maritime Administration

## 46 CFR Part 387

**[Docket No. R–157]**

**RIN No. 2133–AB18**

## Utilization and Disposal of Surplus Federal Real Property for Development or Operation of a Port Facility

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Final rule.

**SUMMARY:** This rule provides guidance for implementation by the Secretary of Transportation, acting by and through the Maritime Administrator, Maritime Administration (Secretary), of controlling regulations issued by the Administrator of General Services (Administrator), as authorized by Public Law 103–160. This rule prescribes the terms, reservations, restrictions, and conditions under which the Secretary will convey surplus Federal real property and related personal property to public entities for use in the development or operation of a port facility.

**EFFECTIVE DATE:** This rule is effective August 16, 1995.

**FOR FURTHER INFORMATION CONTACT:** James R. Carman, Acting Chief, Division of Ports, Maritime Administration, MAR–830, Room 7201, 400 Seventh Street, SW., Washington, DC, 20590, (202) 366–4357.

**SUPPLEMENTARY INFORMATION:** Due to the downsizing of the United States Government, surplus Federal real property and related personal property is becoming available which may be suitable for the development or operation of a port facility. Section 2927 of the National Defense Authorization Act for Fiscal Year 1994, enacted November 30, 1993, Public Law 103–160, amended Section 203 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484) to provide that under such regulations as the Administrator, after consultation with the Secretary of Defense, may prescribe, the Administrator or the Secretary of Defense, in the case of property located at a military installation closed or realigned pursuant to a base closure law, may, in his or her discretion, assign to the Secretary for disposal such surplus real property, including buildings, fixtures, and equipment situated thereon, as is recommended by the Secretary as being needed for the development or operation of a port facility. The

Secretary of Transportation delegated the authority to convey such real and personal surplus Federal property to the Maritime Administrator (59 FR 36987, July 20, 1994). The Administrator has issued a final rule (60 FR 35706, July 11, 1995).

This rule establishes the terms, reservations, restrictions, and conditions of the conveyance, as required by Public Law 103–160, which are consistent with the controlling regulations at 41 CFR 101–47.308–10. Most of the terms, reservations, restrictions, and conditions used in this rule are found in other surplus Federal property conveyance program regulations of Federal agencies. The port facility definition is new and was developed by the Secretary to implement the conveyance program.

**Rulemaking Analyses and Notices**

This rulemaking has been reviewed under Executive Order 12866 and Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). It is not considered to be an economically significant regulatory action under Section 3(f) of E.O. 12866, since it has been determined that it is not likely to result in a rule that may have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This rule would not significantly affect other Federal agencies; would not materially alter budgetary impacts; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities or the principles set forth in E.O. 12866, and has been determined to be a nonsignificant rule under the Department Regulatory Policies and Procedures. Accordingly, it is not considered to be a significant regulatory action under E.O. 12866. Since this is a matter relating to public property it is exempt from the notice requirements of the Administrative Procedure Act (5 U.S.C. 553 (a)(2)). Furthermore, it is necessary to finalize guidelines to facilitate and expedite the selection of the recipients of properties and the actual conveyance.

This rule has not been reviewed by the Office of Management and Budget.

**Federalism**

The Secretary has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612 and has determined that these regulations do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Regulatory Flexibility Act**

The Secretary certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities.

**Environmental Assessment**

The Secretary has considered the environmental impact of this rulemaking and has concluded that the Secretary, as a sponsoring agency under the port facility conveyance, is not required to prepare an environmental assessment under the National Environmental Policy Act of 1969 (NEPA). The Secretary will insure that the reuse plan submitted by an applicant complies with the provisions of NEPA as prepared by the disposal agency.

**Paperwork Reduction Act**

This rulemaking contains a reporting requirement that is subject to the Office of Management and Budget (OMB) approval under 5 CFR Part 1320, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), as amended, and is being (or has been) submitted.

**List of Subjects in 46 CFR Part 387**

Government property management, Surplus Government property.

Accordingly, new 46 CFR Part 387 is added to read as follows:

## PART 387—UTILIZATION AND DISPOSAL OF SURPLUS FEDERAL REAL PROPERTY FOR DEVELOPMENT OR OPERATION OF A PORT FACILITY

Sec.



**Authority:** Pub. L. 103–160, 107 stat. 1933 (40 U.S.C. 484 (q))

### § 12.1 Scope.

This part is applicable to Surplus Property that is recommended by the Secretary as being needed for the development or operation of a Port Facility and is appropriate for being assigned to, or that has been assigned to the Secretary for conveyance as provided for in Public Law 103–160 and 40 U.S.C. 471 *et seq.*

### § 12.2 Definitions.

(a) *Act* means the Federal Property and Administrative Services Act of 1949 as amended, 40 U.S.C. 471 et seq., and 41 CFR 101–47. Terms defined in the Act and not defined in this section have the meanings given to them in the Act.

(b) *Applicant* means any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, or any political subdivision, municipality, or instrumentality thereof, that has submitted an application to the Secretary to obtain surplus Federal property.

(c) *Disposal Agency* means the executive agency of the Government which has authority to assign property to the Secretary for conveyance for development or operation of a port facility.

(d) *Grantee* means the Applicant to which surplus Federal property is conveyed.

(e) *Grantor* means the Secretary.

(f) *Port Facility* means any structure and improved property, including services connected therewith, whether located on the waterfront or inland, which is used or intended for use in developing, transferring, or assisting maritime commerce and water dependent industries, including, but not limited to, piers, wharves, yards, docks, berths, aprons, equipment used to load and discharge cargo and passengers from vessels, dry and cold storage spaces, terminal and warehouse buildings, bulk and liquid storage terminals, tank farms, multimodal transfer terminals, transshipment and receiving stations, marinas, foreign trade zones, shipyards, industrial property, fishing and aquaculture structures, mixed use waterfront complexes, connecting channels and port landside transportation access routes.

(g) *Secretary* means the Secretary of Transportation acting by and through the Maritime Administrator, Maritime Administration by delegation of authority.

(h) *Surplus Property* means Federal real and related personal property duly determined to be unneeded by a Federal agency which may be conveyed to an Applicant for use in the development or operation of a port facility.

### § 12.3 Notice of availability of surplus property.

The Disposal Agency shall publish notices of availability of excess and surplus Federal real and personal property. The Secretary will advise eligible public port agencies, in an

appropriate manner, of the availability of Surplus Property that is deemed to have port facility potential. Potential Applicants shall notify the Secretary, in writing, of a desire to acquire surplus Federal property before the expiration of the notice period specified in the Notice of Surplus Property—Government Property.

**§ 12.4 Applications.**

Application forms for conveyance of Surplus Property can be obtained from the Maritime Administration, Division of Ports, 400 Seventh Street, SW, Washington, DC 20590. The applicant shall identify on the application form the requested property, agree to the terms/conditions of the conveyance and shall also submit a Port Facility Redevelopment Plan (PFRP) which details the plan of use for the property and the associated economic development plan.

**§ 12.5 Surplus property assignment recommendation.**

Before any assignment recommendation is submitted to the Disposal Agency by the Secretary the following conditions shall be met:

(a) The Secretary has received and approved an application for the property.

(b) The Applicant is able, willing, and authorized to assume immediate possession of the property and pay administrative expenses incidental to the conveyance (application preparation, documentation, legal and land transfer costs).

(c) The Secretary, after consultation with the Secretary of Labor, has determined that the property to be conveyed is located in an area of serious economic disruption.

(d) The Secretary, after consultation with the Secretary of Commerce, approves the PFRP as part of a necessary economic development program.

(e) The Secretary determines that the application complies with the provisions of the National Environmental Policy Act of 1969 as prepared by the Disposal Agency.

**§ 12.6 Terms, reservations, restrictions, and conditions of conveyance.**

(a) Conveyances of property shall be on forms approved by, and available from the Secretary, and shall include such terms, reservations, restrictions and conditions set forth in this part and such other terms, reservations, restrictions and conditions as the Secretary may deem appropriate or necessary.

(b) Property shall be conveyed by a quitclaim deed or deeds on an ''as is, where is'' basis without any warranty, expressed or implied.

(c) Property shall be used and maintained in perpetuity for the purpose for which it was conveyed, and that if the property ceases to be used or maintained for that purpose, all or any portion of the property shall, in its then existing condition, at the option of the Government, revert to the Government.

(d) The entire Port Facility, including all structures, improvements, facilities and equipment in which the deed conveys any interest shall be maintained at all times in safe and serviceable condition, to assure its efficient operation and use, provided, however, that such maintenance shall be required as to structures, improvements, facilities and equipment only during the useful life thereof, as determined by the Grantor.

(e) No property conveyed shall be mortgaged or otherwise disposed of, or rights or interest granted by the Grantee without the prior written consent of the Grantor. However, the Grantor will only review leases of five years or more to determine the interest granted therein.

(f) Property conveyed for a Port Facility shall be used and maintained for the use and benefit of the public on fair and reasonable terms, without discrimination.

(g) The Grantee shall, insofar as it is within its powers and to the extent reasonable, adequately protect the water and land access to the Port Facility.

(h) The Grantee shall operate and maintain in a safe and serviceable condition, as deemed reasonably necessary by Grantor, the port and all facilities thereon and connected therewith which are necessary to service the maritime users of the Port Facility and will not permit any activity thereon which would interfere with its use as a Port Facility.

(i) The Port Facility is subject to the provisions of Title 46 Code of Federal Regulations (CFR) Part 340.

(j) The Grantee shall furnish the Grantor such financial, operational and annual utilization reports as may be required.

(k) Where construction or major renovation is not required or proposed, the Port Facility shall be placed into use within twelve (12) months from the date of this conveyance. Where construction or major renovation is contemplated at the time of conveyance, the property shall be placed in service according to the redevelopment time table approved by the Grantor in the PFRP.

(l) The Grantee shall not enter into any transaction which would operate to deprive it of any of the rights and powers necessary to perform or comply with any or all of the terms, reservations, restrictions and conditions set forth in the application and the deed.

(m) The Grantee shall keep up to date at all times a Port Facility layout map of the property described herein showing:

(1) the boundaries of the Port Facility and all proposed additions thereto, and

(2) the location of all existing and proposed port facilities and structures, including all proposed extensions and reductions of existing port facilities.

(n) In the event that any of the terms, reservations, restrictions and conditions are not met, observed, or complied with by the Grantee, the title, right of possession and all other rights conveyed by the deed to the Grantee, or any portion thereof, shall, at the option of the Grantor revert to the Government, in its then existing condition sixty (60) days following the date upon which demand to this effect is made in writing by Grantor or its successor in function, unless within said sixty (60) days such default or violation shall have been cured and all such terms, reservations, restrictions and conditions shall have been met, observed, or complied with, in which event said reversion shall not occur.

(o) The deed will contain a severability clause dealing with the terms, reservations, restrictions and conditions of conveyance.

(p) The Grantee shall remain at all times a State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, or any political subdivision, municipality, or instrumentality thereof.

(q) The Grantee shall comply at all times with all applicable provisions of law, including, the Water Resources Development Act of 1990.

(r) The Grantee shall not modify, amend or otherwise change its approved PFRP without the prior written consent of Grantor and shall implement the PFRP as approved by the Grantor.

(s) The Government under Section 120 (h)(3) of the Comprehensive, Environmental Response, Compensation and Liability Act of 1980, as amended, warrants that:

(1) all remedial action necessary to protect human health and the environment with respect to any hazardous substance on the property has been taken before the date of the conveyance, and

(2) any additional remedial action found to be necessary after the date of

the conveyance shall be conducted by the Government.

(t) The Government reserves the right of access to any and all portions of the property for purposes of environmental investigation, remediation or other corrective action and compliance inspection purposes.

(u) The Grantee shall agree that in the event, the Grantor exercises its option to revert all right, title, and interest in and to any portion of the property to the Government, or Grantee voluntarily returns title to the property in lieu of a reverter, the Grantee shall provide protection to, and maintenance of the property at all times until such time as the title is actually reverted or returned to and accepted by the Government. Such protection and maintenance shall, at a minimum, conform to the standards prescribed in regulations implementing the Act.

(v) The Grantor expressly reserves from the conveyance:

(1) oil, gas and mineral rights,

(2) improvements without land,

(3) military chapels, and

(4) property disposed of pursuant to 204 (c) of the Act.

(w) The Government reserves all right, title, and interest in and to all property of whatsoever nature not specifically conveyed, together with right of removal thereof from the Port Facility within one (1) year from the date of the deed.

(x) The Grantee shall agree to maintain any portion of the property identified as ''historical'' in accordance with recommended approaches in the Secretary of Interior Standards for Historic Property at 16 U.S.C. 461–470w–6.

(y) Prior to the use of any property by children under seven (7) years of age, the Grantee shall remove all lead-based paint hazards and all potential lead-based paint hazards in accordance with applicable lead-based paint laws and regulations.

(z) The Grantee agrees that any construction or alteration is prohibited unless a determination of no hazard to air navigation is issued by the Federal Aviation Administration.

(aa) The Grantee shall agree that in its use and occupancy of the Port Facility it shall comply with all laws relating to asbestos.

(bb) All construction on any portion of the property identified as ''wetlands'' as determined by the appropriate District of the Army Corps of Engineers shall comply with Department of the Army Wetland Construction Restrictions contained in Title 33 CFR, Parts 320 through 330.

(cc) The Grantee shall agree to maintain, indemnify and hold harmless the Grantor and the Government from any and all claims, demands, costs or judgments for damages to persons or property that may arise from the use of the property by the Grantee, guests, employees and lessees.

(dd) The Grantor, on written request from the Grantee, may grant release from any of the terms, reservations, restrictions and conditions contained in the deed, or the Grantor may release the Grantee from any terms, restrictions, reservations or conditions if the Grantor determines that the property so conveyed no longer serves the purpose for which it was conveyed.

(ee) The Grantor shall make reforms, corrections or amendments to the deed if necessary to correct such deed or to conform such deed to the requirements of applicable law.

Dated: August 10, 1995.

By order of the Maritime Administrator.

**Joel C. Richard,**

*Secretary, Maritime Administrator.*

[FR Doc. 95–20180 Filed 8–15–95; 8:45 am]

BILLING CODE 4910–81–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 285

**[I.D. 081095A]**

## Atlantic Tuna Fisheries; Harpoon Boat Category Closure

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

**ACTION:** Harpoon Boat Category Closure.

**SUMMARY:** NMFS closes the Atlantic bluefin tuna (ABT) fishery conducted by vessels permitted in the Harpoon Boat category. This closure is necessary since the annual quota for this category has been attained.

**EFFECTIVE DATE:** The closure is effective from 2330 hours local time on August 11, 1995, through December 31, 1995.

**FOR FURTHER INFORMATION CONTACT:** John D. Kelly, 301–713–2347 or Kevin B. Foster, 508–281–9260.

**SUPPLEMENTARY INFORMATION:** Regulations implemented under authority of the Atlantic Tunas Convention Act (16 U.S.C. 971–971h) pertaining to harvest of Atlantic tunas by persons and vessels subject to U.S. jurisdiction appear at 50 CFR part 285.

Section 285.22(b) of the regulations provides for an annual quota of 47 metric tons of large medium and giant size class ABT to be harvested from the Regulatory Area by vessels permitted in the Harpoon Boat category. The Assistant Administrator for Fisheries, NOAA (AA) is authorized under § 285.20(b)(1) to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the total catch of ABT will equal any quota under § 285.22. The AA is further authorized under § 285.20(b)(1) to prohibit fishing for, or retention of, ABT by the category of gear subject to the quotas.

Based on landing reports, the AA has determined that the quota of ABT allocated for the Harpoon Boat category for 1995 will be attained by August 11, 1995. Fishing for, retention, possession, or landing of large medium or giant size class ABT by vessels permitted in the Harpoon Boat category must cease at 2330 hours on August 11, 1995.

### Classification

This action is taken under the authority of 50 CFR 285.20, and is exempt from review under E.O. 12866.

**Authority:** 16 U.S.C. 971–971h.

Dated: August 10, 1995.

**Richard W. Surdi,**

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

[FR Doc. 95–20202 Filed 8–10–95; 3:51 pm]

BILLING CODE 3510–22–F

## 50 CFR Part 661

**[Docket No. 950426116–5116–01; I.D. 080395B]**

## Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California; Closure From Sisters Rocks to Mack Arch, OR

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

**ACTION:** Closure.

**SUMMARY:** NMFS announces that the commercial salmon fishery in the area from Sisters Rocks to Mack Arch, OR, was closed at 12 midnight, July 25, 1995. The Director, Northwest Region, NMFS (Regional Director), has determined that the commercial quota of 1,200 chinook salmon for the area has been reached. This action is necessary to conform to the preseason announcement of the 1995 management measures and is intended to ensure conservation of chinook salmon.

**DATES:** Effective at 2400 hours local time, July 25, 1995. Comments will be accepted through August 31, 1995.

**ADDRESSES:** Comments may be mailed to William Stelle, Jr., Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE., BIN C15700–Bldg. 1, Seattle, WA 98115–0070. Information relevant to this action has been compiled in aggregate form and is available for public review during business hours at the office of the Regional Director.

**FOR FURTHER INFORMATION CONTACT:** William L. Robinson, 206–526–6140.

**SUPPLEMENTARY INFORMATION:** Regulations governing the ocean salmon fisheries at 50 CFR 661.21(a)(1) state that, when a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary of Commerce will, by notice issued under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached.

In the annual management measures for ocean salmon fisheries (60 FR 21746, May 3, 1995), NMFS announced that the 1995 commercial fishery in the area between Sisters Rocks and Mack Arch, OR would open on July 24 and continue through August 31 or attainment of the 1,200 chinook salmon quota, whichever occurred first. This fishery was scheduled to open for 2-day periods only.

The best available information on July 26 indicated that commercial catches in the area totaled over 1,700 chinook salmon during the first open period on July 24–25. Due to attainment of the quota, NMFS determined to close the fishery for the remainder of the season and, thus, not reopen the fishery on July 28, the next scheduled opening.

The Regional Director consulted with representatives of the Pacific Fishery Management Council and the Oregon Department of Fish and Wildlife regarding this closure. The State of Oregon will manage the commercial fishery in State waters adjacent to this area of the exclusive economic zone in accordance with this Federal action. In accordance with the inseason notice procedures of 50 CFR 661.23, actual notice to fishermen of this action was given prior to 0001 hours local time, July 28, 1995, the next scheduled opening, by telephone hotline number (206) 526–6667 and (800) 662–9825 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 KHz. Because of the need for immediate action to conserve chinook salmon, NMFS has determined that good cause exists for this action to be issued without affording a prior opportunity for public comment. This action does not apply to other fisheries that may be operating in other areas.

### Classification

This action is authorized by 50 CFR 661.21 and 661.23 and is exempt from review under E.O. 12866.

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

Dated: August 9, 1995.

**Richard W. Surdi,**

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

[FR Doc. 95–20177 Filed 8–15–95; 8:45 am]

**BILLING CODE 3510–22–F**

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## 50 CFR Part 677

**[Docket No. 950615155–5200–02; I.D. 060695A]**

**RIN 0648–AI01**

## North Pacific Fisheries Research Plan; Crab Vessel Fee Exemption

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule to exempt certain crab catcher vessels from the 1995 fee-collection program authorized pursuant to the North Pacific Fisheries Research Plan (Research Plan). This exemption responds to a request from the State of Alaska to conform the Research Plan to a recent change in its crab observer coverage requirements for catcher vessels participating in the Dutch Harbor and Adak area king crab fisheries, and will avoid a ''double payment'' by the affected vessels of both Research Plan fees and costs of the State required observer coverage. This final rule is consistent with the intent of the final rule implementing the Research Plan and is intended to facilitate Federal/State cooperative implementation of the crab and groundfish observer programs during the first year of the fee-collection program authorized under the Research Plan.

**EFFECTIVE DATE:** September 1, 1995.

**ADDRESSES:** Copies of the Research Plan and the Environmental Assessment/Regulatory Impact Review prepared for the Research Plan may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510.

**FOR FURTHER INFORMATION CONTACT:** Susan Salveson, 907–586–7228.

**SUPPLEMENTARY INFORMATION:**

Regulations implementing the Research Plan became effective October 6, 1994 (59 FR 46126, September 6, 1994). The purpose for, and description of, the Research Plan are contained in the preamble to the final rule (59 FR 46126, September 6, 1994).

At its April 1995 meeting, the North Pacific Fishery Management Council (Council) requested that NMFS initiate rulemaking to revise 1995 crab observer coverage requirements set out under regulations implementing the Research Plan. The Council also requested NMFS to exempt catcher vessels participating in the Adak and Dutch Harbor king crab fisheries from the 1995 Research Plan fees.

A proposed rule to implement the Council's request was published in the **Federal Register** on June 30, 1995 (60 FR 34228). Comments on the proposed rule were invited through July 12, 1995. No written comments were received within the comment period.

Upon reviewing the reasons for exempting certain crab catcher vessels from the 1995 fee assessments under the Research Plan, NMFS has determined that this final rule implementing the following two measures is necessary to facilitate Federal and Alaska State cooperative implementation of the crab and groundfish observer programs during the first year of the fee-collection program authorized under the Research Plan:

1. Regulations at § 677.10(a)(3) are revised to accommodate a new State of Alaska requirement that catcher vessels participating in the Adak or Dutch Harbor king crab fisheries carry an observer; and

2. Regulations at § 677.6(b)(1)(iii)(A) are revised to extend current exemption provisions from the 1995 fee to crab catcher vessels participating in the Adak and Dutch Harbor king crab fisheries.

Further explanation of, and reasons for, these measures are contained in the preamble to the proposed rule (60 FR 34228, June 30, 1995).

### Classification

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this action would not have a significant economic impact on a substantial number of small entities. The reasons

were published in the **Federal Register** on June 30, 1995 (60 FR 34228). As a result, a regulatory flexibility analysis was not prepared.

This action relieves a restriction on crab vessels participating in the Adak and Dutch Harbor crab fisheries, which open September 1, 1995, and responds to a request from the State of Alaska. Because the rule relieves a restriction, under U.S.C. 553(d)(1), this final rule is made effective September 1, 1995.

This final rule has been determined to be not significant for purposes of E.O. 12866.

**List of Subjects in 50 CFR Part 677**

Fisheries, Reporting and recordkeeping requirements.

Dated: August 9, 1995.

**Gary Matlock,**

*Program Management Officer, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 677 is amended as follows:

## PART 677—NORTH PACIFIC FISHERIES RESEARCH PLAN

1. The authority citation for part 677 continues to read as follows:

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

2. In § 677.6, paragraph (b)(1)(iii)(A) is revised to read as follows:

**§ 677.6 Research Plan fee.**

* * * * *

(b) * * *

(1) * * *

(iii) * * *

(A) The round weight or round-weight equivalent of retained catch of red king crab or brown king crab harvested from ADF&G's statistical area R (Adak), defined at 5 AAC 34.700, brown king crab harvested from ADF&G's statistical area O (Dutch Harbor), defined at 5 AAC 34.600, *Chionoecetes tanneri* Tanner crab, *C. angulatus* Tanner crab, and *Lithodes cousei* king crab determined by the best available information received by the Regional Director since the last bimonthly billing period, multiplied by the standard exvessel price established pursuant to § 677.11 for the calendar year, multiplied by one-half the fee percentage established pursuant to § 677.11 for the calendar year; plus

* * * * *

3. In § 677.10, paragraph (a)(3) is revised to read as follows:

**§ 677.10 General requirements.**

(a) * * *

(3) *Requirements for vessel operators of Bering Sea and Aleutian Islands area king and Tanner crab.* An operator of a vessel that harvests or processes king or Tanner crab must have one or more State of Alaska-certified observers on board the vessel whenever king or Tanner crab are received, processed, or onboard the vessel in the Bering Sea and Aleutian Islands area if the operator is required to do so by Alaska State regulations at 5 AAC 34.035, 34.082, 35.082, or 39.645.

* * * * *

[FR Doc. 95–20257 Filed 8–15–95; 8:45 am]

BILLING CODE 3510–22–F

# Proposed Rules

Federal Register
Vol. 60, No. 158
Wednesday, August 16, 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 Parts 353 and 354

**[Docket No. 90–117–1]**

**RIN 0579–AA54**

### Export Certificates

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to revise completely the ''Phytosanitary Export Certification'' regulations, which concern inspection and phytosanitary certification of plants and plant products offered for export.

We propose to: Revise the requirements for qualifying as an inspector; allow persons other than inspectors, to be known as ''agents,'' to perform phytosanitary field inspections; provide for use of a form specifically for certification of processed plant products offered for export; provide for phytosanitary certification of plants and plant products that are offered for reexport from the United States after having been legally imported into the United States; provide for industry-issued certification of certain plant products under terms of an agreement between the industry and the Animal and Plant Health Inspection Service; and specify that we will issue only one certificate for any export consignment.

These actions would facilitate the export of American agricultural products by ensuring that a sufficient number of qualified individuals are available to carry out Federal certification activities and by providing for additional types of certifications.

We also propose to make minor editorial changes in our user fee regulations for consistency with the proposed changes to the ''Phytosanitary Export Certification'' regulations.

**DATES:** Consideration will be given only to comments received on or before September 15, 1995.

**ADDRESSES:** Please send an original and three copies of your comments to Docket No. 90–117–1, Animal and Plant Health Inspection Service, Policy and Program Development, Regulatory Analysis and Development, 4700 River Road Unit 118, Riverdale, MD 20737–1228. Please state that your comments refer to Docket No. 90–117–1. 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:** Mr. Leonard M. Crawford, Senior Operations Officer, Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Port Operations, 4700 River Road Unit 139, Riverdale, Maryland 20737–1228; (301) 734–8537.

**SUPPLEMENTARY INFORMATION:**

#### Background

The Phytosanitary Export Certification regulations, contained in 7 CFR part 353 (referred to below as the regulations), set forth procedures for obtaining phytosanitary certificates for domestic plants and plant products offered for export. We are proposing to amend these regulations to: (1) Revise the requirements for qualifying as an inspector; (2) allow persons other than inspectors to perform phytosanitary field inspections; (3) provide for use of a form specifically for certification of processed plant products offered for export; (4) provide for phytosanitary certification of plants and plant products that are offered for reexport from the United States after having been legally imported into the United States; (5) provide for industry-issued certification of certain plant products under terms of an agreement between the industry and the Animal and Plant Health Inspection Service; and (6) specify that we will issue only one certificate for any export consignment.

#### Inspectors

Under section 102(e) of the Organic Act of 1944 (7 U.S.C. 147a(e)), the Animal and Plant Health Inspection Service (APHIS) provides phytosanitary certification of plants and plant products other than manufactured or processed products as a service to exporters. After assessing the phytosanitary condition of the plants or plant products intended for export, relative to the receiving country's regulations, an inspector issues an internationally recognized phytosanitary certificate (PPQ Form 577), if warranted.

Since 1975, APHIS has participated with State governments in a Cooperative Phytosanitary Export Certification Program (the program), which allows certain State officials, as well as APHIS officials, to issue phytosanitary certificates. Because the number of Federal inspectors is limited, the use of State inspectors is a considerable service to exporters of plants and plant products, in terms of both time and convenience.

To ensure that all inspectors meet certain minimum qualifications, our regulations contain requirements that must be met by State plant regulatory officials before they can be designated by the Secretary of Agriculture to issue phytosanitary certificates under the program. Currently, the regulations at § 353.1(b)(4) require that a State plant regulatory official, to be eligible for designation as an inspector, must have a bachelor's degree in the biological sciences, a minimum of 2 years' experience in State plant regulatory activities, and a minimum of 2 years' experience in recognizing and identifying domestic plant pests known to occur within the cooperating State. Six years' experience in State plant regulatory activities may be substituted for the degree requirement.

The National Plant Board, an organization made up of State plant regulatory officials, suggested that APHIS requirements for a State official to be designated as an inspector are too stringent. A joint Federal-State committee was formed to study the issue. The committee agreed that the above requirements may be unnecessarily stringent, and that a modification of these requirements would assist State plant regulatory agencies in recruiting adequate numbers of individuals for the position of inspector while still ensuring that the individuals selected for the position had

the necessary skills. It was also suggested that the regulations should be amended to allow county officials to be eligible for designation as an inspector as well. Leaving the requirements unchanged could eventually result in a shortage of qualified inspectors, which would in turn impair APHIS's ability to provide competent, expeditious phytosanitary certification of American agricultural products.

We are therefore proposing to revise the definition of ''Inspector'' at current § 353.1(b)(4) to allow a county plant regulatory official to be eligible for designation as an inspector under the program. We are proposing to amend current § 353.6 by adding eligibility requirements. We would require that State or county plant regulatory officials, to be eligible for designation as an inspector, must have a bachelor's degree in the biological sciences, and a minimum of 1 year's experience in State or county plant regulatory activities, or a combination of higher education in the biological sciences and experience in State plant regulatory activities, as follows:

0 years education and 5 years experience;
1 year education and 4 years experience;
2 years education and 3 years experience;
3 years education and 2 years experience; or
4 years education and 1 year experience.

The years of education and experience do not have to be acquired consecutively. In addition, candidates would be required to successfully complete the APHIS training course on phytosanitary certification prior to their designation as inspectors. Successful completion would be indicated by receipt of a passing grade. The training course would have the same content as the course required of new APHIS Plant Protection and Quarantine officers.

Based on our experience with administering the program, we believe that the above combination of education and experience would be adequate to ensure that inspectors are fully qualified to ascertain the phytosanitary condition of plants or plant products they certify for export. No inspectors would inspect any plants or plant products in which they or a member of their family are directly or indirectly financially interested. In this instance, a family consists of the spouse of the inspector or agent, and their parents, their children, and first cousins.

We are also proposing to revise the description of the certification process in current § 353.7(d) by adding a reference to county agencies. Persons authorized to conduct field inspections of seed crops

The regulations at current § 353.7(d) allow inspectors to issue phytosanitary certificates based on inspections made by cooperating Federal and State agencies. We are proposing to authorize certain other persons to perform phytosanitary inspections of seed crops in the field that will serve as the basis for an inspector to issue a phytosanitary certificate.

Increasingly stringent foreign regulations and shrinking Federal and State budgets have placed increasing demands on a dwindling pool of available inspection personnel, thus making it very difficult to perform necessary phytosanitary field inspections. APHIS and its cooperating State plant regulatory agencies have been searching for alternative ways of satisfying the demand for phytosanitary field inspections to meet the requirements of foreign importers. It was suggested by the National Plant Board that it would be extremely helpful, subject of course to appropriate conditions, to be able to draw on the services of other qualified individuals, such as members of an official seed certifying agency like the Association of Official Seed Certifying Agencies (AOSCA), to perform the field inspections of seed crops as a component of the phytosanitary certification process in the United States. The authorization of such qualified individuals to conduct phytosanitary field inspections of seed crops would help ensure that sufficient personnel are available to conduct these inspections.

We are, therefore, proposing to authorize individuals who possess specified qualifications to conduct field inspections of seed crops that are required for phytosanitary certification. These persons would be designated by APHIS as authorized ''agents.'' Agents would conduct phytosanitary field inspections of seed crops in cooperation with and on behalf of those State plant regulatory agencies which elect to use agents and which maintain an appropriate Memorandum of Understanding (MOU) with APHIS. The MOU would provide that the State plant regulatory agencies would use agents to conduct inspections in accordance with the regulations. Field inspections conducted by agents would be monitored by State plant regulatory and/or APHIS personnel through on-site observation of the agents' activities and review of agents' records relating to these activities. Agents would not be authorized to issue phytosanitary certificates, but would only be authorized to conduct the actual field inspections of seed crops necessary for determining phytosanitary condition prior to the issuance of a phytosanitary certificate for the crops.

The regulations at current § 353.1(b) would be amended by adding a definition for ''agent,'' as follows: ''An individual who meets the eligibility requirements set forth in § 353.6, and who is designated by the Animal and Plant Health Inspection Service to conduct phytosanitary field inspections of seed crops to serve as a basis for the issuance of phytosanitary certificates.''

Current § 353.6 would be amended by adding eligibility requirements for agents. To be eligible for the designation as agents, individuals must have the ability to recognize, in the crops they are responsible for inspecting, plant pests, including symptoms and/or signs of disease-causing organisms of concern to importing countries. An individual, in order to be designated as an agent, also would be required to have a bachelor's degree in the biological sciences, and a minimum of 1 year's experience in identifying plant pests endemic to crops of commercial importance within the cooperating State, or a combination of higher education in the biological sciences and experience in identifying such plant pests, as follows:

0 years education and 5 years experience;
1 year education and 4 years experience;
2 years education and 3 years experience;
3 years education and 2 years experience; or
4 years education and 1 year experience.

The years of education and experience do not have to be acquired consecutively. In addition, agents would be required to receive annual training provided by the State plant regulatory agency. This required training would include instruction in inspection procedures, identification of plant pests of quarantine importance to importing countries, methods of collection and submission of specimens (organisms and/or plants or plant parts) for identification, and preparation and submission of inspection report forms approved by the State plant regulatory agency. Agents would have to have access to Federal or State laboratories for the positive identification of plant pests detected.

Based on our experience with administering the Cooperative Phytosanitary Export Certification Program, we believe that the above combination of education and experience would be adequate to ensure

that individuals meeting the described qualifications would be fully qualified to provide phytosanitary field inspection of seed crops. No agents would inspect any plants or plant products in which they or a member of their family are directly or indirectly financially interested.

**Export Certificate for Processed Plant Products**

Foreign government agencies and foreign buyers frequently require a ''certificate'' for processed or manufactured plant products, such as wooden furniture parts, plywood, or veneer, stating they are free from injurious plant pests before permitting entry into their country. We are proposing to provide for use of a certificate (PPQ Form 578, Export Certificate for Processed Plant Products) specifically for the certification of processed plant products offered for export. Processed products are not eligible for a phytosanitary certificate. This export certificate would be issued by an inspector, and would affirm that, based on inspection of submitted samples and/or by virtue of the processing received, the processed plant products described on the form are believed to be free from injurious plant pests. The original certificate would, immediately upon its issuance, be delivered or mailed to the applicant or a person designated by the applicant. One copy of each certificate would be filed in the office of inspection at the port of certification. (As in the current regulations at 7 CFR Part 353, we would issue a phytosanitary certificate (PPQ Form 577) only for unprocessed domestic plants and plant products.) This new certificate for processed plant products is proposed in order to facilitate trade.

**Phytosanitary Certificate for Reexport**

Foreign origin plants and plant products that are legally imported into the United States and subsequently offered for reexport may require Federal certification in order to satisfy the phytosanitary requirements of importing countries. We are proposing to provide for the issuance of a phytosanitary certificate for reexport (PPQ Form 579). This reexport certificate would certify that, based on the original foreign phytosanitary certificate and/or additional inspection or treatment in the United States, the plants and plant products conform to the current phytosanitary regulations of the importing country and have not been subjected to the risk of infestation or infection during storage in the United States. The reexport certificate would be issued by an inspector. The original certificate would, immediately upon its issuance, be delivered or mailed to the applicant or a person designated by the applicant. One copy of each certificate would be filed in the office of certification.

The reexport certificate would not be issued for plants and plant products which transit the United States under Customs bond. These commodities do not make Customs entry into U.S. commerce, which means that our inspectors do not have the normal opportunities to inspect the articles, check their paperwork, and determine whether they meet the phytosanitary requirements of the final destination country. It would take a major and uneconomical reorganization of our port of arrival activities to give our inspectors the necessary access to articles and paperwork associated with products which transit the United States under Customs bond. Therefore, our policy is that we will not issue phytosanitary certificates for reexportation for plants and plant products which transit the United States under Customs bond.

**Industry-Issued Certificate**

There has been a demonstrated need in the United States (e.g., with conifer lumber exported to Europe and Chile) for segments of the agricultural and forestry industries to be able to issue industry certification under the aegis of the Federal government, affirming that a plant product meets some specific condition. This certification is related to plant health but is less than full phytosanitary certification. For example, some governments require a written certification stating that a wood product exported from the United States is free of bark and grub holes.

We propose to provide for industry-issued certification of certain plant products under terms of a written agreement between the concerned agricultural or forestry company or association and APHIS. Each agreement would specify the articles subject to the agreement and the measures necessary to prevent the introduction and dissemination of specified plant pests into the foreign countries specified in the agreement.

Industry-issued certification would be allowed only with the industry-issued agreement in place. An agreement could be discontinued at any time by request of either party, effective 15 days after one party notifies the other in writing that it wishes to discontinue the agreement. Violation of the terms of the agreement, or movement of articles under the agreement in violation of APHIS regulations, would result in immediate withdrawal of the agreement. Withdrawal of an agreement could be appealed within 10 days following withdrawal, and a hearing would be held to resolve any conflicts as to any material fact. To encourage compliance and aid enforcement, no new agreement would be signed with a party who has had an agreement withdrawn for 12 months after the withdrawal.

The industry-issued certificate would affirm that a plant product has been handled, processed, or inspected in a manner required by a foreign government. APHIS and State regulatory officials would monitor the industry to ensure compliance with the terms of the agreement. Monitoring would be accomplished through on-site observation of pertinent industry activities and review of industry records relating to these activities.

**Application for Certification**

An exporter may sometimes file separate applications for different portions of the same shipment, or consignment. An inspector then ends up conducting multiple inspections of the same consignment and issuing what amounts to duplicate certificates. To eliminate this duplicative work and make better use of available inspectors, we propose to issue only one certificate for any consignment. We propose to amend § 353.5 to stipulate that we will not accept more than one application for any consignment, and that only one certificate will be issued for any consignment. We also propose to amend the definition of consignment currently at § 353.1(b)(7) to indicate that a consignment is a shipment of plants or plant products from one exporter, to one consignee, in one country, on one means of conveyance; or any mail shipment to one consignee. One consignment is entitled to only one certificate.

**Miscellaneous**

We are proposing to remove all references to ''Deputy Administrator,'' and to replace them with references to ''Administrator,'' and to remove certain references to ''Plant Protection and Quarantine Programs,'' and to replace them with references to ''Animal and Plant Health Inspection Service.'' We are also proposing to remove the definition of ''Plant Protection and Quarantine Programs,'' and to add definitions of ''Administrator'' and ''Animal and Plant Health Inspection Service.'' The current regulations indicate that the Deputy Administrator, Plant Protection and Quarantine, APHIS, is the official responsible for the

performance of all duties arising in the administration of the Act. We are proposing to make the terminology changes noted above to indicate that the primary authority and responsibility for various decisions under these regulations belong to the Administrator of the agency.

We are proposing to add definitions for ''Family,'' ''Plant pests,'' ''Plant products,'' ''Plants and plant products,'' and ''Representative of the concerned agricultural or forestry industry'' for clarity.

We are proposing to add a description of the purpose of the export certification program in § 353.2 to make it clear that APHIS does not require export certificates, but issues them as a service to exporters.

APHIS no longer has offices as listed in current § 353.3(a). Therefore, we are proposing to remove the list of area offices where service is offered at § 353.3(a) and to replace it with the four APHIS regional offices which reflect the actual APHIS regional structure. Information concerning the location of inspectors who may issue certificates for plants and plant products may be obtained from the regional offices.

Sometimes persons holding certificates request APHIS to issue new certificates for a consignment, e.g., if the original certificates are lost. Section 353.7(e) of the current regulations allows inspectors to issue new certificates on the basis of inspections for previous certifications when the previously issued certificates can be canceled before they have been accepted by the phytopathological authorities of the country of destination involved. We are retaining this provision for phytosanitary certificates for domestic plants or unprocessed plant products, because this provision allows inspectors to respond to changing conditions in a flexible and economical manner with the least disruption to commerce. We propose to add a similar provision for export certificates for processed plant products, without including the caveat that the previously issued certificates must be canceled before they have been accepted by the phytopathological authorities of the country of destination. Export certificates for processed plant products are not phytosanitary certificates and are not intended for presentation to the phytopathological authorities of foreign countries, so this caveat would be inappropriate for export certificates for processed plant products.

We are also making nonsubstantive editorial changes in the regulations for clarity.

**User Fee Regulations**

At the same time we are making changes to 7 CFR 354.3 for consistency. In order to provide for county plant regulatory officials performing phytosanitary certification, we propose to remove the definition of ''Designated State inspector'' and to replace it with a definition of ''Designated State or county inspector.'' We propose to amend the definitions of ''Phytosanitary certificate,'' ''Phytosanitary certificate for reexport,'' and ''Processed product certificate'' for consistency with definitions for these certificates in proposed § 353.1. Finally, we also propose to amend § 354.3 to clarify that, just as no APHIS user fee is charged for certificates issued by a designated State inspector, no APHIS user fee will be charged for certificates issued by a designated county inspector, although State or county fees may be assessed.

**Review of Existing Regulations**

This proposed rule is part of the scheduled review of Part 353—Phytosanitary Export Certification, to meet regulatory review requirements. Executive Order 12866 and Departmental Regulation 1512–1 require that agencies initiate reviews of currently effective rules to reduce regulatory burdens and minimize impacts on small entities.

**Executive Order 12866 and Regulatory Flexibility Act**

This proposed rule has been reviewed under Executive Order 12866. The proposed 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.

Our proposed changes to the requirements for qualifying as an inspector, and our proposal to allow additional individuals to perform phytosanitary field inspections, would have no measurable financial impact on those entities involved in exporting plants and plant products. The changes would help ensure that sufficient qualified personnel are available to perform inspections.

In addition, our proposal to allow use of additional individuals to perform phytosanitary field inspections could result in a cost savings to industry through reduced duplication of effort in field inspection activities. Currently, seed certifying agencies inspect crops for genetic purity. Inspectors make a separate inspection of the crops in the field to determine their phytosanitary condition under part 353. Under our proposal, ''agents'' could perform a single inspection for both purposes. Large commercial seed companies would be the primary beneficiaries of this proposed change because their crops would be inspected in a more timely manner, thus making them available for the marketplace sooner.

This proposal is not expected to significantly increase the number of certificates for reexport issued by APHIS. APHIS currently issues approximately 9000 certificates for reexport each year. We estimate that approximately 10 percent (900) of these certificates are issued to small businesses, based on the size and value of the shipments.

We anticipate that allowing industry-issued certificates, and inspector-issued export certificates specifically for processed plant products (PPQ Form 578) would benefit exporters, including small businesses, by facilitating exportation of plants and plant products. Most of the articles eligible for such certificates are exported by larger businesses, and we estimate that each year small businesses will probably be issued fewer than 1000 industry-issued certificates and inspector-issued export certificates specifically for processed plant products.

Exporters would be charged a user fee as stated in § 354.3 upon the issuance of commercial, private, and re-issued (voided and returned certificates) export certificates, respectively. The justification for and the analysis of the user fees can be found in the regulatory impact analysis accompanying the final rule published on January 9, 1992 (57 FR 755–773, Docket No. 91–135).

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 has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule will be submitted for approval to the Office of Management and Budget. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please send a copy of your comments to: (1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, 4700 River Road Unit 118, Riverdale, MD 20737–1228, and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

**List of Subjects**

*7 CFR Part 353*

Exports, Plant diseases and pests, Reporting and recordkeeping requirements.

*7 CFR Part 354*

Exports, Government employees, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Travel and transportation expenses.

Accordingly, 7 CFR parts 353 and 354 would be amended as follows:

1. Part 353 would be revised to read as follows:

## PART 353—EXPORT CERTIFICATION

Sec.



**Authority:** 7 U.S.C. 147a; 21 U.S.C. 136 and 136a; 44 U.S.C. 35; 7 CFR 2.17, 2.51, and 371.2(c).

### § 353.1 Definitions.

*Administrator.* The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

*Agent.* An individual who meets the eligibility requirements set forth in § 353.6, and who is designated by the Animal and Plant Health Inspection Service to conduct phytosanitary field inspections of seed crops to serve as a basis for the issuance of phytosanitary certificates.

*Animal and Plant Health Inspection Service* (APHIS). The Animal and Plant Health Inspection Service of the U.S. Department of Agriculture.

*Consignment.* One shipment of plants or plant products, from one exporter, to one consignee, in one country, on one means of conveyance; or any mail shipment to one consignee.

*Export certificate for processed plant products.* A certificate (PPQ Form 578) issued by an inspector, describing the plant health condition of processed or manufactured plant products based on inspection of submitted samples and/or by virtue of the processing received.

*Family.* An inspector or agent and his or her spouse, their parents, children, and first cousins.

*Industry-issued certificate.* A certificate issued by a representative of the concerned agricultural or forestry industry under the terms of a written agreement with the Animal and Plant Health Inspection Service, giving assurance that a plant product has been handled, processed, or inspected in a manner required by a foreign government.

*Inspector.* An employee of the Animal and Plant Health Inspection Service, or a State or county plant regulatory official designated by the Secretary of Agriculture to inspect and certify to shippers and other interested parties, as to the phytosanitary condition of plant products inspected under the Act.

*Office of inspection.* The office of an inspector of plants and plant products covered by this part.

*Phytosanitary certificate.* A certificate (PPQ Form 577) issued by an inspector, giving the phytosanitary condition of domestic plants or unprocessed or unmanufactured plant products based on inspection of the entire lot.

*Phytosanitary certificate for reexport.* A certificate (PPQ Form 579) issued by an inspector, giving the phytosanitary condition of foreign plants and plant products legally imported into the United States and subsequently offered for reexport. The certificate certifies that, based on the original foreign phytosanitary certificate and/or additional inspection or treatment in the United States, the plants and plant products are considered to conform to the current phytosanitary regulations of the receiving country and have not been subjected to the risk of infestation or infection during storage in the United States. Plants and plant products which transit the United States under Customs bond are not eligible to receive the phytosanitary certificate for reexport.

*Plant pests.* Any living stage of any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or other products of plants.

*Plant products.* Products derived from nursery stock, other plants, plant parts, roots, bulbs, seeds, fruits, nuts, and vegetables, including manufactured or processed products.

*Plants and plant products.* Nursery stock, other plants, plant parts, roots, bulbs, seeds, fruits, nuts, vegetables and other plant products, including manufactured or processed products.

*State.* Any of the States of the United States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, or the Virgin Islands of the United States.

*The Act.* The act of Congress entitled ''Department of Agriculture Organic Act of 1944,'' approved September 21, 1944 (58 Stat. 735), section 102.

### § 353.2 Purpose and administration.

The export certification program does not require certification of any exports, but does provide certification of plants and plant products as a service to exporters. After assessing the phytosanitary condition of the plants or plant products intended for export, relative to the receiving country's regulations, an inspector issues an internationally recognized phytosanitary certificate (PPQ Form 577), a phytosanitary certificate for reexport (PPQ Form 579), or an export certificate for processed plant products (PPQ Form 578), if warranted. APHIS also enters into written agreements with industry to allow the issuance of industry-issued certificates giving assurance that a plant product has been handled, processed, or inspected in a manner required by a foreign government.

### § 353.3 Where service is offered.

(a) Information concerning the location of inspectors who may issue certificates for plants and plant products may be obtained by contacting one of the following regional offices:

| Region | States |
|---|---|
| Northeastern:<br>Blason II, 1st Floor, 505 South Lenola Road, Moorestown, NJ 08057. | CT, ME, MA, NH, RI, VT, NY, NJ, PA, MD, DE, VA, WI, MN, IL, IN, OH, MI, WV. |
| Southeastern:<br>3505 25th Avenue, Building 1, North, Gulfport, MS 39501. | FL, AL, GA, KY, MS, TN, NC, SC, PR, US VI. |
| Central:<br>3505 Boca Chica Blvd., Suite 360, Brownsville, TX 78521–4065. | TX, OK, NE, AR, KS, LA, IA, MO, ND, SD. |

| Region | States |
|---|---|
| Western:<br>9580 Micron Avenue, Suite I, Sacramento, CA 95827. | HI, CA, CO, ID, MT, UT, WY, WA, OR, NV, NM, AZ, AK. |

(b) Inspectors who may issue phytosanitary certificates for terrestrial plants listed in 50 CFR part 17 or 23 are available only at a port designated for export in 50 CFR part 24, or at a nondesignated port if allowed by the U.S. Department of the Interior pursuant to section 9 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1538). The following locations are designated in 50 CFR part 24 as ports for export of terrestrial plants listed in 50 CFR part 17 or 23:

(1) Any terrestrial plant listed in 50 CFR part 17 or 23:

Nogales, AZ
Los Angeles, CA
San Diego, CA
San Francisco, CA
Miami, FL
Orlando, FL
Honolulu, HI
New Orleans, LA
Hoboken, NJ (Port of New York)
Jamaica, NY
San Juan, PR
Brownsville, TX
El Paso, TX
Houston, TX
Laredo, TX
Seattle, WA

(2) Any plant of the family Orchidaceae (orchids) listed in 50 CFR part 17 or 23:

Hilo, HI
Chicago, IL

(3) Roots of American ginseng (*Panax quinquefolius*) listed in 50 CFR 23.23:

Atlanta, GA
Chicago, IL
Baltimore, MD
St. Louis, MO
Milwaukee, WI

(4) Any plant listed in 50 CFR 17.12 or 23.23 and offered for exportation to Canada:

Detroit, MI
Buffalo, NY
Rouses Point, NY
Blaine, WA

(5) Any logs and lumber from trees listed in 50 CFR 17.12 or 23.23:

Mobile, AL
Savannah, GA
Baltimore, MD
Gulfport, MS
Wilmington and Morehead City, NC
Portland, OR
Philadelphia, PA
Charleston, SC
Norfolk, VA
Vancouver, WA

(6) Plants of the species *Dionaea muscipula* (Venus flytrap):

Wilmington, NC

**§ 353.4 Products covered.**

Products and plant products when offered for export or re-export.

**§ 353.5 Application for certification.**

(a) To request the services of an inspector, a written application (PPQ Form 572) shall be made as far in advance as possible, and shall be filed in the office of inspection at the port of certification.

(b) Each application shall be deemed filed when delivered to the proper office of inspection at the port of certification. When an application is filed, a record showing the date and time of filing shall be made in such office.

(c) Only one application for any consignment shall be accepted, and only one certificate for any consignment shall be issued.

(Approved by the Office of Management and Budget under control number 0579–0052)

**§ 353.6 Inspection.**

Inspections shall be performed by agents or inspectors.

(a) *Agent.* (1) Agents may conduct phytosanitary field inspections of seed crops in cooperation with and on behalf of those State plant regulatory agencies electing to use agents and maintaining a Memorandum of Understanding with the Animal and Plant Health Inspection Service in accordance with the regulations. The Memorandum of Understanding must state that agents shall be used in accordance with the regulations in this part. Agents are not authorized to issue Federal phytosanitary certificates, but are only authorized to conduct the field inspections of seed crops required as a basis for determining phytosanitary condition prior to the issuance of a phytosanitary certificate for the crops.

(2) To be eligible for designation as an agent, an individual must:

(i) Have the ability to recognize, in the crops he or she is responsible for inspecting, plant pests, including symptoms and/or signs of disease-causing organisms, of concern to importing countries.

(ii) Have a bachelor's degree in the biological sciences, and a minimum of 1 year's experience in identifying plant pests endemic to crops of commercial importance within the cooperating State, or a combination of higher education in the biological sciences and experience in identifying such plant pests, as follows:

0 years education and 5 years experience;
1 year education and 4 years experience;
2 years education and 3 years experience;
3 years education and 2 years experience; or
4 years education and 1 year experience.

The years of education and experience do not have to be acquired consecutively.

(3) An agent must receive annual training provided by the State plant regulatory agency. The required training must include instruction in inspection procedures, identification of plant pests of quarantine importance to importing countries, methods of collection and submission of specimens (organisms and/or plants or plant parts) for identification, and preparation and submission of inspection report forms approved by the State plant regulatory agency.

(4) An agent must have access to Federal or State laboratories for the positive identification of plants pests detected.

(5) No agents shall inspect any plants or plant products in which they or a member of their family are directly or indirectly financially interested.

(b) *Inspector.* (1) An employee of the Animal and Plant Health Inspection Service, or a State or county regulatory official designated by the Secretary of Agriculture to inspect and certify to shippers and other interested parties, as to the phytosanitary condition of plants and plant products inspected under the Act.

(2) To be eligible for designation as an inspector, a State or county plant regulatory official must:

(i) Have a bachelor's degree in the biological sciences, and a minimum of 1 year's experience in State or county plant regulatory activities, or a combination of higher education in the biological sciences and experience in State plant regulatory activities, as follows:

0 years education and 5 years experience;
1 year education and 4 years experience;
2 years education and 3 years experience;
3 years education and 2 years experience; or
4 years education and 1 year experience.

The years of education and experience do not have to be acquired consecutively.

(ii) Successfully complete, as indicated by receipt of a passing grade, the Animal and Plant Health Inspection Service training course on phytosanitary certification.

(3) No inspectors shall inspect any plants or plant products in which they

or a member of their family are directly or indirectly financially interested.

(c) *Applicant responsibility.* (1) When the services of an agent or an inspector are requested, the applicant shall make the plant or plant product accessible for inspection and identification and so place the plant or plant product to permit physical inspection of the lot for plant pests.

(2) The applicant must furnish all labor involved in the inspection, including the moving, opening, and closing of containers.

(3) Certificates may be refused for failure to comply with any of the foregoing provisions.

**§ 353.7 Certificates.**

(a) *Phytosanitary certificate (PPQ Form 577).* (1) For each consignment of domestic plants or unprocessed plant products for which certification is requested, the inspector shall sign and issue a separate certificate based on the findings of the inspection.

(2) The original certificate shall immediately upon its issuance be delivered or mailed to the applicant or a person designated by the applicant.

(3) One copy of each certificate shall be filed in the office of inspection at the port of certification, and one forwarded to the Administrator.

(4) The Administrator may authorize inspectors to issue certificates on the basis of inspections made by cooperating Federal, State, and county agencies.

(5) Inspectors may issue new certificates on the basis of inspections for previous certifications when the previously issued certificates can be canceled before they have been accepted by the phytopathological authorities of the country of destination involved.

(b) *Export certificate for processed plant products (PPQ Form 578).* (1) For each consignment of processed plant products for which certification is requested, the inspector shall sign and issue a certificate based on the inspector's findings after inspecting submitted samples and/or by virtue of processing received.

(2) The original certificate shall immediately upon its issuance be delivered or mailed to the applicant or a person designated by the applicant.

(3) One copy of each certificate shall be filed in the office of inspection at the port of certification.

(4) The Administrator may authorize inspectors to issue certificates on the basis of inspections made by cooperating Federal, State, and county agencies.

(5) Inspectors may issue new certificates on the basis of inspections/processing used for previous certifications.

(c) *Phytosanitary certificate for reexport (PPQ Form 579).* (1) For each consignment of foreign origin plants or unprocessed plant products for which certification is requested, the inspector shall sign and issue a certificate based on the original foreign phytosanitary certificate and/or additional inspection or treatment in the United States after determining that the consignment conforms to the current phytosanitary regulations of the receiving country and has not been subjected to the risk of infestation or infection during storage in the United States.

(2) The original certificate shall immediately upon its issuance be delivered or mailed to the applicant or a person designated by the applicant.

(3) One copy of each certificate shall be filed in the office of inspection at the port of certification, and one forwarded to the Administrator.

(4) The Administrator may authorize inspectors to issue certificates on the basis of inspections made by cooperating Federal, State, and county agencies.

(5) Inspectors may issue new certificates on the basis of inspections for previous certifications when the previously issued certificates can be canceled before they have been accepted by the phytopathological authorities of the country of destination involved.

(d) *Industry-issued certificate.* A certificate issued under the terms of a written agreement between the Animal and Plant Health Inspection Service and an agricultural or forestry company or association giving assurance that a plant product has been handled, processed, or inspected in a manner required by a foreign government. The certificate may be issued by the individual who signs the agreement or his/her delegate.

(1) *Contents of written agreement.* In each written agreement, APHIS shall agree to cooperate and coordinate with the signatory agricultural or forestry company or association to facilitate the issuance of industry-issued certificates and to monitor activities under the agreement, and the concerned agricultural or forestry company or association agrees to comply with the requirements of the agreement. Each agreement shall specify the articles subject to the agreement and any measures necessary to prevent the introduction and dissemination into specified foreign countries of specified injurious plant pests. These measures could include such treatments as refrigeration, heat treatment, kiln drying, etc., and must include all necessary preshipment inspections and subsequent sign-offs and product labeling as identified by Plant Protection and Quarantine (PPQ), APHIS, based on the import requirements of the foreign country.

(2) *Termination of agreement.* An agreement may be terminated by any signatory to the agreement by giving written notice of termination to the other party. The effective date of the termination will be 15 days after the date of actual receipt of the written notice. Any agreement may be immediately withdrawn by the Administrator if he or she determines that articles covered by the agreement were moved in violation of any requirement of this chapter or any provision of the agreement. If the withdrawal is oral, the decision to withdraw the agreement and the reasons for the withdrawal of the agreement shall be confirmed in writing as promptly as circumstances permit. Withdrawal of an agreement may be appealed in writing to the Administrator within 10 days after receipt of the written notification of the withdrawal. The appeal shall state all of the facts and reasons upon which the appellant relies to show that the agreement was wrongfully withdrawn. The Administrator shall grant or deny the appeal, in writing, stating the reasons for granting or denying the appeal as promptly as circumstances permit. If there is a conflict as to any material fact and the person from whom the agreement is withdrawn requests a hearing, a hearing shall be held to resolve the conflict. Rules of practice concerning the hearing shall be adopted by the Administrator. No written agreement will be signed with an individual or a company representative of the concerned agricultural or forestry company or association who has had a written agreement withdrawn during the 12 months following such withdrawal, unless the withdrawn agreement was reinstated upon appeal.

(Approved by the Office of Management and Budget under control number 0579–0052)

## PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS; AND USER FEES

2. The authority citation for part 354 would continue to read as follows:

**Authority:** 7 U.S.C. 2260; 21 U.S.C. 136 and 136a; 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(c).

3. In § 354.3, paragraph (a), the definition for *Designated State inspector* would be removed and a new definition for *Designated State or county inspector* would be added in alphabetical order, the definitions for *Phytosanitary*

*certificate* and *Phytosanitary certificate for reexport* would be revised, the definition for *Processed product certificate* would be removed, and a new definition for *Export certificate for processed plant products* would be added in alphabetical order, and paragraph (g)(2) would be revised to read as follows:

**§ 354.3 User fees for certain international services.**

(a) * * *

* * * * *

*Designated State or county inspector.* A State or county plant regulatory official designated by the Secretary of Agriculture to inspect and certify to shippers and other interested parties, as to the phytosanitary condition of plant products inspected under the Department of Agriculture Organic Act of 1944.

*Export certificate for processed plant products.* A certificate (PPQ Form 578) issued by an inspector, describing the plant health condition of processed or manufactured plant products based on inspection of submitted samples and/or by virtue of the processing received.

* * * * *

*Phytosanitary certificate.* A certificate (PPQ Form 577) issued by an inspector, giving the phytosanitary condition of domestic plants or unprocessed or unmanufactured plant products based on inspection of the entire lot.

*Phytosanitary certificate for reexport.* A certificate (PPQ Form 579) issued by an inspector, giving the phytosanitary condition of foreign plants and plant products legally imported into the United States and subsequently offered for reexport. The certificate certifies that, based on the original foreign phytosanitary certificate and/or additional inspection or treatment in the United States, the plants and plant products are considered to conform to the current phytosanitary regulations of the receiving country and have not been subjected to the risk of infestation or infection during storage in the United States. Plants and plant products which transit the United States under Customs bond are not eligible to receive the phytosanitary certificate for reexport.

* * * * *

(g) * * *

(2) There is no APHIS user fee for a certificate issued by a designated State or county inspector.

* * * * *

Done in Washington, DC, this 9th day of August 1995.

**Lonnie J. King,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 95–20227 Filed 8–15–95; 8:45 am]

BILLING CODE 3410–34–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 95–CE–32–AD]**

## Airworthiness Directives; Beech Aircraft Corporation 90, 99, 100, and 200 Series 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 Beech Aircraft Corporation (Beech) 90, 99, 100, and 200 series airplanes. The proposed action would require inspecting the main landing gear drag leg lock link to ensure that the hole for the roll pin is drilled completely through both walls of the main landing gear drag leg lock link and, if not drilled completely through both link walls, replacing any main landing gear drag leg lock link. An incident where the left main landing gear collapsed on one of the affected airplanes prompted the proposed action. Investigation revealed that the roll pin hole was not completely drilled through both walls of the drag leg lock link. The actions specified by the proposed AD are intended to prevent main landing gear collapse caused by drag leg lock link failure, which, if not detected and corrected, could result in loss of control of the airplane.

**DATES:** Comments must be received on or before October 20, 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–32–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 the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information also may be examined at the Rules Docket at the address above.

**FOR FURTHER INFORMATION CONTACT:** Mr. Steve Potter, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4124; 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–32–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–32–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

### Discussion

The FAA received a report of an incident where the left main landing gear collapsed on a Beech Model 99 airplane. Investigation of this incident revealed that the hole for the roll pin was not completely drilled through both walls of the drag leg lock link.

Further investigation shows that spare drag leg lock links were delivered to the field with the roll pin hole only drilled halfway through the link. When drilled only halfway through the link, the roll

pin will not hold the pivot pin secure in the drag leg lock link. In this scenario, the drag leg lock link does not hold the landing gear in the down position, which could cause main landing gear collapse. These drag leg lock links may be installed on certain Beech 90, 99, 100, and 200 series airplanes.

Beech has issued Service Bulletin No. 2607, Revision 1, dated April 1995, which specifies procedures for inspecting the main landing gear drag leg lock link on Beech 90, 99, 100, and 200 series airplanes to ensure that the roll pin hole is drilled through both walls of the link.

After examining the circumstances and reviewing all available information related to the incident described above, the FAA has determined that AD action should be taken to prevent main landing gear collapse caused by drag leg lock link failure, which, if not detected and corrected, 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 Beech 90, 99, 100, and 200 series airplanes of the same type design, the proposed AD would require inspecting the main landing gear drag leg lock link to ensure that the hole for the roll pin is drilled through both walls of the link and, if not drilled completely through both link walls, replacing any main landing gear lock link. Accomplishment of the proposed inspection would be in accordance with Beech Service Bulletin No. 2607, Revision 1, dated April 1995. The possible replacement would be accomplished in accordance with the applicable maintenance manual.

The FAA estimates that 2,229 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximtely 5 work hours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $100 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $891,600. This figure is based on the assumption that all of the affected airplanes have incorrectly drilled drag leg lock links and that none of the owners/operators of the affected airplanes have replaced the incorrectly drilled links.

Beech has informed the FAA that parts have been distributed to equip approximately 648 airplanes. Assuming that these distributed parts are incorporated on the affected airplanes, the cost of the proposed AD would be reduced by $259,200 from $891,600 to $632,400. In addition, the FAA believes that a majority of the affected airplanes will not have incorrectly drilled links, thereby further reducing the cost impact of the proposed AD upon the public.

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. 106(g); 40101, 40113, 44701.

### § 39.13 [Amended]

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

**Beech Aircraft Corporation:** Docket No. 95–CE–32–AD.

*Applicability:* The following airplane models and serial numbers, certificated in any category:

| Models | Serial Nos. |
|---|---|
| F90 | LA–2 through LA–236 |
| 99, 99A, A99A, B99, and C99. | U–1 through U–239 |
| 100 and A100 | B–1 through B–94 and B–100 through B–247 |
| B100 | BE–1 through BE–137 |
| 200 and B200 | BB–2, BB–6 through BB–1157, BB–1159 through BB–1166, and BB–1168 through BB–1192 |
| 200T and B200T | BT–1 through BT–30 |
| 200C and B200C | BL–1 through BL–72 |
| 200CT and B200CT | BN–1 through BN–4 |
| 65–A90–2(RU–21B) | LS–1 through LS–3 |
| 65–A90–3(RU–21C) | LT–1 through LT–2 |
| 200 (A100–1) | BB–3 through BB–5 |
| A100 (U–21F) | B–95 through B–99 |
| A200 (C–12A and C–12C). | BC–1 through BC–75, and BD–1 through BD–30 |
| A200C (UC–12B) | BJ–1 through BJ–66 |
| A200CT (C–12D) | BP–1, BP–22, and BP–24 through BP–45 |
| A200CT (FWC–12D) | BP–7 through BP–11 |
| A200CT (RC–12D) | GR–1 through GR–13 |
| A200CT (RC–12H) | GR–14 through GR–19 |
| A200CT (RC–12G) | FC–1 through FC–3 |

**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 aircraft from the applicability of this AD.

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

To prevent main landing gear collapse caused by drag leg lock link failure, which, if not detected and corrected, could result in loss of control of the airplane, accomplish the following:

(a) Inspect the main landing gear drag leg lock link to ensure that the hole for the roll pin is drilled completely through both walls of the link in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Beech Service Bulletin No. 2607, Revision 1, dated April 1995.

(b) Prior to further flight, replace any drag leg lock link that does not have the roll pin hole drilled through both walls of the link. Accomplish this replacement in accordance with the applicable maintenance manual

(c) Special flight permits may be issued in accordance with section 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 time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, 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 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(e) All persons affected by this directive may obtain copies of the document referred to herein upon request to the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085; 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 August 10, 1995.

**Gerald W. Pierce,**

*Acting Manger, Small Airplane, Aircraft Certification Service.*

[FR Doc. 95–20274 Filed 8–15–95; 8:45 am]

BILLING CODE 4910–13–M

## FEDERAL TRADE COMMISSION

## 16 CFR Part 3

## Duration of Existing Competition and Consumer Protection Orders

**AGENCY:** Federal Trade Commission (FTC).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commission proposes a rule (''Sunset Rule'') that would terminate existing administrative orders where certain conditions have been met, consistent with Commission policy announced elsewhere in today's **Federal Register.** Curently, the Commission may set aside the provisions of such orders upon petition of the respondent, or pursuant to show cause proceedings initiated *sua sponte* by the Commission. The proposed rule will reduce the administrative expense and burden associated with those procedures by automatically vacating certain order provisions that no longer serve the public interest.

**DATES:** Written comments must be submitted on or before September 15, 1995.

**ADDRESSES:** Written comments should be submitted in twenty copies to Donald S. Clark, Secretary, Federal Trade Commission, Room 159, Sixth Street & Pennsylvania Avenue NW., Washington, D.C. 20580, (202) 326–2514. Individuals filing comments need not submit multiple copies. Submissions should be captioned: Sunset Rule, FTC File No. P954211.

**FOR FURTHER INFORMATION CONTACT:** Justin Dingfelder, Assistant Director for Enforcement, Division of Enforcement, Bureau of Consumer Protection, (202) 326–3017; Roberta Baruch, Deputy Assistant Director for Compliance, Bureau of Competition, (202) 326–2861.

**SUPPLEMENTARY INFORMATION:** Elsewhere in today's **Federal Register** notice, the Commission is publishing a Policy Statement Regarding the Duration of Competition and Consumer Protection Orders. As explained in that notice, the Commission proposes a rule, rather than case-by-case determinations, to implement that policy with respect to existing administrative orders.

The Commission is soliciting comments on the proposed rule. The rule would provide that, in general, all provisions of existing administrative orders would automatically terminate (''sunset'') 20 years from the date that the order was issued.[1] The rule would established an exception, however, where a federal court complaint alleging a violation of an existing order was filed (with or without an accompanying consent decree) within the last 20 years, or where such a complaint is subsequently filed with respect to an existing order that has not yet expired. In that event, the order would run for another 20 years from the date that the most recent complaint was filed with the court, unless the complaint has been dismissed, or the court has ruled that the respondent did not violate any provision of the order, and the dismissal or ruling has not been appealed (or has been upheld on appeal). The Commission's order would remain in effect while the court complaint and any appeal are pending.

The filing of a court complaint would not affect the duration of an order's application to any respondent that is not named as a defendant in the complaint. The Commission, however, may consider whether a complaint alleging order violations has ever been filed against a respondent, and any other relevant circumstances, in determining whether to grant or deny a subsequent petition by a respondent to reopen and set aside an order on the basis of changes in law, fact, or the public interest. *See* Commission Rule 2.51, 16 CFR 2.51.

### Communication by Outside Parties to Commissioners or Their Advisors

Pusuant to Commission Rule 1.26(b)(5), 16 CFR § 1.26(b)(5), communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner advisor during the course of this rulemaking will be subject to the following treatment. Written communications, including written communications from members of Congress, will be forwarded promptly to the Secretary for placement on the public record. Oral communications, not including communications from members of Congress, are permitted only when such oral communications are transcribed verbatim or summarized (at the discretion of the Commissioner or Commissioner advisor to whom such oral communications are made) and are promptly placed on the public record, together with any written communications and summaries of any oral communications relating to such oral communications. Oral communications from members of Congress will be transcribed or summarized (at the discretion of the Commissioner or Commissioner advisor to whom such oral communications are made) and promptly placed on the public record, together with any written communications and summaries of any oral communications relating to such oral communications.

### Regulatory Flexibility Act

On the basis of information currently available to the Commission, it is anticipated that the proposed rule will result in the elimination of a substantial number of existing orders that no longer serve the public interest. Accordingly, the Commission has determined at this time that the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis, because the proposed rule would not have significant impact on a substantial number of small entities within the meaning of the Act. 5 U.S.C. 605. This notice serves as certification to that effect for purposes of the Small Business Administration.

Nonetheless, to ensure that no substantial economic impact is overlooked, the Commission requests public comment on the effect of the proposed rule on costs, profitability,

[1] Orders that are 20 years or older would sunset 30 days after publication of the final rule. Certain provisions in existing administrative orders will expire, or have already expired, according to their own terms, and the proposed rule would not affect the duration of those provisions. The rule would also not revive any order provision that the Commission has previously reopened and set aside. *See* 16 CFR §§ 2.51 & 3.72. The rule would not apply to *in camera* orders or other procedural or interlocutory rulings by an Administrative Law Judge or the Commission.

competitiveness, and employment in small entities. Whether preparation of a final regulatory analysis is warranted will be determined after receipt and review of such comments, if any.

**Effective Date**

The Commission will announce an effective date for the rule upon publication of the rule in final form. Petitions to stay, in whole or in part, the termination of an order pursuant to the rule shall be filed pursuant to Commission Rule 2.51, 16 CFR § 2.51. In the case of orders that have been in effect for at least 20 years, the rule would provide respondents with 30 days to the file such a petition before the order is automatically terminated by the rule. Pending the disposition of such a petition, the order would be deemed to remain in effect without interruption.

**List of Subjects in 16 CFR Part 3**

Administrative practice and procedure, Claims, Equal access to justice, Lawyers.

Accordingly, the Federal Trade Commission proposes to amend Title 16, Chapter I, Subchapter A, of the Code of Federal Regulations as follows:

## PART 3—RULES OF PRACTICE FOR ADJUDICATIVE PROCEEDINGS

1. The authority for Part 3 would continue to read as follows:

**Authority:** Sec. 6, 38 Stat. 721 (15 U.S.C. 46), unless otherwise noted.

2. Section 3.72 would be amended by adding a new paragraph 3.72(b)(3) to read as follows:

**§ 3.72 Reopening.**

* * * * *

(b) * * *

(3) *Termination of existing orders.* (i) *Generally.* Notwithstanding the foregoing provisions of this rule, and except as provided in paragraphs (b)(3)(ii) and (iii) of this section, an order issued by the Commission before August 16, 1995, will be deemed, without further notice or proceedings, to terminate 20 years from the date on which the order was first issued, or on [30 days following publication of the final rule in the **Federal Register**], whichever is later.

(ii) *Exception.* This paragraph applies to the termination of an order issued before August 16, 1995, where a complaint alleging a violation of the order was or is filed (with or without an accompanying consent decree) in federal court by the United States or the Federal Trade Commission while the order remains in force, either on or after August 16, 1995, or within the 20 years preceding that date. If more than one complaint was or is filed while the order remains in force, the relevant complaint for purposes of this paragraph will be the latest filed complaint. An order subject to this paragraph will terminate 20 years from the date on which a court complaint described in this paragraph was or is filed, except as provided in the following sentence. If the compliant was or is dismissed, or a federal court rules or has ruled that the respondent did not violate any provision of the order, and the dismissal or ruling was or is not appealed, or was or is upheld on appeal, the order will terminate according to paragraph (b)(3)(i) of this section is though the complaint was never filed; provided, however, that the order will not terminate between the date that such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal. The filing of a complaint described in this paragraph will not affect the duration of any order provision that has expired, or will expire, by its own terms. The filing of a complaint described in this paragraph also will not affect the duration of an order's application to any respondent that is not named in the complaint.

(iii) *Stay of Termination.* Any party to an order may seek to stay, in whole or part, the termination of the order as to that party pursuant to paragraph (b)(3)(i) or (ii) of this section. Petitions for such stays shall be filed in accordance with the procedures set forth in § 2.51 of these rules. Such petitions shall be filed on or before the date on which the order would be terminated pursuant to paragraph (b)(3)(i) or (ii) of this section. Pending the disposition of such a petition, the order will be deemed to remain in effect without interruption.

(iv) *Orders not terminated.* Nothing in § 3.72(b)(3) is intended to apply to *in camera* orders or other procedural or interlocutory rulings by an Administrative Law Judge or the Commission.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 95–20143 Filed 8–15–95; 8:45 am]

BILLING CODE 6750–01–M

## RAILROAD RETIREMENT BOARD

### 20 CFR Part 230

**RIN 3220–AA61**

### Reduction and Non-Payment of Annuities by Reason of Work

**AGENCY:** Railroad Retirement Board.

**ACTION:** Proposed rule.

**SUMMARY:** The Railroad Retirement Board (Board) proposes to revise Part 230 of its regulations to explain how employment or self-employment after an annuitant's annuity beginning date may cause a reduction in or non-payment of the annuity.

**DATES:** Comments must be received by September 15, 1995.

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

**FOR FURTHER INFORMATION CONTACT:** Thomas W. Sadler, Assistant General Counsel, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4513, TDD (313) 754–4701.

**SUPPLEMENTARY INFORMATION:** Sections 2(f) and 2(g)(2) of the Railroad Retirement Act (45 U.S.C. 231a (f) and (g)(2)) provide for a reduction in or non-payment of an annuity if post-retirement earnings exceed the limits set forth in section 203 of the Social Security Act (45 U.S.C 403). Although these provisions were enacted as part of the Railroad Retirement Act of 1974 (Pub. L. 93–445, Title I, 88 Stat. 1312), the Board has never explained in its regulations how such provisions operate.

Sections 230.5 through 230.16 of these proposed regulations explain how the earnings limitations set forth in section 203 of the Social Security Act apply to a railroad retirement benefit. Specifically, these proposed sections explain how an individual attains an insured status so that the earnings limitations are applicable to his or her benefit, what portion of a railroad retirement benefit is subject to these earnings restrictions (the work deduction component), and how a railroad retirement benefit may be reduced or not paid because of post-retirement earnings.

Secton 230.9 sets forth a revised interpretation of the work deduction component subject to deduction for excess earnings. The revised interpretation tracks explicitly the language of sections 2(f)(1) and 2(f)(2) of the Railroad Retirement Act. These sections provide that the work deduction component of the tier I benefit is the amount of that benefit attributable to post-1974 railroad service

and all social security coverage wages and self employment income. The Railroad Retirement Board has been computing the work deduction as the difference between a hypothetical tier I benefit computed on the basis of all service and a hypothetical tier I benefit computed using only pre-1974 railroad service. This method of computation substantially overvalues pre-1975 railroad service and results in a smaller work deduction component than contemplated by the language of the statute. This revised definition would become effective no earlier than January 1, 1996.

The Labor Member of the Railroad Retirement Board dissented from the vote of the majority of the Board to adopt the revised definition of the work deduction component and wishes to express his views on that change. It is the Labor Member's opinion that the previous definition of the work deduction component of the tier I benefit is the correct interpretation of the statute, giving meaning not only to the wording of the statute itself, but also to the intention of Congress in enacting that provision. Congress, in subjecting tier I benefits to work deductions, like social security benefits, nevertheless recognized that until 1975 these benefits were not subject to such deductions. By providing that only that part of the tier I benefit as is computed on the basis of social security wages and post-1974 railroad compensation Congress intended to preserve that portion of the tier I benefit based on railroad earnings before 1975 as not subject to work deductions. The construction given the Railroad Retirement Act by the majority results in a much smaller exempt amount with the value of pre-1975 railroad earnings eroding more and more each year. In the view of the Labor Member, this is directly contrary to the intention of Congress to preserve the value of pre-1975 railroad service, and since the current method follows past opinions of agency staff, the proposed change will have difficulty passing legal challenge.

The Labor Member is of the opinion that the majority's interpretation of the work deduction component has been manufactured solely to increase the amount of that component, by as much as several hundred dollars per month, so as to reduce benefit payments. He believes that the majority's action is arbitrary and capricious, compromises due process, and that it is wrong to change a long-standing agency interpretation without a compelling reason to do so. Moreover, analysis prepared by agency staff has shown that the change in interpretation will be costly and impose substantial administrative burdens on agency staff. Finally, the change in interpretation will result in recurring benefit recomputations resulting from additional earnings. Because of the delay in posting these earnings there will occur additional overpayments that will be subject to recovery action. In summary, the Labor Member believes that the action of the majority is arbitrary and capricious, will adversely affect rights and expectations of our beneficiaries, and is contrary to the intention of Congress in drafting the language in question.

Sections 230.17 through 230.20 of these proposed regulations explain how an annuitant must report his or her post-retirement earnings to the Board and what penalties may apply for failure to make such reports. Finally, proposed § 230.21 explains when the Board may suspend the payment of a benefit because the annuitant is currently engaging in employment or self-employment.

Other restrictions apply to a railroad retirement benefit because of post-retirement work. Sections 2(e)(3), (e)(5) and (g)(1) of the Act (45 U.S.C. 231a(e)(3), (e)(5), and (g)(1)) provide for the non-payment of a benefit for any month in which an annuitant performs compensated service for an employer under the Act. Proposed § 230.4 explains how these provisions apply to a railroad retirement benefit. Section 2(e)(4) of the Act provides for a special earnings limitation for disability annuitants. A reference to this limitation is found in proposed § 230.3. Proposed § 230.22 explains how work outside the United States may affect payment of a benefit.

Finally, the Railroad Unemployment Insurance and Retirement Improvement Act of 1988, Public Law 100–647, section 7302(b) (102 Stat. 3342, 3777), amended section 2(e) of the Railroad Retirement Act to provide for an earnings limitation applicable to the tier II and supplemental annuity components of a railroad retirement annuity where an employee or spouse annuitant performs work for wages for the last employer(s) for whom he or she worked prior to his or her annuity beginning date (commonly known as last person service). These provisions are explained in proposed § 230.23.

The Board, in conjunction with the Office of Management and Budget, has determined that this is not a major rule under Executive Order No. 12866; therefore, no regulatory impact analysis is required. Information collections required by this part have been approved by the Office of Management and Budget under Control Nos. 3220–0032 and 3220–0073.

**List of Subjects in 20 CFR 230**

Railroad employees, Railroad retirement.

For the reasons set out in the preamble, Title 20, Chapter II, of the Code of Federal Regulations is proposed to be amended as follows:

1. Part 230 is revised to read as follows:

## PART 230—REDUCTION AND NON-PAYMENT OF ANNUITIES BY REASON OF WORK

Sec.



**Authority:** 45 U.S.C. 231f.

### § 230.1 Introduction.

This part describes what events may cause a reduction in or nonpayment of part or all of an individual's annuity under the Railroad Retirement Act as the result of the annuitant engaging in

employment or self-employment after his or her annuity beginning date.

**§ 230.2 Definitions.**

*Annuity* means a payment due an entitled person for a calendar month and made to him or her on the first day of the following month.

*Retirement Age* means age 65, with respect to an employee or spouse who attains age 62 before January 1, 2000 (age 60 in the case of a widow(er), remarried widow(er) or surviving divorced spouse). For an employee or spouse who attains age 62 (or age 60 in the case of a widow(er), remarried widow(er), or surviving divorced spouse) after December 31, 1999, retirement age means the age provided for in section 216(1) of the Social Security Act.

*Social Security Overall Minimum Guarantee* means the benefit paid to an employee which is equal to the total amount of family benefits which would be payable under the Social Security Act on the earnings record of that employee had his or her railroad compensation been covered under that statute and not the Railroad Retirement Act. This benefit is only paid when it is greater than the amount of annuities produced by the benefit formulas under the Railroad Retirement Act.

*Tier I Benefit* means the benefit component of an annuity under the Railroad Retirement Act calculated using Social Security Act formulas and based upon earnings covered by either the Railroad Retirement Act or the Social Security Act.

*Tier II Benefit* means the benefit component calculated under a formula found in the Railroad Retirement Act and based only upon earnings in the railroad industry.

*Vested Dual Benefit* means a monthly payment due an entitled person in addition to the tier I and tier II benefit. The benefit is payable to employee annuitants who met certain requirements under the Railroad Retirement Act and Social Security Act prior to 1975. The vested dual benefit restores, in part, any reduction in the tier I benefit due to receipt of a social security benefit.

*Work Deduction Component* means that part of an individual's annuity which is subject to non-payment or reduction because of employment or self-employment after the annuity beginning date (see § 230.9 of this part). The work deduction component for a survivor annuitant is the entire annuity (see § 230.10 of this part). The special work deduction component for last person service work deductions is defined in § 230.23 of this part.

**§ 230.3 Loss of disability annuity because of earnings and penalties.**

The provisions pertaining to loss of a disability annuity because of earnings and penalties may be found in part 220, Subpart M of this chapter.

**§ 230.4 Loss of annuity for month in which compensated service is rendered.**

(a) If an individual in receipt of an annuity renders compensated service to an employer covered under the Railroad Retirement Act, as defined in part 202 of this chapter, he or she shall not be paid an annuity with respect to any month in which such service is rendered.

(b) If an employee in receipt of an annuity renders compensated service to an employer covered under the Railroad Retirement Act, as defined in part 202 of this chapter, no spouse annuity or divorced spouse annuity based on the employee's earnings record shall be paid with respect to any month in which the employee renders such service.

**§ 230.5 Earnings limitation; definitions.**

As used in this part:

(a) *Earnings* shall have the same meaning as that term is defined in § 404.429 of this title. Generally, earnings shall include:

(1) Remuneration for services rendered as an employee, and

(2) Any earnings from self-employment (less any loss from self-employment for the year).

(3) Deferred income from self-employment which is received in a year after the year in which entitlement to an annuity under the Railroad Retirement Act begins is not included in determining the individual's excess earnings if it is based on services performed before entitlement begins.

(b) *Annual Exempt Amount* means the maximum amount of money that can be earned in a year without losing any annuity because of earnings. Annuitants who are between 60 and retirement age during the entire year have a lower annual exempt amount than those who attain retirement age during the year, are over retirement age during the whole year or die in the year they would have attained retirement age. The amount which constitutes the annual exempt amount is determined periodically by the Secretary of Health and Human Services in accord with § 404.430 of this title and is published in the **Federal Register**, usually in October in the year preceding the year in which it applies. No annual exempt amount applies with regard to the reduction due to last person service. See § 230.23 of this part.

(c) *Excess earnings* means, with respect to an individual who has attained retirement age before the close of his or her taxable year, 33⅓ percent of the amount of earnings above the annual limit that must be applied against the amount of benefit subject to work deductions. If the individual has not attained retirement age before the close of his or her taxable year, the applicable percentage is 50 percent. The excess earnings as derived under the preceding sentences, if not a multiple of $1, shall be reduced to the next lower $1.

(d) *Monthly exempt amounts* means the amount of wages which an annuitant may earn in any month without part of his or her annuity being deducted because of excess earnings. The monthly exempt amount is determined periodically by the Secretary of Health and Human Services in accordance with § 404.430 of this title and is published in the **Federal Register**, usually in October in the year preceding the year in which it applies. The monthly exempt amount applies only in an annuitant's grace year or years (see § 230.14 of this part).

**§ 230.6 Earnings limitation; annual earnings test.**

(a) Under the annual earnings test, deductions are made from an annuity payable to an annuitant for each month in a calendar year in which the auunitant is under age 70 and to which excess earnings are charged. This deduction is in an amount equal to the lesser of the amount of the excess earnings so charged or the total amount of the work deduction component, as explained in § 230.11 of this part.

(b) Deductions are made from an annuity payable on the basis of an employee's earnings record because of the employee's excess earnings. However, deductions will not be made from the annuity payable to a divorced spouse who has been divorced from the employee for at least two years.

(c) If an annuity is payable to a person who is not the employee but who is entitled on the basis of the earnings record of the employee and such person has excess earnings charged to a month, a deduction is made only from that person's annuity for that month. This deduction is in an amount equal to the lesser of the amount of the excess earnings so charged or the total amount of the work deduction component, as explained in § 230.11 of this part. See § 230.12 of this part for the method of charging excess earnings.

**§ 230.7 Earnings limitation; earnings in a taxable year.**

(a) In applying the annual earnings test, all of an annuitant's earnings for all

months of the annuitant's taxable year are used even though the individual may not be entitled to an annuity during all months of the taxable year. However, in the case of a survivor annuity, earnings after the annuity terminates are not included in the total earnings for the taxable year that is used for the annual earnings test. The taxable year of an employee is presumed to be a calendar year until it is shown to the satisfaction of the Railroad Retirement Board that the individual has a different taxable year. A self-employed individual's taxable year is a calendar year unless the individual has a different taxable year for the purposes of subtitle A of the Internal Revenue Code of 1986. The number of months in a taxable year is not affected by the time an application is filed, attainment of any particular age, marriage or the termination of marriage, adoption, or the death of the annuitant.

(b) Remuneration for services rendered as an employee are includable as earnings for the months and year in which the annuitant rendered the compensated services. Net earnings from self-employment, or net losses therefrom, are includable as earnings or losses in the year for which such earnings or losses are reportable for Federal income tax purposes.

(c) Earnings in and after the month an individual attains age 70 will not be used to figure excess earnings. For the employed individual, wages for months prior to the month of attainment of age 70 are used to figure the excess earnings. For the self-employed individual, the pro rata share of the net earnings or net loss for the taxable year for the period prior to the month of attainment of age 70 is used to figure the excess earnings. If the annuitant was not engaged in self-employment prior to the month of attainment of age 70, any subsequent earnings or losses from self-employment in the same taxable year will not be used to figure the excess earnings.

**§ 230.8 Earnings limitation; work deduction insured status.**

(a) An individual entitled to a retirement annuity must have a work deduction insured status for his or her annuity to be reduced by work deductions. No work deduction insured status is required for the reduction due to last person service employment. See § 230.23 of this part.

(b) An employee has a work deduction insured status when he or she has sufficient quarters of coverage under the Social Security Act to be eligible for a social security benefit, or would be eligible for a benefit under that Act if he or she was old enough and has accumulated sufficient wage quarters which, when added to all quarters of railroad compensation after 1974 would equal the number of quarters of coverage necessary to have an insured status under the Social Security Act.

(c) A spouse has a work deduction insured status when he or she:

(1) Is married to an employee who has or who acquires a work deduction insured status, or

(2) Is vested for a vested dual benefit amount.

(d) If the employee has a work deduction insured status, both the employee and the spouse may lose part of their annuities because of the employee's earnings. A spouse may also lose part of his or her annuity if the spouse works.

(e) A divorced spouse has a work deduction insured status when he or she was married to an employee who has or who acquires a work deduction insured status. A divorced spouse who has been divorced from the employee for at least two years is not subject to deductions for the employee's excess earnings, however, the divorced spouse is still subject to deductions based on his or her own earnings.

**§ 230.9 Earnings limitation; retirement work deduction component.**

(a) *Employee annuity.* The amount of any employee annuity which is subject to work deductions is the amount of the tier I component of the employee annuity computed on the basis of the employee's railroad retirement covered compensation and service subsequent to 1974 and the employee's wages and self-employment income derived from employment covered under the Social Security Act, plus any vested dual benefit payable. If the annuity is reduced for early retirement, then the age reduction factor is applied to this result. Work deductions will not apply to the tier I component for any month in which that component is reduced due to receipt of social security benefits.

(b) *Spouse annuity.* The tier I work deduction component for the spouse or divorced spouse is the amount of the tier I component computed on the basis of the employee's railroad retirement covered compensation and service subsequent to 1974 and the employee's wages and self-employment income derived from employment covered under the Social Security Act. A spouse's vested dual benefit is entirely subject to reduction for work deductions. Work deductions will not apply to the tier I component for any month in which that component is reduced due to receipt of social security benefits.

(c) Any benefit payable under the social security overall minimum guarantee is treated as a social security benefit and is subject to the same work deductions as would be applicable to a social security benefit.

**§ 230.10 Earnings limitation; survivor work deductions.**

The total survivor annuity is subject to reduction for excess earnings except that work deductions are not applicable to:

(a) A disabled child annuitant age 18 or over,

(b) A disabled annuitant under age 60 who became entitled to a disabled widow's annuity before age 60 (work deductions become applicable when the disabled widow attains age 60),

(c) Any survivor annuitant at least age 70, and

(d) Any survivor annuitant who receives a social security benefit which is reduced for work deductions, if the total amount of excess earnings are recoverable from the social security benefit.

**§ 230.11 Earnings limitation; yearly amount subject to work deductions.**

The yearly amount subject to work deductions is determined by multiplying the monthly work deduction component by the number of months subject to withholding for work deductions in a year. The amount to be withheld for work deductions is the annuitant's excess earnings as defined in § 230.5 of this part or the total work deduction component, whichever would be less.

**§ 230.12 Earnings limitation; method of charging.**

(a) *Months charged.* Excess earnings, as described in § 230.5 of this part, of an individual are charged to each month beginning with the first month the individual is entitled to benefits in the taxable year in question and continuing, if necessary, to each succeeding month in such taxable year until all of the individual's excess earnings have been charged. Excess earnings, however, are not charged to any month described in §§ 230.13 and 230.14

(b) *Amount of excess earnings charged*—(1) *Employee's excess earnings.* The employee's excess earnings are charged on the basis of $1 of excess earnings for each $1 of the employee's and his or her spouse's or divorced spouse's monthly work deduction components.

(2) *Excess earnings of annuitant other than the employee.* The excess earnings of an annuitant other than an employee-annuitant are charged on the basis of $1 of excess earnings for each $1 of his or

her monthly work deduction component.

(3) *Employee and spouse or divorced spouse both have excess earnings.* If both the employee and a spouse or divorced spouse entitled on his or her compensation record have excess earnings, the employee's excess earnings are charged first against the total work deduction components payable on his or her compensation record, as described in paragraph (b)(1) of this section. Next, the excess earnings of the spouse or divorced spouse are charged (as described in paragraph (b)(2) of this section) against his or her own work deduction component, but only to the extent that such component has not already been charged with the excess earnings of the employee.

**§ 230.13 Earnings limitation; monthly benefits payable.**

(a) No matter how much an annuitant earns in a given taxable year, no deduction on account of excess earnings will be made in a work deduction component in any month is which:

(1) The annuitant was not entitled to an annuity;

(2) The annuitant was entitled to a monthly earnings test and has a month of entitlement in which he or she neither worked for wages greater than the monthly exempt amount nor rendered substantial services in self-employment (see § 230.14 of this part);

(3) The annuitant was age 70;

(4) The annuitant was entitled to a disability annuity other than as a disabled widow(er) and was under age 65;

(5) The annuitant was entitled to a disabled child's annuity; or

(6) The annuitant was a widow(er) under age 60 and entitled to a disabled widow(er)'s annuity.

**§ 230.14 Earnings limitation; monthly earnings test.**

(a) No matter how much an annuitant earns in a given taxable year, no deduction on account of excess earnings will be made in benefits payable for any month which is a ''nonwork'' month (see paragraph (b) of this section) in the annuitant's ''grace year'' (see paragraph (c) of this section).

(b) A nonwork month is any month in which an individual is entitled to an annuity and:

(1) Does not work in self-employment (see paragraphs (d) and (e) of this section);

(2) Does not perform services for wages greater than the monthly exempt amount (see § 230.5 of this part); and

(3) Does not work in remunerative activity not covered by the Social Security Act in excess of 45 hours in a month while outside the United States. A nonwork month occurs even if there are no excess earnings in the year.

(c) An annuitant's grace year is:

(1) The first year after 1977 in which there is a nonwork month;

(2) A year after 1977 in which there is a break in entitlement for at least one month and the annuitant becomes entitled to a different type of annuity. The new grace year would then be the taxable year in which occurs the first nonwork month after the break in entitlement;

(3) The year in which an annuity based upon having a child in care, a child's annuity, or a child's benefit under the social security overall minimum guarantee ends for a reason other than the death of the annuitant (this exception applies only if the annuitant is not entitled to any type of benefit in the month after entitlement to the child's annuity or the benefit based on a child in care ends; it does not apply to an annuity based on age, only to an annuity payable because of a child).

**Example 1:** John, age 65, will retire from his railroad job in April of next year and apply for an annuity to begin May 1. Although he will have earned $15,000 for January-April of that year and plans to work part time, he will not earn an amount in excess of the monthly exempt amount after April. John's taxable year is the calendar year. Since next year will be the first year in which he has a nonwork month while entitled to benefits, it will be his grace year and he will be entitled to the monthly earnings test for that year only. He will receive benefits for all months in which he does not earn an amount in excess of the monthly exempt amount (May-December) even though his total earnings for the year have substantially exceeded the annual exempt amount. However, in the years that follow, only the annual earnings test will be applied if he has earnings that exceed the annual exempt amount, regardless of his monthly earnings.

**Example 2:** Lisa was entitled to a widow's annuity based upon having a child of her deceased husband, the railroad employee, in her care. The child marries in May, thus terminating Lisa's annuity in April. Since Lisa's entitlement did not terminate by reason of her death and she was not entitled to another type of railroad retirement annuity, she is entitled to a termination grace year for that year. The following year Lisa applies for and becomes entitled to a widow's annuity based upon age. Because there was a break in entitlement to benefits of at least one month before entitlement to another type of annuity, this year will also be a grace year if Lisa has a nonwork month during it.

(d) An individual works in self-employment in any month in which he or she performs substantial services (see § 230.15 of this part) in the operation of a trade or business (or in a combination of trades and businesses if there are more than one) as an owner or partner, even though there may be no earnings or net earnings caused by the individual's services during the month.

(e) For purposes of applying the monthly earnings test, an individual is presumed to have worked in self-employment in each month of the individual's taxable year until it is shown to the satisfaction of the Board that in a particular month the individual did not perform substantial services in any trade or business (or in a combination of trades and businesses if there are more than one) from which the net income or loss is included in computing the individual's annual earnings (see § 230.7 of this part).

(f) For purposes of applying the monthly earnings test, an individual is presumed to have performed services in any month for wages of at least as much as the applicable monthly exempt amount set for that month until it is shown to the satisfaction of the Board that the individual did not perform services in that month for wages of at least as much as the monthly exempt amount.

**§ 230.15 Earnings limitation; self-employment—substantial services.**

(a) In the case of the monthly earnings test, work deductions do not apply for any month in which the annuitant does not earn more than the monthly exempt amount and does not render substantial services in self-employment, regardless of total earnings for the year.

(b) A self-employed person's monthly work activity cannot be gauged accurately by the amount of monthly earnings; therefore, the self-employed person's services are measured by whether they are substantial (only if, however, the monthly earnings test applies—once the monthly earnings test has been applied in a particular year, work deductions are assessed based on total yearly earnings).

(c) The general test of whether services are substantial is whether, in view of the particular services rendered and the surrounding circumstances, the person can reasonably be considered to be retired in a particular month. In determining whether services rendered in self-employment in a month are substantial, the following factors, among others, may be considered:

(1) The amount of time devoted to the business;

(2) The nature of the services rendered;

(3) A comparison of the services rendered after retirement with the services rendered before retirement;

(4) The setting in which the services were performed, including: the presence of a paid manager, a partner, or a family member who manages the business; the type of business that is involved; the amount of capital invested; and whether the trade or business is seasonal.

(d) An individual who alleges that he or she did not render substantial services in any month or months shall submit detailed information about the operation of the trade or business covered, including the individual's activities in connection therewith. When requested to do so by the Board, the individual shall also submit such additional statements, information, and other evidence as the Board may consider necessary for a proper determination as to whether the individual rendered substantial services in self-employment.

**§ 230.16 Evaluation of factors involved in substantial services test.**

In determining whether an individual's services are substantial, consideration is given to the following factors:

(a) *Amount of time devoted to trades or businesses.* Consideration is first given to the total amount of time the self-employed individual devotes to all trades or businesses, the net income or loss of which is includable in computing his or her earnings as defined in § 230.7. For the purposes of this paragraph, the time devoted to trade or business includes all the time spent by the individual in any activity, whether physical or mental, at the place of business or elsewhere in furtherance of such trade or business. This includes the time spent in advising and planning the operation of the business, making business contacts, attending meetings, and preparing and maintaining the facilities and records of the business. All time spent at the place of business which cannot reasonably be considered unrelated to business activities is considered time devoted to the trade or business. In considering the weight to be given to the time devoted to trades or businesses the following rules are applied:

(1) *Forty-five hours or less in a month devoted to trade or business.* Where the individual establishes that the time devoted to all of his or her trades or businesses during a calendar month was not more than 45 hours, the individual's services in that month are not considered substantial unless other factors (see paragraphs (b), (c), and (d) of this section), make such a finding unreasonable. For example, an individual who worked only 15 hours in a month might nevertheless be found to have rendered substantial services if he or she was managing a sizable business or engaging in a highly skilled occupation.

(2) *More than 45 hours in a month devoted to trade or businesses.* Where an individual devotes more than 45 hours to all trades and businesses during a calendar month, it will be found that the individual's services are substantial unless it is established to the satisfaction of the Board that the individual could reasonably be considered to be retired in the month and, therefore, that such services were not, in fact, substantial.

(b) *Nature of services rendered.* Consideration is also given to the nature of the services rendered by the individual in any case where a finding that the individual was retired would be unreasonable if based on time alone (see paragraph (a) of this section). The more highly skilled and valuable his or her services in self-employment are, the more likely it is that the individual rendering such services could not reasonably be considered retired. The regular performance of services also tends to show that the individual has not retired. Services are considered in relation to the technical and management needs of the business for which they are rendered. Thus, skilled services of a managerial or technical nature may be so important to the conduct of a sizable business that such services would be substantial even though the time required to render the services is considerably less than 45 hours.

(c) *Comparison of services rendered before and after retirement.* Where consideration of the amount of time devoted to trade or business (see paragraph (a) of this section) and the nature of services rendered (see paragraph (b) of this section) is not sufficient to establish whether an individual's services were substantial, consideration is given to the extent and nature of the services rendered by the individual before his or her ''retirement,'' as compared with the services performed during the period in question. A significant reduction in the amount or importance of services rendered for the business tends to show that the individual is retired; absence of such reduction tends to show that the individual is not retired.

(d) *Setting in which services performed.* Where consideration of factors described in paragraphs (b) and (c) of this section is not sufficient to establish whether or not an individual's services in self-employment were substantial, all other factors are considered. The presence of a capable manager, the kind and size of the business, the amount of capital invested and whether the business is seasonal, as well as any other pertinent factors, are considered in determining whether the individual's services are such that he or she can reasonably be considered retired.

**§ 230.17 Obligation to report earnings.**

(a) *General Rule.* An individual who during a taxable year is entitled to an annuity is required to report to the Board the total amount of his or her earnings for each taxable year. A exceed the monthly exempt amount multiplied by the number of months in his or her taxable year, except that a report is not required for a taxable year if:

(1) The individual attained the age of 70 in or before the first month of his or her entitlement to benefits in his or her taxable year, or

(2) The individual's benefits subject to the earnings limitation were suspended for reasons other than his or her excess earnings for all months in which he or she was entitled to benefits and was under age 70.

(b) *Time for filing.* The report required by paragraph (a) of this section shall be made on a form prescribed by the Board and shall be filed on or before the 15th day of the fourth month following the close of an individual's taxable year or at such other time as may be set by the Board.

(c) *Representative payee.* Where an individual is receiving benefits on behalf of another, the representative payee shall be responsible for the report required in paragraph (a) of this section.

(d) *Requirement to furnish requested information.* An annuitant, or the person reporting on his or her behalf, is required to furnish any other information about the annuitant's earnings and services that the Board requests for the purpose of determining the correct amount of benefits payable for a taxable year.

(e) *Extension of time for filing report*—(1) *General.* Notwithstanding the provision described in paragraph (b) of this section, the Board may grant a reasonable extension of time for making the report of earning required under this section if it finds that there is valid reason for a delay, but in no case may the period be extended more than 3 months for any taxable year.

(2) *Requirements applicable to requests for extensions:* Before his or her annual report of earnings is due, an annuitant may request an extension of

time for filing the report. The request must be in writing and signed by the requester.

(3) *Valid reason defined.* A valid reason is a bona fide need, problem, or situation which makes it impossible or very difficult for an annuitant (or his or her representative payee) to meet the annual report due date prescribed by law. This may be illness or disability of the one required to make the report, absence or travel so far from home that he or she does not have and cannot readily obtain the records needed for making the report, inability to obtain evidence required from another source when such evidence is necessary in making the report, inability of an accountant to compile the data needed for the annual report, or any similar situation which has a direct bearing on the individuals' ability to comply with the reporting obligation within the specified time limit.

(4) *Evidence that extension of time has been granted.* In the absence of written evidence of a properly approved extension of time for making an annual report of earnings, it will be presumed that no extension of filing time was granted. In such case it will be necessary for the annuitant to establish whether he or she otherwise had good cause (§ 230.19) for filing the annual report after the normal due date.

(Approved by the Office of Management and Budget under control numbers 3220–0032 and 3200–0073)

**§ 230.18 Penalty deductions for failure to timely report earnings.**

(a) *Penalty for failure to report earnings; general.* Penalty deductions are imposed only against an individual's retirement benefits, in addition to the deductions required because of his or her excess earnings, if:

(1) He or she fails to make a timely report of his or her earnings as specified in § 230.17 for a taxable year; and

(2) It is found that good cause for failure to timely report earnings (see § 230.19) does not exist; and

(3) A deduction is imposed because of his or her excess earnings for that year; and

(4) An overpayment of benefits results, recovery of which is not waived, provided however, that if the person is found to be without fault in causing the overpayment, no penalty shall be assessed.

(b) *Determining amount of penalty deduction.* The amount of the penalty deduction for failure to report earnings for a taxable year within the prescribed time is determined as follows:

(1) *First failure to file timely report.* The penalty deduction for the first failure to file a timely report is an amount equal to the individual's work deduction component for the last month of the year in which the overpayment occurs. If the total excess earnings deduction for the year is less than the work deduction component the penalty equals the total excess earnings or $10, whichever is larger.

(2) *Second failure to file timely report.* The penalty deduction for the second failure to file a timely report is an amount equal to twice the amount of the individual's work deduction component for the last month of entitlement of the year in which the overpayment occurs.

(3) *Subsequent failures to file timely reports.* The penalty deduction for the third or subsequent failure to file a timely report is an amount equal to three times the amount of the individual's work deduction component for the last month of entitlement of the year in which the overpayment occurs.

**Example.** For the first late report, the violation period begins with the date of entitlement and ends with the last overpaid year for which the report is late. For subsequent late reports, the penalty applies to each overpaid year for which the report is late. For example, an employee has the following earnings record:

| Year | Earnings |
|---|---|
| 1980 | Excess |
| 1981 | |
| 1982 | Excess |
| 1983 | |
| 1984 | Excess |
| 1985 | Excess |
| 1986 | |
| 1987 | Excess |
| 1988 | |

If the employee reports his 1980, 1982 and 1984 earnings in February 1985, the report is late for 1980 and 1982. Since this is the first late report, there is one penalty. The penalty is equal to the work deduction component for December 1982. If the employee reported his 1985 and 1987 earnings in July 1988, the report is late for 1985 and 1987. Since this is a subsequent late report, 1985 is considered the second late report and 1987 is the third late report. The penalty amount for 1985 is two times the work deduction component for December 1985. The penalty amount for 1987 is three times the work deduction component for December 1987.

(c) *Penalty deduction imposed under § 230.22 not considered.* A failure to make a report as required by § 230.22 of this part for which a penalty deduction is imposed is not counted as a failure to report in determining under this section whether a failure to report earnings or wages is the first or subsequent failure to report.

(d) *Limitation on amount of penalty deduction.* Notwithstanding the provisions described in paragraph (b) of this section, the amount of the penalty deduction imposed for failure to file a timely report of earnings for a taxable year may not exceed the number of months in that year for which the individual received and accepted a benefit and for which deductions are imposed by reason of his or her earnings for such year.

**§ 230.19 Good cause for failure to make required reports.**

(a) *General.* The failure of an individual to make a timely report required under this part will not result in a penalty deduction provided for in this part if the individual establishes to the satisfaction of the Board that his or her failure to file a timely report was due to good cause. Before making any penalty determination provided for in this part the individual shall be advised of the penalty and good cause provisions and afforded an opportunity to establish good cause for failure to file a timely report. The failure of the individual to submit evidence to establish good cause within a specified time may be considered a sufficient basis for a finding that good cause does not exist. For example, ''good cause'' may be found where failure to file a timely report was caused by:

(1) Serious illness of the individual, or death or serious illness in his or her immediate family;

(2) Inability of the individual to obtain, within the time required to file the report, earnings information from his or her employer because of death or serious illness of the employer or one in the employer's immediate family; or unavoidable absence of his or her employer; or destruction by fire or other damage of the employer's business records; or failure or refusal of the employer to furnish the information upon timely request therefor;

(3) Destruction by fire, or other damage of the individual's business records;

(4) Failure on the part of the Board to furnish forms in sufficient time for an individual to complete and file the report on or before the date it was due, provided the individual made a timely request to the Board for the forms.

(5) Reliance upon a written report to the Board made by, or on behalf of, the annuitant before the close of the taxable year, if such report contained sufficient information about the annuitant's earnings or work to require suspension of his or her work deduction component and the report was not subsequently refuted or rescinded.

(b) *Good cause for subsequent failure.* Where circumstances are similar and an

individual fails on more than one occasion to make a timely report good cause normally will not be found for the second or subsequent violation.

**§ 230.20 Request by Board for reports of earnings; effect of failure to comply with request.**

(a) *Request by the Board for report during taxable year; effect of failure to comply.* The Board may, during the course of a taxable year, request an annuitant to make a declaration of his or her estimated earnings for his or her taxable year and to furnish any other information about his or her earnings that the Board may specify. If an annuitant fails to comply with such a request from the Board the annuitant's failure in itself constitutes justification for a determination that it may reasonably be expected that the annuitant will have deductions imposed under the earnings for that taxable year, and consequently the Board may suspend payment of the annuitant's work deduction component for the remainder of the taxable year.

(b) *Request by the Board for report after close of taxable year; failure to comply.* After the close of his or her taxable year, the Board may request an annuitant to furnish a report of earnings for the closed taxable year and to furnish any other information about earnings for that year that the Board may specify. If the annuitant fails to comply with this request, such failure shall in itself constitute justification for a determination that the annuitant's work deduction component is subject to deductions for each month in the taxable year (or only for the months thereof specified by the Board).

**§ 230.21 Current suspension of work deduction component because an individual works or engages in self-employment.**

(a) *Circumstances under which benefit payments may be suspended.* If, on the basis of information obtained by or submitted to the Board, it is determined that an individual entitled to an annuity for any taxable year may reasonably be expected to have deductions imposed against his or her work deduction component by reason of his or her earnings for such year, the Board may, before the close of the taxable year, suspend such component of the individual and of all other persons entitled to benefits on the basis of the individual's earnings record.

(b) *Duration of suspension.* The suspension described in paragraph (a) of this section shall remain in effect with respect to the work deduction component for each month until the Board has determined whether or not any deduction under that part applies for such month.

**§ 230.22 Employment outside the United States.**

(a) *General rule.* An annuitant who has a work deduction insured status as provided in § 230.8 of this part shall lose his or her work deduction component for any month during which he or she works in remunerative activity not covered by the Social Security Act outside the United States for more than 45 hours. In the case of a survivor annuitant subject to work deductions, earnings from remunerative activity outside the United States shall be charged against the annuity to the same extent that such earnings would have been charged had the remunerative activity taken place within the United States.

(b) *Spouse annuitant.* If an employee-annuitant loses his or her work deduction component for any month in accordance with paragraph (a) of this section, then the amount of any spouse or divorced spouse work deduction component is also not paid in that month. However, the benefits of a divorced spouse who has been divorced from the employee-annuitant for at least 2 years are not subject to withholding because of the employee-annuitant's work activity.

(c) *Outside the United States.* Work activity outside the United States means work activity outside the territorial boundaries of the 50 States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, and American Samoa. Self-employment by an alien in Puerto Rico, the U.S. Virgin Islands, Guam, or American Samoa is considered to be outside the U.S. unless the alien is a permanent resident of a State, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, or American Samoa.

(d) *Remunerative activity not covered by the Social Security Act.* Remunerative activity not covered by the Social Security Act includes all employment or self-employment outside the United States unless the wages or net earnings from self-employment are subject to social security taxes as provided for in the Internal Revenue Code. A trade or business which produces only income which is not considered earnings from self-employment (for example dividends, or rental from real estate) is not considered remunerative employment.

(e) *Obligation to report.* Any annuitant under age 70 who becomes employed or self-employed outside the United States shall file with the Board a report of such employment or self-employment before the annuitant accepts benefits for the second month following the month in which he or she worked or engaged in self-employment. Such report shall be made on the form and in accordance with instructions provided by the Board.

(f) *Penalty for failure to report.* An individual who fails to file a report within the time limits required by paragraph (e) of this section and who is not able to show good cause for such failure, as provided for in § 230.19 of this part, shall be subject to the penalty deductions provided for in § 230.18 of this part.

(g) *Extension of time to file.* An individual may request an extension of time to file the report required in paragraph (e) of this section in accordance with § 230.17 of this part.

(Approved by the Office of Management and Budget under control numbers 3220–0032 and 3220–0073.)

**§ 230.23 Last person service work deductions.**

(a) *General rule.* An individual in receipt of an employee or spouse annuity who receives remuneration in any month for services rendered as an employee to the last person or persons (LPS) by whom such individual was employed before the date on which his or her annuity began to accrue shall, in addition to any other deduction required by this part, be subject to a deduction in his or her work deduction component, as defined in paragraph (b) of this section, for that month of $1 for every $2 of remuneration received. Unlike the earnings limitation found in §§ 239.5–230.15 of this part there is no monthly or annual exempt amount. Each $2 of remuneration received from a last person service employer subjects the work deduction component to a $1 reduction for that month.

(b) *Work deduction component.* For purposes of this section, the work deduction component of an individual in receipt of an employee annuity shall be that portion of the annuity payable in any month which is computed under section 3(b) of the Railroad Retirement Act as adjusted by section 3(g) of that Act (tier II benefit) plus the amount computed under section 3(e) of that Act (supplemental annuity). With respect to an individual in receipt of a spouse annuity, his or her work deduction component shall be that portion of the annuity payable in any month computed under section 4(b) of the Railroad Retirement Act as adjusted under section 4(d) of that Act (tier II benefit).

(c) *Method of charging.* An individual in receipt of a spouse annuity shall have

the work deduction component of that annuity reduced by the amount of any deduction in the employee annuity required by paragraph (a) of this section. Where both an employee and his or her spouse have received remuneration as described in paragraph (a) of this section, the employee's work deduction component is reduced for his or her earnings and the spouse's work deduction component is reduced first for his or her earnings and then for the employee's earnings.

(d) *Maximum deduction.* Any deductions imposed by this section for any month shall not exceed 50 percent of the work deduction component.

(Approved by the Office of Management and Budget under Control Numbers 3220–0032 and 3320–0073.)

**Example.** An employee receives wages of $400 from his or her last person service employer in a given month. The deductions in the employee's and his or her spouse's work deduction components are computed as follows:

| Annuity component | | LPS deduction | Component after deduction |
|---|---|---|---|
| Employee tier 2 | $1,000 | [1] $191.75 | $808.25 |
| Supplemental annuity | 43 | [2] 8.25 | 34.75 |
| Spouse tier 2 | 450 | 200.00 | 250.00 |
| Totals | $1,493 | $400.00 | $1,093.090 |

[1] $200 × $1,000/$1,043 = 191.75.
[2] $200 × $43/$1,043 = 8.25.

**§ 230.24 Exception concerning service to a local lodge or division of a railway labor organization.**

In determining whether an annuity is subject to the provisions of this part, the Board shall disregard any remuneration for services rendered after December 31, 1936, to an employer which is a local lodge or division of a railway labor organization if the remuneration for such service is required to be disregarded under the provisions of § 211.2 of this chapter.

Dated: August 7, 1995.

By Authority of the Board.

For the Board.

**Beatrice Ezerski,**

*Secretary to the Board.*

[FR Doc. 95–20078 Filed 8–15–95; 8:45 am]

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## DEPARTMENT OF EDUCATION

### 34 CFR Part 371

**RIN 1820–AB32**

### Vocational Rehabilitation Service Projects for American Indians With Disabilities

**AGENCY:** Department of Education.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Secretary announces a public meeting to discuss the proposed regulations published in the **Federal Register** for comment on July 27, 1995 (60 FR 38608) and to assist in the development of regulations implementing the Vocational Rehabilitation Service Projects for American Indians with Disabilities program.

The purpose of the meeting is to allow interested parties an opportunity to review and discuss the proposed regulations, which implement section 130(b)(3) of the Rehabilitation Act of 1973, as amended (the Act), to provide greater funding continuity for tribal projects that are performing effectively by extending the normal 36-month project period for up to 24 additional months and to provide an opportunity for public comment on the proposed changes to conform the purpose and outcome of the program, consistent with section 100(a)(2) of the Act, as revised by the 1992 Amendments, from placement in suitable employment to placement in gainful employment consistent with individual strengths, resources, priorities, abilities, capabilities, and informed choice.

In addition, the meeting will provide an opportunity for public comment on whether additional changes are needed in existing program regulations in order to clarify requirements, reduce grantee burden, and increase program flexibility and effectiveness.

**DATES:** The public meeting is scheduled to be held from 8:00 a.m. to 10:15 a.m. on August 30, 1995. Written comments must be submitted by September 11, 1995.

**ADDRESSES:** The meeting will be held at The Red Lion Hotel, 300–112th Avenue, Bellevue, Washington. The meeting facilities and proceedings will be accessible to people with disabilities.

Individuals participating in the meeting are requested to provide a written copy of their comments. Individuals who cannot attend the meeting are invited to send in written comments regarding the proposed regulations and on the other changes that may be needed that are identified in the **SUPPLEMENTARY INFORMATION** section of this notice. Written comments should be addressed to Fredric K. Schroeder, Commissioner, Rehabilitation Services Administration, U. S. Department of Education, 600 Independence Avenue, S.W., Room 3028, Mary E. Switzer Building, Washington, D.C. 20202–2531. Comments may also be sent through the internet to ''American—Indians@ed.gov''.

**SUPPLEMENTARY INFORMATION:** The proposed regulations, which would implement section 130(b)(3) of the Act, would permit the granting, on a case-by-case basis, of extensions of up to 24 months to tribal projects that meet the requirements to be established in a new § 371.5. The Secretary is interested in comments regarding this proposed new section and whether the standard for determining to grant extension—which considers compliance with program requirements, continuing need for the project, and project effectiveness—is an appropriate standard. In addition, the Secretary is particularly interested in whether other changes are needed in the program, such as changes in the requirements under § 371.21 for complying with certain State Vocational Rehabilitation (VR) Services Program requirements. These requirements include developing individualized written rehabilitation programs for each individual receiving services, providing an opportunity for dissatisfied recipients to file grievances under procedures comparable to the fair hearing procedures required of State VR agencies, establishing minimum standards for providers of services comparable to those used by State VR agencies, and making an effort to provide a broad scope of VR services in a manner and at a level of quality comparable to the services provided by

State VR agencies. Do these application requirements need to be clarified or revised in light of the changes made to the State VR Services Program by the 1992 Amendments to the Act or because these requirements may be burdensome or unfeasible for a tribal program, especially a developing one? In what ways should tribal projects be comparable to VR programs administered by State VR agencies, other than providing comparable rehabilitation services to the extent feasible as required by section 130(b)(1)(B) of the Act? Should Federal regulations establish additional comparability requirements or should tribal applicants be given the flexibility in their funding proposals to describe how their projects would or would not be comparable and the reasons therefor? The Secretary also is particularly interested in whether revisions are needed in the selection criteria for this program in § 371.30 in order to better evaluate applications for funding.
AVAILABILITY OF COPIES OF THE PROPOSED REGULATIONS: The proposed regulations can be accessed through the RSA Bulletin Board System (BBS) by calling the following access number: (202) 205–9694. If you experience any difficulty in accessing the BBS, please contact either John Chapman at (202) 205–9290 or Teresa Darter at (202) 205–8444, co-system operators (sysops), for assistance. For those individuals unable to access the BBS, copies of the proposed regulations are available in regular print, large print, and computer diskette (WordPerfect 5.1 and ASCII formats) by calling (202) 205–9544. A limited number of copies in braille are also available.

**FOR FURTHER INFORMATION CONTACT:** Persons desiring to participate in the meeting should contact Richard Corbridge, 915 Second Avenue, Room 2848, Seattle, Washington 98174–1099. Telephone (206) 220–7840. Individuals who use a telecommunications device for the deaf (TDD) may call (206) 220–7849 for TDD services. Persons seeking additional information regarding the proposed regulations should contact Barbara Sweeney, 600 Independence Avenue, S.W., Room 3225, Mary E. Switzer Building, Washington, D.C. 20203–2531. Telephone (202) 205–9544. Individuals who wish additional information and use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

(Authority: 29 U.S.C. 701)

Dated: August 10, 1995.

**Howard R. Moses,**

*Acting Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 95–20226 Filed 8–15–95; 8:45 am]

**BILLING CODE 4000–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[IL132–1–7104; FRL–5278–2]**

### Approval and Promulgation of Implementation Plans; Illinois

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The United States Environmental Protection Agency (USEPA) proposes to approve Illinois' request to grant an exemption for the Chicago ozone nonattainment area from the applicable oxides of nitrogen ($NO_X$) transportation conformity requirements. On June 20, 1995, Illinois submitted to the USEPA a State Implementation Plan (SIP) revision request for an exemption under section 182(b)(1) of the Clean Air Act (Act) from the conformity requirements for $NO_X$ for the Chicago ozone nonattainment area, which is classified as severe. The request is based on the urban airshed modeling (UAM) conducted for the attainment demonstration for the Lake Michigan Ozone Study (LMOS) modeling domain. The rationale for this proposed approval is set forth below; additional information is available at the address indicated below.

**DATES:** Comments on this proposed rule must be received on or before September 15, 1995.

**ADDRESSES:** Copies of the documents relevant to this action are available for inspection at the following address: (It is recommended that you telephone Patricia Morris at (312) 353–8656, before visiting the Region 5 office.) U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Written comments shall be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

**FOR FURTHER INFORMATION CONTACT:** Patricia Morris, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604. (312) 353–8656.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

Clean Air Act section 176(c)(3)(A)(iii) requires, in order to demonstrate conformity with the applicable SIP, that transportation plans and transportation improvement programs (TIPs) contribute to emissions reductions in ozone and carbon monoxide nonattainment areas during the period before control strategy SIPs are approved by USEPA. This requirement is implemented in 40 CFR 51.436 through 51.440 (and 93.122 through 93.124), which establishes the so-called ''build/no-build test.'' This test requires a demonstration that the ''Action'' scenario (representing the implementation of the proposed transportation plan/TIP) will result in lower motor vehicle emissions than the ''Baseline'' scenario (representing the implementation of the current transportation plan/TIP). In addition, the ''Action'' scenario must result in emissions lower than 1990 levels.

The November 24, 1993, final transportation conformity rule does not require the build/no-build test and less-than-1990 test for $NO_x$ as an ozone precursor in ozone nonattainment areas where the Administrator determines that additional reductions of $NO_x$ would not contribute to attainment of the National Ambient Air Quality Standard (NAAQS) for ozone. Clean Air Act section 176(c)(3)(A)(iii), which is the conformity provision requiring contributions to emission reductions before SIPs with emissions budgets can be approved, specifically references Clean Air Act section 182(b)(1). That section requires submission of State plans that, among other things, provide for specific annual reductions of volatile organic compounds (VOCs) and $NO_x$ emissions ''as necessary'' to attain the ozone standard by the applicable attainment date. Section 182(b)(1) further states that its requirements do not apply in the case of $NO_x$ for those ozone nonattainment areas for which USEPA determines that additional reductions of $NO_x$ would not contribute to ozone attainment.

For ozone nonattainment areas, the process for submitting waiver requests and the criteria used to evaluate them are explained in the December 1993 USEPA document ''Guidelines for Determining the Applicability of Nitrogen Oxides Requirements Under Section 182(f),'' and the May 27, 1994, and February 8, 1995, memoranda from

John S. Seitz, Director of the Office of Air Quality Planning and Standards, to Regional Air Division Directors, titled ''Section 182(f) $NO_x$ Exemptions—Revised Process and Criteria.''

On July 13, 1994, the States of Illinois, Indiana, Michigan, and Wisconsin (the States) submitted to the USEPA a petition for an exemption from the requirements of section 182(f) of the Clean Air Act (Act). The States, acting through the Lake Michigan Air Directors Consortium (LADCo), petitioned for an exemption from the Reasonably Available Control Technology (RACT) and New Source Review (NSR) requirements for major stationary sources of $NO_x$. The petition also asked for an exemption from the transportation and general conformity requirements for $NO_x$ in all ozone nonattainment areas in the Region.

On March 6, 1995, the USEPA published a rulemaking proposing approval of the $NO_x$ exemption petition for the RACT, NSR and transportation and general conformity requirements. A number of comments were received on the proposal. Several commenters argued that $NO_x$ exemptions are provided for in two separate parts of the Act, in sections 182(b)(1) and 182(f), but that the Act's transportation conformity provisions in section 176(c)(3) explicitly reference section 182(b)(1). In April 1995, the USEPA entered into an agreement to change the procedural mechanism through which a $NO_x$ exemption from transportation conformity would be granted (*EDF et al.* v. *USEPA*, No. 94–1044, U.S. Court of Appeals, D.C. Circuit). Instead of a petition under 182(f), transportation conformity $NO_x$ exemptions for ozone nonattainment areas that are subject to section 182(b)(1) now need to be submitted as a SIP revision request. The Chicago ozone nonattainment area is classified as severe and, thus, is subject to section 182(b)(1).

The transportation conformity requirements are found at sections 176(c) (2), (3), and (4). The conformity requirements apply on an areawide basis in all nonattainment and maintenance areas. The USEPA's transportation conformity rule [1] and general conformity rule [2] currently reference the section 182(f) exemption process as a means for exempting any nonattainment area from $NO_x$ conformity requirements. The USEPA intends to amend the transportation conformity rule to instead reference section 182(b)(1) as the means for exempting areas subject to section 182(b)(1) from the transportation conformity $NO_x$ requirements. After the USEPA amends the transportation conformity rule to reference section 182(b)(1) for granting $NO_x$ waivers, the USEPA will take final action on today's proposal.

The June 20, 1995, SIP revision request from Illinois, has been submitted to meet the requirements of a formal SIP revision submittal in accordance with the 182(b)(1) requirements. A public hearing on this SIP revision request was held on July 17, 1995. The Chicago severe ozone nonattainment area includes the Counties of Cook, DuPage, Grundy (Aux Sable and Gooselake Townships), Kane, Kendall (Oswego Township), Lake, McHenry, and Will.

Section 182(b)(1) requires submittal of a plan revision that provides for reasonable further progress (RFP) reductions for moderate and above ozone nonattainment areas. The plan must provide for specific annual reductions in emissions of VOCs and $NO_x$ as necessary to attain the national primary ambient air quality standard for ozone by the attainment date applicable under the Act. Further, the requirement shall not apply in the case of $NO_x$ for those areas for which the Administrator determines that additional reductions of $NO_x$ would not contribute to attainment. In evaluating the 182(b) SIP revision request, the USEPA considered whether additional $NO_x$ reductions would contribute to attainment of the standard in the Chicago area and also in the downwind areas of the LMOS modeling domain.

As outlined in relevant USEPA guidance, the use of photochemical grid modeling is the recommended approach for testing the contribution of $NO_x$ emission reductions to attainment of the ozone standard. This approach simulates conditions over the modeling domain that may be expected at the attainment deadline for three emission reduction scenarios: (1) Substantial VOC reductions, (2) substantial $NO_x$ reductions, and (3) both VOC and $NO_x$ reductions. If the areawide predicted maximum one-hour ozone concentration for each day modeled under scenario (1) is less than or equal to those from scenarios (2) and (3) for the corresponding days, the test is passed and the section 182(f) $NO_x$ emissions reduction requirements would not apply.

In making this determination under section 182(b)(1) that the $NO_x$ requirements do not apply, or may be limited in the Lake Michigan area, the USEPA has considered the national study of ozone precursors completed pursuant to section 185B of the Act. The USEPA has based its decision on the demonstration and the supporting information provided in the SIP revision request.

## II. Summary of Submittal

On June 20, 1995, the State of Illinois submitted as a revision to the SIP, a request for a waiver from the transportation conformity $NO_x$ requirements. The submittal included the LMOS UAM modeling for the attainment demonstration for 3 ozone episodes during 1991. The modeling supported the request by documenting that $NO_x$ reductions in the Chicago nonattainment area would not contribute to attainment and, in fact, would be detrimental to the goal of reaching attainment. The Illinois Environmental Protection Agency (IEPA) discussed the $NO_x$ waiver in the context of the public hearing on the attainment demonstration held on December 21, 1994. To assure that the public was fully informed and given appropriate opportunity for comment, the IEPA committed to hold a further hearing specifically to address the section 182(b)(1) transportation conformity waiver. This public hearing was held on July 17, 1995.

Pursuant to 40 CFR part 93, subpart A, 40 CFR part 51, subpart T, the SIP revision request seeks an exemption from the transportation conformity requirements for $NO_x$ in the Chicago ozone nonattainment area. The States' have utilized the UAM to demonstrate that reductions in $NO_x$ in the LMOS modeling domain will not contribute to attainment of the standard. To conduct the modeling analysis, the following steps were followed: (a) Emissions were projected to 1996 (the deadline for implementation of the 15 percent reasonable further progress reduction) and 2007 (the attainment deadline for the severe nonattainment areas) from the 1990 base year, (b) it was assumed that a 40 percent VOC emission reduction beyond that achieved as a result of emission controls mandated by the Act would be necessary to attain the ozone standard in the LMOS modeling domain, (c) a 40 percent $NO_x$ emission reduction in grid B (that portion of the LMOS modeling domain that is essentially composed of the ozone nonattainment areas within the modeling domain) beyond the projected emission levels was assumed for all

[1] ''Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved under Title 23 U.S.C. of the Federal Transit Act'' November 24, 1993 (58 FR 62188).

[2] ''Determining Conformity of General Federal Actions to State or Federal Implementation Plans; Final Rule'' November 30, 1993 (58 FR 63214).

anthropogenic $NO_x$ emissions, (d) a 40 percent VOC emission reduction and a 40 percent $NO_x$ reduction in grid B beyond projected emission levels were assumed for all anthropogenic VOC and $NO_x$ emissions and (e), the ozone modeling results for (b), (c), and (d) were compared considering the modeled domain-wide peak ozone concentrations and temporal and spatial extent of modeled ozone concentrations above 120 parts per billion (ppb).

For all modeled days using 1996 and 2007 conditions, domain-wide peak ozone concentrations for ''VOC-only'' controls were found to be lower than or equal to those for ''$NO_x$-only'' controls or those for ''VOC plus $NO_x$'' controls. In addition, consideration of daily peak ozone isopleth maps (these maps are included in the documentation of the section 182(b) SIP revision request) shows that the ''VOC-only'' control scenario leads to the smallest areas with predicted peak ozone concentrations exceeding 120 ppb.

Additional sensitivity tests were conducted for a 40 percent $NO_x$ emission reduction that was applied only to point sources in Grid B for episode 2 and 1996 conditions for both an assumed $NO_x$ reduction alone and a 40 percent reduction in both VOCs and $NO_x$. These sensitivity tests compared to the scenarios with across the board anthropogenic $NO_x$ reductions demonstrated that control of ground level $NO_x$ sources (such as transportation sources) did not contribute to attainment of the standard and in fact increased the domain wide peak ozone concentrations exceeding 120 ppb and the number of hours that exceeded 120 ppb. This result was more pronounced than with the point source only $NO_x$ control.

### III. Analysis of Submittal

Review of the modeling results show a very definite directional signal indicating that application of $NO_x$ controls in the Chicago ozone nonattainment area would exacerbate peak ozone concentrations not only in the Chicago area but also in the LMOS modeling domain. The LMOS modeling domain includes northern Indiana, western Michigan and eastern Wisconsin. The States and LADCo have now completed the validation process for the UAM modeling system to be used in the demonstration of attainment for the LMOS modeling domain. Therefore, documentation supporting the validity of the modeling results has been submitted with the SIP revision request.

It is noted that the use of simple, area-wide emission projection factors raises some uncertainty in the modeling results for 1996 and 2007. Some changes in modeling results may be expected if area-specific and source category-specific projection factors are used instead of the average factors used in these analyses. These more detailed projection factors will be used in the final demonstration of attainment for the LMOS domain. These changes, however, are not expected to reverse the directional signal of the modeling done to date. Concluding that $NO_x$ reductions will not contribute to attainment in Chicago and throughout the LMOS domain.

Although ozone concentrations modeled further downwind from the urban source areas increase as a result of increased $NO_x$ point source emissions, this is not the case with the ground level $NO_x$ sources. LADCo and the States view the potential increase in outflow ozone concentrations with increasing $NO_x$ point source emissions to be marginal. More importantly, the SIP revision request demonstrates that additional reductions in $NO_x$ would not contribute to attainment of the ozone standard in the LMOS domain. These results are believed to be consistent with USEPA's section 185B report to Congress.

Therefore, based on its conformance with USEPA guidance, the USEPA believes the State of Illinois' demonstration is adequate, and thus is approving the transportation conformity waiver request. It is noted by LADCo, however, that subsequent modeling analyses may lead to an ozone attainment plan which includes, for specified portions of the LMOS domain only, both $NO_x$ and VOC emission controls. The modeling indicates that these $NO_x$ emission controls will most likely be limited to rural areas, but would not be required in the Chicago nonattainment area and will also not likely be applied to ground level sources.

Monitoring data such as concentrations of non-methane hydrocarbons and $NO_x$ and derived/monitored ozone production potentials of air parcels, collected for the urban source areas during the 1991 field study support the approval of the $NO_x$ waiver. It is noted, however, that the primary basis for the approval of the $NO_x$ waiver is the modeling results submitted in support of the waiver. The 1991 field data by themselves may not be an adequate support for the waiver since these data are limited in nature and do not present a complete picture of the impacts of $NO_x$ controls on LMOS modeling domain peak ozone concentrations.

VOC and $NO_x$ emission reductions were found to produce different impacts spatially. In and downwind of major urban areas, within the ozone nonattainment areas, VOC reductions were effective in lowering peak ozone concentrations, while $NO_x$ emission reductions resulted in increased peak ozone concentrations. Farther downwind, within attainment areas, VOC emissions reductions became less effective for reducing ozone concentrations, while $NO_x$ emission reductions were effective in lowering ozone concentrations. It must be noted, however, that the magnitude of ozone decreases farther downwind due to $NO_x$ emission reductions was less than the magnitude of ozone increases in the ozone nonattainment areas as a result of the same $NO_x$ emission reductions.

Analyses of ambient data by LMOS contractors provided results which corroborated the modeling results. These analyses identified areas of VOC- and $NO_x$-limited conditions (VOC-limited conditions would imply a greater sensitivity of ozone concentrations to changes in VOC emissions; the reverse would be true for $NO_x$-limited conditions) and tracked the ozone and ozone precursor concentrations in the urban plumes as they moved downwind. The analyses indicated VOC-limited conditions in the Chicago/Northwest Indiana and Milwaukee areas and $NO_x$-limited conditions further downwind. These results imply that VOC controls in the Chicago/Northwest Indiana and Milwaukee areas would be more effective at reducing peak ozone concentrations within the severe ozone nonattainment areas.

The consistency between the modeling results and the ambient data analysis results for all episodes with joint data supports the view that the UAM modeling system developed in the LMOS may be used to investigate the relative merits of VOC versus $NO_x$ emission controls. The UAM-V results for all modeled episodes point to the benefits of VOC controls versus $NO_x$ controls in reducing the modeled domain peak ozone concentrations.

For a more detailed analysis of the modeling analysis results, please see the August 22, 1994 ''Technical Review of a Four State Request for a Section 182(f) Exemption from Oxides of Nitrogen ($NO_x$) Reasonably Available Control Technology (RACT) and New Source Review (NSR) Requirements'' memorandum contained in the docket for this action.

The USEPA believes LADCo's UAM application has adequately met the requirement to demonstrate that $NO_x$

controls within the Chicago ozone nonattainment area and throughout the LMOS domain will not contribute, but instead will interfere with attainment of the ozone standard.

### IV. Proposed Rulemaking Action and Solicitation of Comments

Based on the submittal accompanying the State's SIP revision request, the USEPA proposes to approve Illinois' request for an exemption from the transportation conformity requirement to provide annual reductions in $NO_x$ emissions as necessary to reach attainment, for the Chicago ozone nonattainment area.

Public comments are solicited on the requested SIP revision and on USEPA's proposed rulemaking action. Comments received by September 15, 1995, will be considered in the development of USEPA's final rule.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. The USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This approval does not create any new requirements. Therefore, I certify that this action does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of the regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *USEPA*, 427 U.S. 246, 256–66 (1976).

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the USEPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, the USEPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the USEPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The USEPA has determined that this action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

This Federal action will relieve requirements otherwise imposed under the Act, and hence does not impose any federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act. Accordingly, no additional costs to State, local, or tribal governments, or the private sector, result from this action.

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Conformity, Intergovernmental relations, Oxides of nitrogen, Ozone, Transportation conformity.

**Authority:** 42 U.S.C. 7401–7671q.

Dated: August 4, 1995.

**Corinne S. Wellish,**

*Acting Regional Administrator.*

[FR Doc. 95–20253 Filed 8–15–95; 8:45 am]

BILLING CODE 6560–50–P

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## 40 CFR Part 180

**[PP 6F3436/P624; FRL 4968–8]**

**RIN 2070–AC18**

## Tralomethrin; Pesticide Tolerances

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes that time-limited tolerances be established with an expiration date of November 15, 1997, for the combined residues of the insecticide tralomethrin and its metabolites *cis*-deltamethrin and *trans*-deltamethrin in or on the raw agricultural commodities (RACs) leaf lettuce, head lettuce, broccoli, and sunflowers. The proposed tolerances would establish the maximum permissible levels for residues of the insecticide in or on the commodities. The AgrEvo USA Co. requested these tolerances pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA).

**DATES:** Comments identified by the docket number, [PP 6F3436/P624], must be received on or before September 15, 1995.

**ADDRESSES** Submit written comments by mail to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Public Docket, Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures as set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 1132 at the above address, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number, [PP 6F3436/P624]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

**FOR FURTHER INFORMATION CONTACT** By mail: George T. LaRocca, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection

Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Second Floor, CM #2, 1900 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6100; e mail: larocca.george@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of October 29, 1986 (51 FR 39576), EPA issued a notice that AgrEvo USA Co. (formerly Roussel Uclaf of Paris, France; U.S. Agent: Hoechst-Roussel Agri-Vet Co.), Little Falls Center One, 2711 Centerville Rd., Wilmington, DE 19808, had submitted pesticide petition (PP 6F3436) to EPA proposing to amend 40 CFR part 180 by establishing a regulation pursuant to the Federal Food, Drug and Cosmetic Act (21 U.S.C. 346a and 371), to establish tolerances for residues of the pyrethroid tralomethrin [(*S*)-*alpha*-cyano-3-phenoxybenzyl-(1*R*,3*S*)-2,2-dimethyl-3-[(*RS*)-1,2,2,2-tetrabromoethyl]-cyclopropane carboxylate] and its metabolites *cis*-deltamethrin [(*S*)-*alpha*-cyano-3-phenoxybenzyl(1*R*,3*R*)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate] and *trans*-deltamethrin [(*S*)-*alpha*-cyano-3-phenoxybenzyl(1*S*,3*R*)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate] in or on the following raw agricultural commodities (RACs): broccoli at 0.50 part per million (ppm); broccoli, Chinese (gai lon), broccoli, and raab (rapini) at 3.50 ppm; Brussels sprouts at 3.50 ppm; cabbage at 0.10 ppm; cabbage, Chinese (bok choy, napa) at 3.50 ppm; cabbage, Chinese mustard (gai choy) at 3.50 ppm; cauliflower at 3.50 ppm; collards at 3.50 ppm; kale at 3.50 ppm; kohlrabi at 3.50 ppm; lettuce, head at 0.50 ppm; lettuce, leaf at 2.50 ppm; mustard greens at 3.50 ppm; sunflower seeds at 0.05 (N); and rape greens at 3.50 ppm.

On May 21, 1990, AgrEvo USA Co. submitted a request to amend the subject petition by deleting the proposed tolerance for the entire brassica (cole) leafy vegetable crop group except broccoli. Tolerances were proposed for broccoli at 0.50 ppm, leaf lettuce at 3.0 ppm, and head lettuce at 0.50 ppm. On July 20, 1993, AgrEvo USA Co. submitted a request to increase the proposed tolerance level of the insecticide and its metabolites in or on the RAC head lettuce to 1.00 ppm.

The scientific data submitted in the petitions and other relevant material have been evaluated. The toxicological and metabolism data and analytical methods for enforcement purposes considered in support of these tolerances are discussed in detail in related documents published in the **Federal Register** of September 18, 1985 (50 FR 37581). In addition, mutagenicity studies were submitted and considered in support of these tolerances. Based on the studies submitted (an unscheduled DNA synthesis study in rat primary hepatocytes and a chromosome aberration study in Chinese hamster ovary cells), tralomethrin is not considered mutagenic.

A dietary exposure/risk assessment was performed for tralomethrin using a Reference Dose (RfD) of 0.0075 mg/kg/bwt/day, based on a no-observed-effect level (NOEL) of 0.75 mg/kg bwt/day and an uncertainty factor of 100. The NOEL was determined in a 2-year rat-feeding study. The endpoint effect of concern was decreased body weight. The Theoretical Maximum Residue Contribution (TMRC) from established tolerances utilizes less than 1% of the RfD for the U.S. population and the subpopulation most highly exposed, females (13+ years, nursing). Establishing the new tolerances would utilize 3.7% of the RfD for the U.S. population and 5.1% for females (13+ years, nursing). If the new tolerances are approved, the total percentages of RfD utilized for the U.S. population and females (13+ years, nursing) are 3.8% and 5.2%, respectively. Generally speaking, EPA has no cause for concern if total residue contribution for published tolerances is less than the RfD. EPA concludes that the chronic dietary risk of deltamethrin, as estimated by the dietary risk assessment, does not appear to be of concern.

The nature of the residues in lettuce, broccoli, and sunflowers is adequately understood for the establishment of tolerances. An adequate analytical method, gas-liquid chromatography, is available for enforcement purposes. The enforcement methodology has been submitted to the Food and Drug Administration and published in the Pesticide Analytical Manual, Vol. II (PAM II).

The Agency issued a conditional registration for tralomethrin for use on cotton with an expiration date of December 31, 1989 (see the **Federal Register** of September 18, 1985 (50 FR 37581)). The conditional registration was subsequently amended and extended to November 15, 1996 (see the **Federal Register** of February 22, 1995 (60 FR 9785)). The registration was amended and extended to allow time for submission and evaluation of additional environmental effects data. In order to evaluate the effects of the pyrethroids on fish and aquatic organisms and its fate in the environment, additional data were required to be collected and submitted during the period of conditional registration. Such requirements included a sediment bioavailability and toxicity study and a small-plot runoff study that must be submitted to the Agency by July 1, 1996. Due to the conditional status of the registration, tolerances have been established for tralomethrin and its metabolites on a time-limited basis (until November 15, 1997) on cotton and soybeans to cover residues expected to be present from use during the period of conditional registration. To be consistent with the conditional registration and extension on cotton and soybeans, the Agency is proposing to issue a conditional registration with an expiration date of November 15, 1996, and establishing a time-limited tolerance on broccoli and lettuce (leaf and head lettuce) and sunflowers with an expiration date of November 15, 1997, to cover residues expected to result from use during the period of conditional registration.

There are currently no actions pending against the continued registration of this chemical and its metabolites. The pesticide is considered useful for the purposes for which it is sought. Based on the information and data considered, the Agency has determined that the tolerances established by amending 40 CFR part 180 would protect the public health. Therefore, it is proposed that the tolerances be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains the ingredient listed herein, may request within 30 days after the publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA).

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 6F3436/P624]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch at the above address from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

A record has been established for this rulemaking under docket number [PP 6F3436/R624] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper

versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

The Office of Management and Budget has exempted this document from the requirement of review pursuant to Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 27, 1995.

**Stephen L. Johnson,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

## PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a and 371.

2. In 180.422, by revising the table therein, to read as follows:

**§ 180.422 Tralomethrin; tolerances for residues.**

* * * * *

| Commodity | Parts per million |
|---|---|
| Broccoli | 0.50 |
| Cottonseed | 0.02 |
| Lettuce, head | 1.00 |
| Lettuce, leaf | 3.00 |
| Soybeans | 0.05 |
| Sunflower seed | 0.05 |

[FR Doc. 95–20011 Filed 8–15–95; 8:45 am]

BILLING CODE 6560–50–F

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### 49 CFR Part 571

**[Docket No. 95–28; Notice 3]**

**RIN 2127–AF73**

### Lamps, Reflective Devices and Associated Equipment; Schedule of Advisory Committee Public Meetings

**AGENCY:** National Highway Traffic Safety Administration (NHTSA); DOT.

**ACTION:** Notice; Schedule of Advisory Committee Meetings.

**SUMMARY:** The National Highway Traffic Safety Administration gives notice, as required by the Federal Advisory Committee Act (Pub. L. 92–463) of the scheduled dates for the meetings of its Advisory Committee on Regulatory Negotiation (concerning the improvement of headlamp aimability performance and visual/optical headlamp aiming) during the remainder of 1995. The Committee has also adopted a tentative schedule for its first three meetings in 1996, as indicated below, subject to confirmation or modification at its November meeting. If there are changes or additions to this schedule, NHTSA will publish a notice informing the public of the changes.

**DATES:** Wednesday/Thursday, September 6/7, 1995; Wednesday/Thursday, October 18/19, 1995; Tuesday/Wednesday, November 28/29, 1995; Wednesday/Thursday, January 17/18, 1996; Wednesday/Thursday, March 6/7, 1996; Tuesday/Wednesday, April 23/24, 1996.

**ADDRESSES:** Meetings of the Advisory Committee are currently scheduled to be held beginning at 9:00 a.m. at the Department of Transportation, Room 2230 Nassif Building, 400 Seventh Street, SW, Washington D.C.

**FOR FURTHER INFORMATION CONTACT:** Jere Medlin, Office of Vehicle Safety Standards, NHTSA (Phone: 202–366–5276; FAX: 202–366–4329). *Mediator:* Lynn Sylvester, Federal Mediation and Conciliation Service, (phone: 202–606–9140; FAX: 202–606–3679).

**SUPPLEMENTARY INFORMATION:** The listed meetings of the Advisory Committee are for the purposes of negotiating the contents of the preamble and a proposed amendment to 49 CFR 571.108 Motor Vehicle Safety Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment* that will be issued by the National Highway Traffic Safety Administration to develop recommended specifications for adding a visual/optical aimability requirement for the lower beam headlamp. This would facilitate visual aimability of headlamps and, should this affect the lower beam pattern, it might be the basis for a world-wide lower beam pattern.

At its first meeting on July 25, 1995, the Committee adopted the schedule for its meetings for the remainder of 1995 as set forth above. It also adopted a tentative schedule for its first three meetings in 1996, as shown above, subject to confirmation at its November meeting. If there are any changes or additions, NHTSA will publish a further notice.

The meetings are open to the public.

Issued: August 11, 1995.

**Barry Felrice,**

*Associate Administrator for Safety Performance Standards.*

[FR Doc. 95–20311 Filed 8–15–95; 8:45 am]

BILLING CODE 4910–59–P

### 49 CFR Part 575

**[Docket No. 94–30, Notice 5]**

**RIN 2127–AF17**

### Consumer Information Regulations: Uniform Tire Quality Grading Standards

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Extension of comment period.

**SUMMARY:** This notice grants a request to extend the comment period on an agency proposal to amend the Uniform

Tire Quality Grading Standards to change the treadwear grading procedures, add an additional traction grade, and to substitute a fuel economy grade for the current temperature resistance grade. Subsequent to the publication of the proposal, NHTSA extended the comment period to August 14, 1995 and held a public meeting on the proposals at the request of several tire manufacturers. In response to a petition, the agency is further extending the comment period from August 14, 1995 to September 1, 1995.

**DATES:** Comments on the May 24, 1995 proposal must be received by the agency on or before close of business, September 1, 1995.

**ADDRESSES:** Comments should refer to Docket No. 94–30, Notice 2, and be submitted to the Docket Section, NHTSA, 400 Seventh Street, SW, Room 5109, Washington, DC 20590. Docket hours are from 9:30 a.m. to 4:00 p.m., Monday through Friday. Telephone (202) 366–4949.

**FOR FURTHER INFORMATION CONTACT:** Mr. Orron Kee, Office of Market Incentives, Office of the Associate Administrator for Safety Performance Standards, NHTSA, 400 Seventh Street, SW, Room 5313, Washington, DC 20590, telephone (202) 366–4936.

**SUPPLEMENTARY INFORMATION:** On May 24, 1995, NHTSA published a Notice of Proposed Rulemaking (NPRM) to amend the Uniform Tire Quality Grading Standards (UTQGS), 49 CFR 575.104. The amendments would change the treadwear grading procedures, add an ''AA'' rating to the traction grade, and substitute a fuel economy rating for the current temperature resistance rating. The agency believed that the proposed fuel economy rating, based on reduced tire rolling resistance, would be more meaningful to consumers than the temperature resistance rating.

The NPRM specified a comment closing date of July 10, 1995. However, the agency subsequently received several requests to extend the comment period and to hold a public hearing on the issues involved in the proposed rulemaking. In order to provide ample opportunity for interested parties to express their views on the UTQGS proposals, NHTSA extended the comment period until August 14, 1995 and granted the requests for a public meeting (60 FR 34961, July 5, 1995). The agency held the public meeting on July 28, 1995 at the DOT headquarters building, 400 Seventh Street, Washington, DC 20590. Twenty-nine persons testified and additional written testimony was submitted for inclusion in the record. At the meeting, Multinational Business Services, Inc. (MBS), among others, requested an additional extension of the comment period to provide participants an opportunity to review the record of the proceedings and submit additional comments, if desired.

On August 3, 1995, the National Tire Dealers & Retreaders Association (NTDRA) petitioned the agency to extend the comment period an additional 2 weeks from the present closing date of August 14, 1995. NTDRA stated that the public meeting revealed ''considerable disagreement * * * within the tire industry on a wide range of issues'' and, like MBS and the others, asserted that the meeting participants needed an opportunity to review the data presented by the other attendees.

After thorough review of the NTDRA petition and the other requests for an extension of the comment period, NHTSA agrees that additional time for commenting on the May 24, 1995 NPRM is desirable. Such extension will provide interested parties the opportunity to review the record of the public meeting and submit additional matters for the agency's consideration in this rulemaking action. Accordingly, the agency believes that there is good cause for the further extension of the comment period and that this extension is consistent with the public interest. Based on the above considerations, the agency is extending the comment closing date on the May 24, 1995, NPRM until September 1, 1995.

Issued on: August 11, 1995.

**Barry Felrice,**

*Associate Administrator for Safety Performance Standards.*

[FR Doc. 95–20344 Filed 8–11–95; 4:54 pm]

**BILLING CODE 4910–59–P**

# Notices

Federal Register
Vol. 60, No. 158
Wednesday, August 16, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. 95–058–1]**

### Availability of Environmental Assessments and Findings of No Significant Impact

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** We are advising the public that two environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The environmental assessments provide a basis for our conclusion that the field testing of the genetically engineered organisms will not have a significant impact on the quality of the human environment. Based on its findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

**ADDRESSES:** Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room.

**FOR FURTHER INFORMATION CONTACT:** Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, BBEP, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1237; (301) 734–7612. For copies of the environmental assessments and findings of no significant impact, write to Mr. Clayton Givens at the same address. Please refer to the permit numbers listed below when ordering documents.

**SUPPLEMENTARY INFORMATION:** The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained or a notification acknowledged before a regulated article may be introduced into the United States. The regulations set forth the permit application requirements and the notification procedures for the importation, interstate movement, and release into the environment of a regulated article.

In the course of reviewing each permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued permits for the field testing of the organisms listed below after concluding that the organisms will not have a significant impact on the quality of the human environment. The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of permits to allow the field testing of the following genetically engineered organisms:

| Permit no. | Permittee | Date issued | Organisms | Field test location |
|---|---|---|---|---|
| 95–041–01 | R.J. Reynolds Tobacco Company ... | 6–09–95 | Tobacco mosaic virus genetically engineered to express proteins of pharmaceutical interest. | North Carolina |
| 95–130–01 | University of Wisconsin ..... | 7–13–95 | *Pseudomonas syringae pv. syringae* genetically engineered for decreased virulence. | Wisconsin |

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321 et seq.), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372; 60 FR 6000–6005, February 1, 1995).

Done in Washington, DC, this 9th day of August 1995.

**Lonnie J. King,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 95–20163 Filed 8–15–95; 8:45 am]

BILLING CODE 3410–34–P

### Forest Service

### Southwest Oregon Provincial Interagency Executive Committee (PIEC), Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Southwest Oregon PIEC Advisory Committee will meet on August 31, 1995 at Jot's Resort in Gold Beach, Oregon. The meeting will begin at 8 a.m. and continue until 4 p.m. Agenda items to be covered include: (1)

Proposed charter for a research and monitoring working group; (2) Local area issue presentation; (3) Proposal for next actions on standards and guides, monitoring, and fuel, insect and disease issues; (4) Update on Appelate fuels strategy; (5) Public forum. All Province Advisory committee meetings are open to the public, interested citizens are encouraged to attend.

**FOR FURTHER INFORMATION CONTACT:** Direct questions regarding this meeting to Chuck Anderson, Province Advisory Committee staff, USDA, Rogue River National Forest, PO Box 520, Medford, Oregon 97501, 503–858–2322.

Dated: August 9, 1995.

**James T. Gladen,**

*Forest Supervisor.*

[FR Doc. 95–20285 Filed 8–15–95; 8:45 am]

BILLING CODE 3410–11–M

## CONGRESSIONAL BUDGET OFFICE

### Notice of Transmittal of Sequestration Update Report for Fiscal Year 1996 to Congress and the Office of Management and Budget

Pursuant to Section 254(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 904(b)), the Congressional Budget Office hereby reports that it has submitted its Sequestration Update Report for Fiscal Year 1996 to the House of Representatives, the Senate, and the Office of Management and Budget.

**Stanley L. Greigg,**

*Director, Office of Intergovernmental Relations, Congressional Budget Office.*

[FR Doc. 95–20326 Filed 8–15–95; 8:45 am]

BILLING CODE 95–0702–M

## DEPARTMENT OF COMMERCE

### Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* Bureau of Economic Analysis.

*Title:* Transactions of U.S. Affiliate, Except a U.S. Banking Affiliate, with Foreign Parent; and Transactions of U.S. Banking Affiliate with Foreign Parent.

*Form Number(s):* BE–605 and BE–605 Bank.

*Agency Approval Number:* 0608–0009.

*Type of Request:* Extension of a currently approved collection.

*Burden:* 17,600 hours.

*Number of Respondents:* 4,400.

*Avg Hours Per Response:* 4 hours.

*Needs and Uses:* The survey collects quarterly sample data on transactions and positions between foreign–owned U.S. business enterprises and their foreign parents. Universe estimates are developed from the reported sample data. The data are needed for compiling the U.S. balance of payments accounts, the international investment position of the United States, and the national income and product accounts. The data are also needed to measure the amount of foreign direct investment in the United States, monitor changes in such investment, and assess its impact on the U.S. and foreign economies, and, based upon this assessment, make informed policy decisions regarding foreign direct investment in the United States.

*Affected Public:* Businesses or other for–profit institutions.

*Frequency:* On quarterly.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:* Paul Bugg, (202) 395–3093.

*Agency:* Bureau of Economic Analysis.

*Title:* Annual Survey of Construction, Engineering, Architectural, and Mining Services Provided by U.S. Firms to Unaffiliated Foreign Persons.

*Form Number(s):* BE–47.

*Agency Approval Number:* 0608–0015.

*Type of Request:* Extension of a currently approved collection.

*Burden:* 1675 hours.

*Number of Respondents:* 135.

*Avg Hours Per Response:* 5 hours.

*Needs and Uses:* The survey will obtain sample data on U.S. sales to unaffiliated foreign persons of construction, engineering, architectural, and mining services. The information gathered is needed, among other purposes, to support U.S. trade policy initiatives, including trade negotiations, and to compile the U.S. balance of payments and the national income and product accounts.

*Affected Public:* U.S. businesses or other for–profit institutions providing construction, engineering, architectural, and mining services to unaffiliated foreign persons.

*Frequency:* Annually.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:* Paul Bugg, (202) 395–3093.

*Agency:* Bureau of Economic Analysis.

*Title:* Annual Survey of Royalties, License Fees, and Other Receipts and Payments for Intangible Rights between U.S. and Unaffiliated Foreign Persons.

*Form Number(s):* BE–93.

*Agency Approval Number:* 0608–0017.

*Type of Request:* Extension of a currently approved collection.

*Burden:* 2,200 hours.

*Number of Respondents:* 550.

*Avg Hours Per Response:* 4 hours.

*Needs and Uses:* The survey will obtain sample data on royalties, license fees, and other receipts and payments for intangible rights between U.S. and unaffiliated foreign persons. The information gathered is needed, among other purposes, to support U.S. trade policy initiatives, including trade negotiations, and to compile the U.S. balance of payments and the national income and product accounts.

*Affected Public:* U.S. businesses or other institutions receiving royalties and license fees from, or paying royalties and license fees to, unaffiliated foreign persons.

*Frequency:* Annually.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:* Paul Bugg, (202) 395–3093.

Copies of the above information collection proposals can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Paul Bugg, OMB Desk Officer, Room 10201, New Executive Office Building, Washington, DC 20503.

Dated: August 10, 1995.

**Gerald Taché,**

*Departmental Forms Clearance Officer, Office of Management and Organization.*

[FR Doc. 95–20195 Filed 8–15–95; 8:45 am]

BILLING CODE 3510–CW–F

### Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* Bureau of the Census.

*Title:* Current Industrial Reports (Wave II Mandatory).

*Form Number(s):* Various.

*Agency Approval Number:* 0607–0395.

*Type of Request:* Revision of a currently approved collection.

*Burden:* 28,102 hours.

*Number of Respondents:* 21,407.

*Avg Hours Per Response:* 1 hour 19 minutes.

*Needs and Uses:* The Current Industrial Reports (CIR) program is a series of monthly, quarterly, and annual surveys which provide key measures of production, shipments, and/or inventories on a national basis for selected manufactured products. Government agencies, business firms, trade associations, and private research and consulting organizations use these data to make trade policy, production, and investment decisions. Due to the large number of surveys conducted in the CIR program, Census has divided them into 3 waves, each cleared for three years. Each wave contains two separate clearance packages one for mandatory reports and one for voluntary. The waves are staggered so that only one of the three waves is submitted each year.

*Affected Public:* Businesses or other for–profit institutions.

*Frequency:* Quarterly and annually.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:* Maria Gonzalez, (202) 395–7313.

*Agency:* Bureau of the Census.

*Title:* Current Industrial Reports (Wave II Voluntary).

*Form Number(s):* Various.

*Agency Approval Number:* 0607–0206.

*Type of Request:* Revision of a currently approved collection.

*Burden:* 4,054 hours.

*Number of Respondents:* 2,146.

*Avg Hours Per Response:* 33 minutes.

*Needs and Uses:* The Current Industrial Reports (CIR) program is a series of monthly, quarterly, and annual surveys which provide key measures of production, shipments, and/or inventories on a national basis for selected manufactured products. Government agencies, business firms, trade associations, and private research and consulting organizations use these data to make trade policy, production, and investment decisions. Due to the large number of surveys conducted in the CIR program, Census has divided them into 3 waves, each cleared for three years. Each wave contains two separate clearance packages one for mandatory reports and one for voluntary. The waves are staggered so that only one of the three waves is submitted each year.

*Affected Public:* Businesses or other for–profit institutions.

*Frequency:* Quarterly and annually.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposals can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Maria Gonzalez, OMB Desk Officer, Room 10201, New Executive Office Building, Washington, DC 20503.

Dated: August 11, 1995.

**Gerald Taché,**

*Departmental Forms Clearance Officer, Office of Management and Organization.*

[FR Doc. 95–20303 Filed 8–15–95; 8:45 am]

BILLING CODE 3510–07–F

## Foreign-Trade Zones Board

**[Docket A(32b1)-15–95]**

### Foreign-Trade Zone 18, San Jose, CA Request for Manufacturing Authority Silicon Valley Solutions, Inc. (Personal Computers) San Jose, CA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by San Jose Distribution Services, operator of FTZ 18, pursuant to § 400.32(b)(1)(ii) of the Board's regulations (15 CFR part 400), requesting authority on behalf of Silicon Valley Solutions, Inc. (SVS), to manufacture personal computers for export within FTZ 18. It was formally filed on August 8, 1995.

SVS is planning to assemble personal computers using certain components that would be sourced abroad, including monitors, keyboards, mouses, floppy disc drives, and power supplies. Of these, only monitors (HTSUS 8471.92.32) and mouses (HTSUS 8471.92.90) are dutiable (3.7%). Zone procedures would exempt the company from Customs duty payments on the foreign products used in its exports. The request indicates that the savings from zone procedures would help encourage the proposed export activity.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is [30 days from date of publication]. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to October 6, 1995).

A copy of the request will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: August 9, 1995.

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 95–20301 Filed 8–15–95; 8:45 am]

BILLING CODE 3510–DS–P

## International Trade Administration

### Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part.

**SUMMARY:** The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with July anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received a request to revoke an antidumping duty order in part.

**EFFECTIVE DATE:** August 16, 1995.

**FOR FURTHER INFORMATION CONTACT:** Holly A. Kuga, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–4737.

**SUPPLEMENTARY INFORMATION:**

#### Background

The Department has received timely requests, in accordance with 19 CFR 353.22(a) and 355.22(a) (1994), for administrative reviews of various antidumping and countervailing duty orders and findings with July anniversary dates. The Department also received a timely request to revoke in part the antidumping duty orders on silicon metal from Brazil.

#### Initiation of Reviews

In accordance with sections 19 CFR 353.22(c) and 355.22(c), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. The Department is not initiating an administrative review of any exporters and/or producers who were not named in a review request because such exporters and/or producers were not

specified as required under section 353.22(a) (19 CFR 353.22(a)). We intend to issue the final results of these reviews not later than July 31, 1996.

| | Period to be reviewed |
|---|---|
| *Antidumping duty proceedings:* | |
| Brazil: *Silicon Metal,* A–351–806 | |
| Companhia Brasileira Carbureto de Calcio | 07/01/94–06/30/95 |
| Camargo Correa Metais S.A. | |
| Eletrosilex Belo Horizonte | |
| Companhia Ferroligas Minas Gerais-Minasligas | |
| RIMA Eletrometalurgica S.A. | |
| Italy: *Large Power Transformers*[1], A–475–031 | |
| Tamini Costruzioni | 06/01/94–05/31/95 |
| Japan: *Certain Forklift Trucks*[1], A–588–703 | |
| Nissan Motor Company | 06/01/94–05/31/95 |
| Toyota Motor Corporation | |
| Toyo Umpanki Company, Ltd | |
| *High Power Microwave Amplifiers and Components Thereof,* A–588–005 | |
| NEC Corporation | 07/01/94–06/30/95 |
| *Professional Electric Cutting Tools,* A–588–823 | |
| Makita Corporation | 07/01/94–06/30/95 |
| The People's Republic of China: *Sparklers*[2], A–570–804 | |
| Guangxi Native Produce I/E Corporation | 06/01/94–05/31/95 |
| Behai Fireworks & Firecrackers Branch | |
| All other exporters of sparklers from the PRC are conditionally covered by this review. | |
| *Sebacic Acid,* A–570–825 | |
| Sinochem Jiangsu I/E Corp | 01/05/94–06/30/95 |
| Tianjin Chemicals I/E Corp. | |
| Guangdong Chemicals I/E Corp. | |
| Sinochem Int'l Chemicals Co. | |
| All other exporters of sebacic acid from the PRC are conditionally covered by this review. | |
| *Tapered roller bearings and parts thereof*[1], A–570–601 | |
| Harbin Bearing Factory | 06/01/94–05/31/95 |
| Luoyang Bearing Factory | |
| Wafangdian Bearing Factory | |
| Shanghai General Bearing Co., Ltd | |
| Shanghai Rolling Bearing Factory. | |
| Xiangyang Bearing Factory | |
| Chengdu General Bearing Factory | |
| Hailin Bearing Factory | |
| Guiyang Bearing Factory | |
| Haihong Bearing Factory | |
| Lanzhou Bearing Factory | |
| Xibei Bearing Factory | |
| Changzhi Bearing Factory | |
| Jining Bearing Factory | |
| Shenyang Bearing Factory | |
| Gongzhuling Bearing Factory | |
| Jiamusi Bearing Factory | |
| Hangzhou Bearing Factory | |
| Jiangxi Bearing Factory | |
| Liangshan Bearing Factory | 06/01/94–05/31/95 |

| | Period to be reviewed |
|---|---|
| Yantai Bearing Factory | |
| Northwest Bearing Plant | |
| Huangshi Bearing Factory | |
| Guangxi Bearing Factory | |
| Chongqing Bearing Factory | |
| Yunnan Bearing Factory | |
| Baoji Bearing Factory | |
| Xiangtan Bearing Factory | |
| Shaoguan Bearing Factory | |
| Xinjiang Bearing Factory | |
| The Second Bearing Factory of Xuzhou | |
| Yuxi Bearing Factory | |
| Changde Bearing Factory | |
| Chengdu Bearing Company | |
| Handan Bearing Factory | |
| Xingcheng Bearing Factory | |
| Premier Bearing & Equip., Ltd. | |
| Chin Jun Industrial Ltd. | |
| China National Machinery & Equipment Import & Export Corporation (CMEC) | |
| Henan Machinery & Equipment Import & Export Corporation | |
| Lianoning Machinery & Equipment Import and Export Corporation | |
| Jilin Machinery Import & Export Corporation | |
| Guizhou Machinery Import & Export Corporation | |
| Kenwa Shipping Co., Ltd. | |
| Far East Enterprising Co. (H.K.) Ltd. | |
| Far East Enterprising (H.K.) Co. | |
| Pantainer Express Line Co. | |
| Intermodal Systems Ltd. | |
| China Ningbo Int'l Economic & Technical Cooperation Corp. | |
| China Ningbo Cixi Import/Export Corp. | |
| Ningbo Xing Li Bearing Co., Ltd. | |
| Ningbo Yinxian Import/Export Corp. China | |
| Ningbo Yinxian Import/Export Corp. Hong Kong | |
| China National Machinery/Equipment Corp. | 06/01/94–05/31/95 |
| China National Machinery Import/Export Corporation | |
| China National Machinery and Equipment Corp./Hunan Co., Ltd. | |
| Santoh HK Ltd. | |
| Huuzhou Import and Export Corp. | |
| Ideal Consolidators Ltd. | |
| Cargo Services Far East Ltd. | |
| China Resources Transportation & Godown Co., Ltd. | |
| China Travel Service (HK) Ltd. | |
| Fortune Network Ltd. | |
| China Jiangsu Technical Import/Export Corp. | |
| China Jiangsu Machinery Import and Export (Group) Corp. | |
| Shanghai Machinery & Equipment Import & Export Corp. | |
| Shanghai Machinery Import/Export Corp. | |
| Hubei Provincial Machinery Import & Export Corporation | |
| Kaitone Shipping Co., Ltd. | |
| Profit Cargo Service Co., Ltd. | |
| United Cargo Management, Inc. | |
| Zhejang Expanded Bearing Co. (China) | |
| Zhejang Expanded Bearing Co. (HK) | |
| Zhejang Yongtong Company (China) | |
| Zhejang Yongtong Company (HK) | |
| Zhejang Machinery Import/Export Corp. | |
| Wafangdian Bearing Industry Co. | |
| Heilongjang Machinery Import/Export Corp. | |
| Shandong Machinery Import/Export Corp. | |
| Wafangdian Hyatt Bearing Manufacturing Co., Ltd. | |
| China National Bearing Joint Export Corp. | |
| PFL Pacific Forwarding Ltd. | |
| Sui Jun International Ltd. | |
| Wah Shun Shipping Co., Ltd. | |
| Aempac-System, Inc. | |
| Xinguang Ind. Prod. Import/Export Corp. of Sichuan Province | |
| Sunway Line, Inc. | |
| Trans-Ocean Bridge Services, Ltd. | 06/01/94–05/31/95 |

| | Period to be reviewed |
|---|---|
| Scanwell Container Line Ltd.<br>Scanwell Consolidators & Forwarders Ltd.<br>China Machine-Building Int'l Corp.<br>Hyaline Shipping (HK) Co., Ltd.<br>Long Trend Ltd.<br>China National Automotive Industry Guizhou Import/Export Corp.<br>Waiwell Shipping Ltd.<br>Special Line Ltd.<br>YK Shipping International, Inc.<br>Blue Anchor Line Co.<br>Onan Shipping Ltd.<br>Shanghai Bearing Corporation<br>Wing Tung Wei (China) Ltd.<br>China Merchants S & E Co., Ltd.<br>Zhejiang Huangli Bearing Co., Ltd.<br>China Ningbo International Economic & Technical Cooperation Corp.<br>Ningbo Free Trade Zone<br>China Nationan Machinery I/E Corp.<br>China-East Resources Int'l<br>Distribution Services Ltd.<br>Inteks Inc. N.V.O.C.C.<br>Shaanxi Machinery & Equipment I/E Corp.<br>United Cargo Management Inc., Dalian Office<br>Xiang Fan Int'l Trade Corp.<br>China Tiancheng Jiangsu Corp. Nanjing, China<br>China Tiancheng Jiangsu Corp. Shanghai, China<br>Zhejiang East Sea Bearing Co.<br>Shanghai Pacific Machinery I/E Corp.<br>Mayer Shipping Ltd.<br>Wholelucks Industrial Lim.<br>Peko Incorporation<br>O/B Manfred Development Co., (HK)<br>Asia Stone Company Limited<br>Asia (USA) Inc.<br>Xiamen Special Economic Zone Trade Co. Ltd.<br>China Machinery Equipment I/E Wuxi Co. Ltd.<br>Xiang Fan Int'l Trade Corp.<br>SEC Line Ltd.<br>Jebsin Shipping Ltd.<br>Heika Express Int'l Ltd.<br>J.P. Freight, Inc.<br>Brilliant Ocean Ltd. Corp. (USA)<br>Shaanxi Machinery & Equipment I/E Corp.<br>Transunion Int'l Company<br>Roson Express Int'l Co., Ltd.<br>Streamline Shippers Association<br>Wholelucks Industrial Lim.<br>Laconic Freight Forwarding Co., Ltd.<br>Mitrans Shipping Co., Ltd.<br>Distribution Services Ltd.<br>The Ultimate Freight Management (H.K.) Ltd.<br>Indeal Consolidators Ltd. | |
| All exporters of TRBs from the People's Republic of China are conditionally covered by this review. | |
| Romania: *Tapered roller bearings and parts thereof,* A–485–602 | |
| S.C. Rulmentul S.A. Brasov [1] | 06/01/94–05/31/95 |
| S.C. Rulmenti Alexandria S.A.[1]<br>S.C. Rulmenti S.A. Slatina [1]<br>S.C. Rulmenti-Suceava S.A. Suceava [1]<br>S.C. Rulmenti S.A. Birlad [1]<br>S.C. Rulmenti Grei S.A. Ploiesti [1]<br>Tehno Forest Import Export [1] | |
| All other exporters of TRBs from Romania are conditionally covered by this review. | |

[1] Inadvertently omitted from previous initiation notice.
[2] The July 14, 1995 (60 FR 36260) initiation notice covering sparklers from the PRC should have read as stated above.

*Countervailing Duty Proceedings*

None.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b) and 355.34(b).

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 353.22(c)(1) and 355.22(c)(1).

Dated: August 10, 1995.

**Joseph A. Spetrini,**

*Deputy Assistant Secretary for Compliance.*

[FR Doc. 95–20220 Filed 8–15–95; 8:45 am]

**BILLING CODE 3510–DS–M**

**[A–570–808]**

## Chrome-Plated Lug Nuts From The People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, U.S. Department of Commerce.

**ACTION:** Notice of Preliminary Results of the Antidumping Duty Administrative Review of Chrome-Plated Lug Nuts from the People's Republic of China.

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on chrome-plated lug nuts (lug nuts) from the People's Republic of China (PRC) in response to a request by petitioner, Consolidated International Automotive, Inc. (Consolidated). This review covers shipments of this merchandise to the United States during the period September 1, 1993, through August 31, 1994.

We have preliminarily determined that sales have been made below foreign market value (FMV). If these preliminary results are adopted in our final results, we will instruct the U.S. Customs Service to assess antidumping duties equal to the difference between United States price (USP) and FMV.

Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** August 16, 1995.

**FOR FURTHER INFORMATION CONTACT:** Donald Little, Elisabeth Urfer, or Maureen Flannery, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–4733.

### Background

The Department published in the **Federal Register** an antidumping duty order on lug nuts from the PRC on April 24, 1992 (57 FR 15052). On September 2, 1994, the Department published in the **Federal Register** (59 FR 45664) a notice of opportunity to request an administrative review of the antidumping duty order on lug nuts from the PRC covering the period September 1, 1993, through August 31, 1994.

On September 21, 1994, in accordance with 19 CFR 353.22(a), Consolidated requested that we conduct an administrative review of China National Automotive Industry I/E Corp., Nantong Branch (Nantong); China National Automobile Import and Export Corp., Yangzhou Branch (Yangzhou); Jiangsu Rudong Grease-Gun Factory (Rudong); Ningbo Knives & Scissors Factory (Ningbo); Shanghai Automobile Import & Export Corp. (Shanghai Automobile); Tianjin Automotive Import and Export Co. (Tianjin); China National Machinery & Equipment Import & Export Corp., Jiangsu Branch (Jiangsu); and China National Automotive Industry I/E Corp. (China National). We published a notice of initiation of this antidumping duty administrative review on October 13, 1994 (59 FR 51939). The Department is conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

### Applicable Statute and Regulations

Unless otherwise stated, all citations to the statute and the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

### Scope of Review

On April 19, 1994, the Department issued its ''Final Scope Clarifications on Chrome-Plated Lug Nuts from Taiwan and the PRC.'' The scope, as clarified, is described in the subsequent paragraph. All lug nuts covered by this review conform to the April 19, 1994, scope clarification.

Imports covered by this review are one-piece and two-piece chrome-plated lug nuts, finished or unfinished. The subject merchandise includes chrome-plated lug nuts, finished or unfinished, which are more than 11⁄16 inches (17.45 millimeters) in height and which have a hexagonal (hx) size of at least 3⁄4 inches (19.05 millimeters) but not over one inch (25.4 millimeters), plus or minus 1⁄16 of an inch (1.59 millimeters). The term ''unfinished'' refers to unplated and/or unassembled chrome-plated lug nuts. The subject merchandise is used for securing wheels to cars, vans, trucks, utility vehicles, and trailers. Zinc-plated lug nuts, finished or unfinished, and stainless-steel capped lug nuts are not included in the scope of this review. Chrome-plated lock nuts are also not subject to this review.

Chrome-plated lug nuts are currently classified under subheading 7318.16.00.00 of the Harmonized Tariff Schedule (HTS). Although the HTS subheading is provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

This review covers the period September 1, 1993, through August 31, 1994, and eight producer/exporters of Chinese lug nuts.

### Market-Oriented Industry

Rudong submitted, with its March 30, 1995 questionnaire response, a request that we treat the lug nuts industry as a market-oriented industry (MOI). Rudong claims that its material inputs are acquired at market prices and that, accordingly, we should find that the Chinese lug nuts industry is an MOI, and use Rudong's home market sales and/or costs as the basis of FMV.

The criteria for determining whether an MOI exists are: (1) For the merchandise under review, there must be virtually no government involvement in setting prices or amounts to be produced; (2) the industry producing the merchandise under review should be characterized by private or collective ownership; and (3) market-determined prices must be paid for all significant inputs, whether material or non-material (*e.g.,* labor and overhead), and for all but an insignificant portion of all the inputs accounting for the total value of the merchandise under review. (*See Amendment to Final Determination of Sales at Less than Fair Value and Amendment to Antidumping Duty Order: Chrome-Plated Lug Nuts from the People's Republic of China* (57 FR 15054, April 24, 1992) (*Lug Nuts Redetermination*).)

As we found in the *Lug Nuts Redetermination*, in the original investigation of this case, the third criterion of the test, noted above, has not been met in this review. Rudong has not submitted any factual evidence that demonstrates that it pays market-determined prices for steel, a major input in lug nut production, or that the steel industry is not subject to significant state control and state-required production. Further, Rudong has not placed on the record any factual evidence that it pays market-determined prices for chemical inputs, or that the chemicals industry is not subject to significant state control. Rudong has not supplied any description of the supply and demand factors supporting a claim that the steel and chemicals industries in the PRC are market-driven. Based on the foregoing, we preliminarily determine that Rudong has not demonstrated the lug nut industry is an MOI and accordingly have calculated foreign market value in accordance with section 773(c) of the Act. For a further discussion of the Department's preliminary determination that the lug

nuts industry does not constitute an MOI, *see Decision Memorandum to Holly A. Kuga, Director of Antidumping Compliance,* dated July 31, 1995, ''Market Oriented Industry Request in the Third Administrative Review of Chrome-Plated Lug Nuts from the People's Republic of China,'' which is on file in the Central Record Unit (room B099 of the Main Commerce Building).

**Separate Rates**

To establish whether a company operating in a state-controlled economy is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China* (56 FR 20588, May 6, 1991) (*Sparklers*), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China* (59 FR 22585, May 2, 1994) (*Silicon Carbide*). Under this policy, exporters in non-market economies (NMEs) are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law and in fact, with respect to exports. Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control over exports is based on four factors: (1) Whether each exporter sets its own export prices independently of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and (4) whether each exporter has autonomy from the government regarding the selection of management.

Rudong and Nantong responded to the Department's request for information regarding separate rates; therefore, Rudong and Nantong were the only firms on which we made a determination of whether they should receive a separate rate. In the previous administrative review covering the period from September 1, 1992 through August 31, 1993 (1992–93 review), we preliminarily determined that Nantong merited a separate rate. Because the results from the 1992–93 review are not final, we analyzed Nantong's submission in this review to determine whether Nantong merits a separate rate. We have made the determination of whether Rudong and Nantong should receive separate rates under the policy set forth in *Silicon Carbide* and *Sparklers*. In *Silicon Carbide*, we concluded that ownership by the people does not require the application of a single rate, and amplified the test set out in *Sparklers* by examining the management of an enterprise. With respect to the absence of *de jure* government control, evidence on the record indicates that Nantong is a local government-owned company, an independent entity. Further, several PRC laws establish that the responsibility for managing entities has been transferred from the central government to the enterprise. (*See* July 18, 1995 memorandum to the file, with attachments, ''Chrome-Plated Lug Nuts from the People's Republic of China: laws and regulations governing various categories of companies in the PRC.'') In particular, ''The People's Republic of China All People's Ownership Business Law,'' enacted on April 13, 1988, indicates that branch companies have become legally and financially independent of centrally-controlled foreign trade companies. Additionally, lug nuts do not appear on the ''Temporary Provisions for Administration of Export Commodities,'' approved on December 21, 1992, and are not, therefore, subject to the constraints of this provision.

With respect to the absence of *de facto* control, although Nantong is a local government-owned company, such ownership does not preclude a determination that a separate rate is appropriate. Nantong's management is elected by company staff, and is responsible for all decisions such as determining export prices, allocation and retention of profit on export sales, and negotiating export sales contracts. Nantong stated that the PRC government does not become involved with its business activities.

With respect to the absence of *de jure* government control, evidence on the record indicates that Rudong is a collectively-owned enterprise. Rudong stated that it has always operated as a decentralized company. The ''Regulations on Rural Collective Enterprises'' identify rules and regulations pertaining to collectively-owned enterprises which give rural collective enterprises such rights as the right to act on their own, adopt independent accounting, and assume the sole responsibility for their profits and losses. (*See* July 20, 1995 memorandum to the file, with attachments, ''Chrome-Plated Lug Nuts from the People's Republic of China: laws and regulations governing various categories of companies in the PRC.'')

With respect to the absence of *de facto* control, Rudong is a collectively-owned enterprise. Rudong's management is elected by Rudong's staff, and is responsible for all decisions such as determining its export prices, profit distribution, employment policy, marketing strategy, and negotiating contracts. During verification, we saw no evidence of government involvement in these decisions.

We have found that the evidence on the record demonstrates an absence of government control, both in law and in fact, with respect to Rudong and Nantong according to the criteria identified in *Sparklers* and *Silicon Carbide.* For further discussion of the Department's preliminary determination that Rudong and Nantong are each entitled to a separate rate, see *Decision Memorandum to Holly A. Kuga, Director of Antidumping Compliance,* dated July 31, 1995, ''Separate Rate for Jiangsu Rudong Grease-Gun Factory in the Third Administrative Review of Chrome-Plated Lug Nuts from the People's Republic of China,'' and *Decision Memorandum to Holly A. Kuga, Director of Antidumping Compliance,* dated July 31, 1995, ''Separate Rate for China National Machinery & Equipment Import & Export Corp., Nantong Company, in the Third Administrative Review of Chrome-Plated Lug Nuts from the People's Republic of China,'' which are on file in the Central Record Unit (room B099 of the Main Commerce Building).

**Verification**

We verified the information submitted by Rudong in the PRC from May 4 through May 6, 1995, and May 8 and May 9, 1995. We used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by Rudong.

**United States Price**

For sales made by Rudong we based USP on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold to unrelated purchasers in the United States prior to importation into the United States.

We calculated purchase price based on the price to unrelated purchasers. We

made deductions, where appropriate, for brokerage and handling, foreign inland freight, marine insurance, and ocean freight. We valued brokerage and handling, foreign inland freight, marine insurance, and ocean freight deductions using surrogate data based on Indian freight costs. We selected India as the surrogate country for the reasons explained in the ''Foreign Market Value'' section of this notice.

**Foreign Market Value**

For all companies located in NME countries, section 773(c)(1) of the Act provides that the Department shall determine FMV using a factors-of-production methodology if (1) The merchandise is exported from an NME country, and (2) the information does not permit the calculation of FMV under section 773(a) of the Act.

In the amendment to the final determination of sales at less than fair value (LTFV), the Department treated the PRC as an NME country, and determined that the lug nuts industry is not a MOI (*see Lug Nuts Redetermination).* Rudong has argued that the lug nut industry is a MOI; however, as discussed above, we have preliminarily determined the lug nut industry not to be market-oriented. Accordingly, we are not able to determine FMV on the basis of Rudong's costs and prices, and have applied surrogate values to the factors of production to determine FMV.

We calculated FMV based on factors of production in accordance with section 773(c) of the Act and section 353.52 of our regulations. We determined that India is comparable to the PRC in terms of: (1) Per capita gross national product (GNP), (2) the growth rate in per capita GNP, and (3) the national distribution of labor. In addition, India is a significant producer of comparable merchandise. Therefore, for this review, we chose India as the most comparable surrogate on the basis of the above criteria, and have used publicly available information relating to India to value the various factors of production. (*See Memorandum to Laurie Parkhill from David Mueller,* dated June 9, 1995, ''Chrome-Plated Lug Nuts from the People's Republic of China: Non-market Economy Status and Surrogate Country Selection,'' and *Memorandum to the File from Donald Little,* dated July 20, 1995, ''India: Significant Production of Comparable Merchandise,'' which are on file in the Central Record Unit (room B099 of the Main Commerce Building).)

We valued the factors of production as follows:

- For steel wire rods, we used a per kilogram value obtained from the March 1994 *Monthly Statistics of Foreign Trade of India (Indian Import Statistics)* for the period April 1993 through March 1994. Using wholesale price indices (WPI) obtained from the *International Financial Statistics,* published by the International Monetary Fund (IMF), we adjusted these values to reflect inflation through the period of review (POR). We made further adjustments to include freight costs incurred between the supplier and Rudong.
- For chemicals used in the production and plating of lug nuts, we used per kilogram values obtained from the *Indian Import Statistics.* We adjusted these rates to reflect inflation through the POR using WPI published by the IMF. We made further adjustments to include freight costs incurred between the supplier and Rudong.
- For hydrochloric acid, we based the value on an Indian price quote used in the *Final Determination of Sales at Less Than Fair Value: Coumarin from the People's Republic of China* (59 FR 66895, December 28, 1994) (*Coumarin*), because the Indian Import Statistics for hydrochloric acid were found to be aberrational. We adjusted the value used in *Coumarin* to reflect inflation through the POR using WPI published by the IMF.
- For direct labor, we used the labor rates reported in the Business International Corporation report *IL&T India,* released November 1993. This source breaks out labor rates between skilled and unskilled labor for 1993 and provides information on the number of labor hours worked per week. We adjusted these rates to reflect inflation through the POR using WPI published by the IMF.
- For factory overhead, we used information reported in the September 1994 *Reserve Bank of India Bulletin* for the Indian metals and chemicals industries. From this information, we were able to determine factory overhead as a percentage of the total cost of manufacture.
- For selling, general and administrative (SG&A) expenses, we used information obtained from the September 1994 *Reserve Bank of India Bulletin* for the Indian metals and chemicals industries. We calculated an SG&A rate by dividing SG&A expenses by the cost of manufacture. Since the calculated SG&A expense rate is less than 10 percent of the cost of manufacture, we used the statutory minimum of 10 percent.
- To calculate a profit rate, we used information obtained from the September 1994 *Reserve Bank of India Bulletin* for the Indian metals and chemicals industries. We calculated a profit rate by dividing the before-tax profit by the cost of manufacturing plus SG&A. Since the calculated profit rate is less than eight percent, we used the statutory minimum of eight percent to calculate profit.
- For packing materials, we used per kilogram values obtained from the *Indian Import Statistics.* We adjusted these values to reflect inflation through the POR using WPI published by the IMF.
- To value electricity, we used the price of electricity for 1993 reported in the *Confederation of Indian Industries Handbook of Statistics.* We adjusted the value of electricity to reflect inflation through the POR using WPI published by the IMF.
- To value truck freight, we used the rates reported in an August 1993 cable from the U.S. Consulate in India submitted for the *Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers From the People's Republic of China* (58 FR 48833, September 20, 1993). We adjusted the rates to reflect inflation through the POR using WPI published by the IMF.

**Currency Conversion**

We made currency conversions in accordance with 19 CFR 353.60(a). Currency conversions were made at the rates certified by the Federal Reserve Bank.

**Best Information Available**

We preliminarily determine, in accordance with section 776(c) of the Act, that the use of best information available (BIA) is appropriate for Yangzhou, Ningbo, Jiangsu, China National, Tianjin, and Shanghai Automobile because these firms did not respond to the Department's antidumping questionnaire.

In deciding what to use as BIA, 19 CFR 353.37(b) provides that the Department may take into account whether a party refused to provide requested information. Thus, the Department determines on a case-by-case basis what is BIA. When a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's review, the Department will normally assign to that company the higher of (1) The highest rate for any firm in the investigation or prior administrative reviews of sales of subject merchandise from that same country; or (2) the highest rate found in the current review for any firm. When

a company has cooperated with the Department's request for information but fails to provide the information requested in a timely manner or in the form required, the Department will normally assign to that company the higher of (1) the highest margin calculated for that company in any previous review or the original investigation; or (2) the highest calculated margin for any respondent that supplied an adequate response for the current review. (*See Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany, et al.; Final Results of Administrative Review* (56 FR 31705, July 11, 1991).)

We have applied BIA to sales made by China National, Jiangsu, Yangzhou, Ningbo, Shanghai Automobile, and Tianjin. Because these firms did not respond to our questionnaire, as BIA we have applied the highest margin ever in the LTFV investigation or in this or prior administrative reviews. The highest rate in this proceeding is 42.42 percent, which the Department determined in the LTFV investigation. If the publication of the final results of the 1992–93 review occurs prior to the final results for this review, we will consider those results in our final BIA determination. These firms form the basis of the PRC country-wide rate, which is therefore also based on non-cooperative BIA.

**Non-Shipper**

Nantong submitted a questionnaire response to the Department stating that it did not ship lug nuts to the United States during the period of review. There is no evidence on the record to demonstrate that Nantong shipped subject merchandise to the United States during the period of review. We have preliminarily determined that Nantong merits a separate rate for this review period, as discussed in the separates rates section above. Assuming that we determine, in the final results of review for the 1992–93 period, that Nantong merits a separate rate for that period, we will assign to Nantong for this period its own rate we determine in the final results of the 1992–93 period.

**Preliminary Results of the Review**

We preliminarily determine that the following dumping margin exists:

| Manufacturer/Exporter | Time Period | Margin (percent) |
|---|---|---|
| Jiangsu Rudong Grease-Gun Factory. | 09/01/93–08/31/94 | 20.59 |

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and FMV may vary from the percentage stated above. The Department will issue appraisement instructions directly to the U.S. Customs Service.

Furthermore, the following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of lug nuts from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) For Rudong, which has a separate rate, the cash deposit rate will be the company-specific rate established in the final results of this administrative review; (2) for Nantong, which had no shipments to the United States during this review period and which has a separate rate, the cash deposit rate will be the company-specific rate established for the last period in which it was reviewed, *i.e.*, the 1992–93 period; (3) for the companies named above which were not found to have separate rates, China National, Jiangsu, Yangzhou, Ningbo, Shanghai Automobile, and Tianjin, as well as for all other PRC exporters, the cash deposit rate will be the highest margin ever in the LTFV investigation or in this or prior administrative reviews, the PRC rate; and (4) for non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter.

These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: August 8, 1995.

**Susan G. Esserman,**

*Assistant Secretary for Import Administration.*

[FR Doc. 95–20211 Filed 8–15–95; 8:45 am]

BILLING CODE 3510–DS–P

**[A–602–803]**

## Certain Corrosion-Resistant Carbon Steel Flat Products from Australia: 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 one respondent, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on *Certain Corrosion-Resistant Carbon Steel Flat Products from Australia* (A–602–803). This review covers one manufacturer/exporter of the subject merchandise to the United States during the period of review (POR) February 4, 1993, through July 31, 1994.

We have preliminarily determined that sales to the United States 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:** August 16, 1995.

**FOR FURTHER INFORMATION CONTACT:** Bob Bolling or Sally Gannon, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–3793.

**SUPPLEMENTARY INFORMATION:**

**Background**

On July 9, 1993, the Department published in the **Federal Register** (58 FR 37079) the final affirmative antidumping duty determination on Certain Corrosion-Resistant Carbon Steel Flat Products from Australia, and published an antidumping duty order on August 19, 1993 (58 FR 44161). On August 3, 1994, the Department published the notice of ''Opportunity to Request an Administrative Review'' of this order for the period February 4, 1993, through July 31, 1994 (59 FR 39543). The Department received requests for administrative review from the Australian National Industries Ltd. (ANI), and the Broken Hill Proprietary Company Ltd. (BHP). On September 8, 1994 (59 FR 46391), we initiated the administrative review of ANI, and on September 19, 1994 (59 FR 47842) we amended that initiation notice to include BHP. Subsequently, on November 3, 1994, ANI timely withdrew its request for an administrative review pursuant to section 353.22(a)(5) and on April 12, 1995, the Department published a ''Partial Termination of Antidumping Administrative Review'' (60 FR 18581).

The Department is now conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act). This review covers sales of certain corrosion-resistant carbon steel flat products by BHP and its subsidiaries, BHP Trading, Inc. (''Trading''), BHP Coated Corporation (''Coated''), and BHP Steel Products USA Inc. (''Building''). The POR is February 4, 1993 through July 31, 1994.

**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 administrative review constitute one ''class of kind'' of merchandise: certain corrosion-resistant carbon steel flat products. These products include flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, 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 HTS under item numbers 7210.31.0000, 7210.39.0000, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.60.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.21.0000, 7212.29.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.5000, 7217.12.1000, 7217.13.1000, 7217.19.1000, 7217.19.5000, 7217.22.5000, 7217.23.5000, 7217.29.1000, 7217.29.5000, 7217.32.5000, 7217.33.5000, 7217.39.1000, and 7217.39.5000. Included are flat-rolled products of nonrectangular cross-section where such-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 are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin-free steel''), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio. These HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

**United States Price**

The Department used purchase price and exporter's sales price (ESP) for Trading, ESP for Coated, and ESP for Building, as defined in section 772 of the Tariff Act.

*A. Trading*

Purchase price was based on the packed price, with sales terms ex dock paid F.O.B., to unrelated purchasers in the United States. We made deductions from purchase price, where appropriate, for foreign inland freight, foreign inland insurance, ocean freight, marine insurance, brokerage and handling, port charges, U.S. duty, wharfage, and U.S. inland freight. ESP was based on the packed, F.O.B. price to unrelated purchasers in the United States. We made deductions from ESP, where applicable, for foreign inland freight, foreign inland insurance, ocean freight, marine insurance, brokerage and handling, port charges, U.S. duty, U.S. inland freight, wharfage, credit expenses, warranty expenses, warehousing expenses, third-party commissions and indirect selling expenses (which include inventory carrying costs, selling expenses, unrelated processing expenses, and other U.S. incurred selling expenses).

*B. Coated*

ESP was based on the packed price, with various sales terms, to unrelated purchasers in the United States. We made deductions from ESP, where applicable, for foreign inland freight, foreign inland insurance, ocean freight, brokerage and handling, U.S. duty, U.S. inland freight, credit expenses, and indirect selling expenses (which include inventory carrying costs and selling expenses).

In addition, where appropriate, we made further deductions from ESP for all value-added to corrosion-resistant steel in the United States, pursuant to section 772(e)(3) of the Tariff Act. The value-added consists of the costs associated with the production of the further-manufactured products, other than the costs associated with the imported corrosion-resistant steel, and a proportional amount of any profit related to the further-manufacture. Profit was calculated by deducting all applicable expenses from the sales of the corrosion-resistant steel. The total profit was then allocated proportionally to all components of cost. Only the profit attributable to the value added was deducted from ESP. *See Color Televisions From Korea,* 55 FR 26225 (6/27/90).

In determining the costs incurred to produce the further-manufactured corrosion-resistant steel the Department included the appropriate (1) cost of manufacture, (2) movement and packing expenses, (3) selling, general and administrative expenses (SG&A), and (4) interest expenses.

For any further-manufactured sales where we found that the model-specific home market cost information necessary to build the total further-manufacturing cost was not provided, we used the costs (total cost of manufacturing, general and administrative expenses, and interest expenses) which corresponded to the lowest total cost of production identified in the home market cost database.

*C. Building*

ESP was based on the packed price, with various sales terms, to unrelated purchasers in the United States. We made deductions from ESP, where applicable, for foreign inland freight, foreign island insurance, ocean freight, brokerage and handling, U.S. duty, U.S. inland freight, freight to customer, credit expenses, third-party commissions, warranty expenses, credit notes, discounts and rebates, and indirect selling expenses (which include inventory carrying costs, selling expenses, and pre-sale freight). In addition, we made further deductions from ESP for all value-added to corrosion-resistant steel in the United States, as described above.

Where the customer level of trade was missing for certain sales and we were unable to perform the matching of these sales with the home market database, we applied to these sales the final weighted-average margin determined in the less than fair value (LTFV) investigation as the best information available (BIA) in accordance with our practice regarding partial BIA (*see Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France,* 60 FR 10900, 10907, February 28, 1995). For any further-manufactured sales where we found that the model-specific home market cost information necessary to build the total further manufacturing cost was not provided, we used costs as described above.

It is the Department's standard practice in ESP cases to conduct the review on the basis of sales made during the POR. Respondent claimed that certain merchandise was not subject to review because the merchandise entered prior to the suspension of liquidation (February 4, 1993). We have included all sales during the POR because there is not sufficient data to link sales during the POR to entries of subject merchandise prior to suspension of liquidation. *See Industrial Belts From Italy,* 57 FR 8295, 96 March 9, 1992.

**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. Further, BHP had sales both to related and unrelated parties in the home market during the POR. After reviewing and verifying BHP's U.S. and home market sales to both unrelated and related purchasers and their ability to obtain downstream sales information, the Department determined that BHP need not report its home market sales made by its related distributors to the first unrelated party (downstream sales) because BHP's home market sales to the related distributors were made on an arm's length basis (see the Department's June 9, 1995, letter to BHP available in the public file). In addition, for sales to certain related parties that failed the arm's-length test, the Department did not require BHP to report the downstream sales made by these related parties because the related parties further-manufactured the products into merchandise outside the scope of this review. For a full discussion of how we treated BHP's sales to related parties in this review, see the Analysis Memorandum for this review, which is on file in room B–099 of the main building of the commerce Department.

BHP had sales of secondary merchandise (non-prime) in the home market; however, there were no sales of secondary merchandise in the U.S. market during the POR. Therefore, as per our established model match criteria, the Department only compared prime merchandise sold in the United States to prime merchandise sold in the home market.

Petitioners submitted an allegation of sales-below-cost on January 20, 1995, and supplemented the allegation on January 30, 1995. We reviewed petitioners' methodology and found that petitioners calculated the cost of production (COP) in accordance with 19 C.F.R. 353.51 and based their calculations on data submitted on the record by the respondents. We determined that petitioner's sales-below-cost methodology was reasonable, indicating that there were reasonable grounds to believe or suspect that, during this POR, BHP made sales of subject merchandise in the home market at prices less than the COP. Thus, in accordance with section 773(b) of the Tariff Act, the Department initiated an investigation on February 3, 1995, to determine whether BHP made home market sales of corrosion-resistant steel at prices less than the COP during the POR.

In accordance with section 773(b) of the Tariff Act, in determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made in substantial quantities over an extended period of time, and whether such sales were made at prices which permitted recovery of all costs within a reasonable period of time in the normal course of trade. We calculated COP for BHP as the sum of reported materials, labor, factory overhead, and general expenses, and compared the COP to home market prices, net price adjustments, discounts, rebates, movement expenses, and pre-packing and packing expenses in accordance with 19 CFR 353.51(c).

Pursuant to the Department's practice, for each model for which 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 for which 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 they were made over an extended period of time. For each model for which 90 percent or more of the home market sales during the POR were priced below the COP and were made over an extended period of time, we disregarded all sales of that model in our calculation and, in accordance with section 773(b) of the Tariff Act, we used the constructed value (CV) of those models, as described below. *See e.g., Mechanical Transfer Presses from Japan, Final Results of Antidumping Duty Administrative Review,* 59 FR 9958 (March 2, 1994).

In accordance with section 773(b)(1) of the Tariff Act, to determine whether sales below cost had been made over an extended period of time, we compared the number of months in which sales below cost occurred for a particular model to the number of months in which that model was sold. If the model was sold in fewer than three months, we did not disregard below-cost sales unless there were below-cost sales of that model in each month sold. If a model was sold in three or more months, we did not disregard below-cost sales unless there were sales below cost in at least three of the months in which the model was sold. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan: Final Results of Antidumping Duty Administrative Reviews,* 58 FR 64720, 64729 (December 8, 1993).

BHP provided insufficient evidence that its below-cost sales of models were

at prices that would permit recovery of all costs within a reasonable period of time and in the normal course of trade. Thus, we disregarded those sales which were made below cost over an extended period of time pursuant to the methodology described above. For a full discussion of how we treated BHP's claim of cost recovery in this review, see the Analysis Memorandum for this review, which is on file in room B–099 of the main building of the Commerce Department.

We used CV as FMV for those U.S. models for which we were unable to find a home market match and calculated CV in accordance with section 773(e) of the Tariff Act. In our calculations, we included the cost of materials, labor, and factory overhead. Where the general expenses were less than the statutory minimum of 10 percent of the cost of manufacture (COM), we calculated general expenses as 10 percent of COM. Where the actual profits were less than the statutory minimum of 8 percent of the COM plus general expenses, we calculated profit as 8 percent of the sum of COM plus general expenses.

In accordance with section 773(a)(1)(A) of the Tariff Act, for those U.S. models for which we were able to find a home market such or similar match, we calculated FMV based on the packed, F.I.S. (''free into store'') home market sales price to unrelated purchasers or related purchasers which met the Department's arms-length test as described above. We made deductions from FMV, where applicable, for inland freight, inland insurance, credit expenses, warranty expenses, advertising expenses, discounts and rebates.

For home market sales with missing payment dates, we denied BHP's claim for a cash (settlement) discount. For sales with missing payment and shipment dates, we used the average inventory and credit periods of the remaining home market sales in order to calculate the inventory carrying cost and credit expense, respectively, for these sales. We will request the updated information from BHP after the preliminary results are issued. Additionally, we denied BHP's claim under section 353.55 that it had provided discounts of at least the same magnitude on 20 percent or more of its sales, and that it was therefore entitled to an adjustment for discounts on sales that had not actually received a discount. Using discounts of different magnitudes, respondent calculated average discounts for painted and updated products. Respondent then applied to each sale that received less than the average discount, or no discount, the amount necessary to bring the discount up to the full amount of the appropriate average discount. While BHP supported its claim that discounts were granted on more than 20 percent of sales, we denied the adjustment because respondent failed to demonstrate that the discounts actually granted were of at least the same magnitude, as required under 353.55(b)(1). For a full discussion of how we treated these claims and the missing data, see the Analysis Memorandum for this review, which is on file in room B–099 of the main building of the Commerce Department.

For purchase price comparisons, pursuant to section 773(a)(4)(B) of the Tariff Act and 19 CFR 353.56(a)(2), we made circumstance of sale adjustments to FMV, where appropriate, for differences in warranty, credit, and warehousing expenses. We deducted from FMV home market pre-packing and packing costs and added to FMV packing expenses incurred in Australia for U.S. sales. Where appropriate, we added U.S. third-party commissions to FMV and deducted from FMV the weighted-average home market indirect selling expenses (which included inventory carrying costs, indirect selling expenses, technical service expenses, and pre-sale freight expenses) up to the amount of the third-party commissions incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(1). We also adjusted FMV, where appropriate, for physical differences in the merchandise, in accordance with 19 CFR 353.57.

For ESP comparisons, we deducted from FMV the weighted-average home market indirect selling expenses (which include inventory carrying costs, indirect selling expenses, technical service expenses, and pre-sale freight expenses), limiting the home market indirect selling expense deduction by the amount of indirect selling expenses incurred in the United States, in accordance with section 353.56(b)(2) of the Department's regulations. In cases where a third-party 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. third-party commission for comparison to home market indirect selling expenses. Also, after deducting from FMV home market pre-packing and packing expenses, we added to FMV packing expenses incurred in Australia for U.S. sales. We also adjusted FMV, where appropriate, for physical differences in the merchandise, in accordance with 19 CFR 353.57.

**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 February 4, 1993, through July 31, 1994;

| Manufacturer | Margin (percent) |
|---|---|
| BHP | 20.10 |

Interested parties may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first business day thereafter. Case briefs and/or written comments from interested parties may be submitted no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication of this notice. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. 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 Corrosion-Resistant Carbon Steel Flat Products from Australia as follows: (1) The cash deposit rate for the reviewed company will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this 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; and (4) if neither the exporter nor the manufacturer is a firm covered in this review, the case deposit rate will be 24.96 percent. This is the

''all others'' rate from the LTFV investigation. *See Final Determination of Sales at Less Than Fair Value: Certain Corrosion-Resistant Carbon Steel Flat Products from Australia*. (58 FR 37079, July 9, 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: August 8, 1995.

**Susan G. Esserman,**

*Assistant Secretary for Import Administration.*

[FR Doc. 95–20302 Filed 8–5–95; 8:45 am]

BILLING CODE 3510–DS–M

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**[A–122–820 (Lead Case Number) A–122–822 A–122–823]**

## Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada; 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 requests by respondents, Algoma Steel Inc. (Algoma), Continuous Colour Coat (CCC), Dofasco, Inc. (Dofasco), Manitoba Rolling Mills (MRM), Sorevco, Inc. (Sorevco), Stelco Inc. (Stelco), the Department of Commerce (the Department) is conducting the first administrative review of the antidumping duty orders on *Certain Corrosion-Resistant Carbon Steel Flat Products* (corrosion-resistant steel) (A–122–822) and *Certain Cut-to-Length Carbon Steel Plate* (A–122–823) (cut-to-length plate) from Canada. These reviews cover five manufacturers/exporters, Algoma, CCC, Dofasco, MRM, Sorevco, and Stelco, and entries of corrosion-resistant steel and cut-to-length plate into the United States during the period of review (POR) February 4, 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 reviews, 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:** August 16, 1995.

**FOR FURTHER INFORMATION CONTACT:** John Drury (CCC), Eric Johnson (Dofasco/Sorevco), Elizabeth Patience (Algoma), Gerry Zapiain (Stelco), Steven Presing or Stephen Jacques, 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) 482–3793.

**SUPPLEMENTARY INFORMATION:**

### 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.

### Background

On July 9, 1993, the Department published in the **Federal Register** (58 FR 37099) the final affirmative antidumping duty determination on corrosion-resistant steel and cut-to-length plate from Canada, for which we published antidumping duty orders on August 19, 1993 (58 FR 44162). On August 3, 1994, the Department published the notice of ''Opportunity to Request an Administrative Review'' of these orders for the period February 4, 1993, through July 31, 1994 (59 FR 39543). The respondents, Algoma, CCC, Dofasco, MRM, Sorevco, and Stelco, requested administrative reviews. We initiated the reviews on September 8, 1994 (59 FR 46391). The Department is conducting these reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

In the underlying investigations of less-than-fair-value (LTFV) sales, the Department conducted an analysis of Sorevco's relationship with Dofasco to determine whether the relationship between the related parties is such that one company is in a position to manipulate the other company's prices and/or production decisions (*See Brass Sheet and Strip from France*, 52 Fed. Reg. 812, 814 (January 9, 1987); *Certain Iron Construction Castings from Canada*, 55 Fed. Reg. 460 (January 5, 1990)). The Department's investigation revealed that, for the period of investigation, Sorevco should be ''collapsed'' with Dofasco. On October 31, 1994, the U.S.-Canada Binational Panel upheld the Department's decision to collapse Sorevco with Dofasco for the investigation. In the matter of: *Certain Corrosion-Resistant Carbon Steel Flat Products, USA–93–1904–03.*

The Department considered whether Sorevco should remain collapsed with Dofasco for the purposes of this administrative review.

It is the Department's practice to collapse related parties when the facts demonstrate that the relationship is such that there is a strong possibility of manipulation of prices and production decisions that would result in circumvention of the antidumping law. *See Nihon Cement Co., Ltd.* v. *United States*, Slip Op. 93–80 (CIT May 25, 1993); *Certain Iron Construction Castings from Canada*, 55 Fed. Reg. 460 (1990); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany*, 54 Fed. Reg. 18992, 19089 (1989). In determining whether to collapse related parties, the Department considered the level of common ownership; whether managerial employees or board members of one company sit on the board(s) of directors of the other related party(ies); the existence of production facilities for similar or identical products that would not require retooling either plant's facilities to implement a decision to restructure either company's manufacturing priorities; and whether the operations of the companies are intertwined (*e.g.*, sharing of sales information; involvement in production and pricing decisions, sharing of facilities or employees; transactions between the companies).

Although the Department considers all four factors, no one factor is determinative. Rather the determination whether to collapse is based on the totality of circumstances. *See Nihon Cement Co., Ltd.* v. *United States*, Slip Op. 93–80 at 51.

An analysis of the above-mentioned criteria as they relate to Dofasco and Sorevco for the current period of review revealed that collapsing of Dofasco and Sorevco is warranted. The two companies' close business relationship, Dofasco's 50 percent ownership of Sorevco and continuing presence on Sorevco's board, and the existence of similar production facilities demonstrates a strong possibility of future manipulation of production and

pricing decisions (See Memorandum to the File dated May 30, 1995).

During the Department's investigation of sales at less than fair value of steel from Canada, the Department also collapsed CCC and Stelco. However, the U.S.-Canada Binational Panel concluded that there was not substantial evidence on the record supporting the Department's decision to collapse the two companies, and directed the Department to ''uncollapse'' CCC and Stelco in preparing the Department's redetermination. *See* USA–93–1904–03, *supra*.

In a submission dated January 19, 1995, in conjunction with the first administrative review, petitioners again raised the issue of collapsing Stelco and CCC. Specifically, petitioners outlined available evidence in support of collapsing and requested that the Department collect more data and examine the issue in greater detail. As a result, the Department has undertaken a detailed analysis of the relationship between CCC and Stelco. Based on our analysis, we determined that CCC and Stelco are ''related parties'', but that CCC and Stelco should not be collapsed because the two companies do not make comparable products such that a shift in production could be accomplished without fundamental and expensive retooling. (See Memorandum to the File dated May 22, 1995).

**Scope of the Review**

The products covered by these administrative reviews constitute two separate ''classes or kinds'' of merchandise: (1) Certain corrosion-resistant steel and (2) certain cut-to-length plate.

The first class or kind includes flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, 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 7210.31.0000, 7210.39.0000, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.60.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.21.0000, 7212.29.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.5000, 7217.12.1000, 7217.13.1000, 7217.19.1000, 7217.19.5000, 7217.22.5000, 7217.23.5000, 7217.29.1000, 7217.29.5000, 7217.32.5000, 7217.33.5000, 7217.39.1000, and 7217.39.5000. Included 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 are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin-free steel''), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio. These HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The second class or kind, certain cut-to-length plate, includes hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7208.31.0000, 7208.32.0000, 7208.33.1000, 7208.33.5000, 7208.41.0000, 7208.42.0000, 7208.43.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.11.0000, 7211.12.0000, 7211.21.0000, 7211.22.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included 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 is grade X–70 plate. These HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The POR is February 4, 1993, through July 31, 1994.

*United States Price*

The Department used purchase price, in accordance with section 772(b) of the Act, when the subject merchandise was sold to unrelated purchasers in the United States. For Stelco, where certain corrosion-resistant sales to the first unrelated purchaser took place after importation into the United States, we also based USP on exporters sales price (ESP), in accordance with section 772(c) of the Act.

We adjusted USP for value-added taxes (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).

*Algoma*

The Department used purchase price, as defined in section 772(b) of the Tariff Act, in calculating USP for Algoma. USP was based on packed prices to customers in the United States. For terms of sale, please see Analysis Memorandum to the File, June 16, 1995.

We made deductions from purchase price for movement expenses, U.S. Customs duties and fees, U.S. brokerage/handling fees, U.S. inland freight expense. We added to purchase price amounts for freight revenue, brokerage and duty revenue and billing adjustments.

We used as date of sale the date of contract (if there was one that set quantity and value) or, if there was no

such contract, the order date on which price and quantity were fixed.

*CCC*

The Department used purchase price as defined in section 772(b) of the Tariff Act, in calculating USP for CCC. USP was based on packed, FOB or delivered prices to customers in the United States.

We made deductions from purchase price for movement expenses (U.S. and foreign movement, brokerage, and handling), and discounts and rebates. We used the date of invoice as the date of sale for both U.S. sales and home market sales because that is the date when price and quantity are fixed.

CCC was unable to report duty and brokerage paid for certain U.S. sales. As partial best information available (BIA) we used the highest duty rate calculation submitted by CCC to calculate duty and brokerage rates for the missing values. *See, e.g., Certain Steel Products from France,* 58 FR 37125, 37129 (July 9, 1993).

*Dofasco/Sorevco*

The Department used purchase price, as defined in section 772(b) of the Tariff Act, in calculating USP for Dofasco. USP was based on packed prices to customers in the United States. As in the LTFV investigation, the Department used Dofasco's five reported levels of trade in which, according to Dofasco, pricing structure differs according to customer type: automotive, construction, service center, manufacturing, and converter.

We made deductions from purchase price for two types of discounts, one type of rebate and total freight (for one term of sale). U.S. further processing expenses for certain sales are not treated as part of the purchase price for the reasons set forth in the memorandum from Edward Yang to Roland MacDonald.

For Dofasco's sales of secondary merchandise, the Department determined at verification that only six of the eleven product characteristics were reported accurately: type, process, coating metal, thickness, width, and form. Thus, the Department performed its model match for these sales based only on these six characteristics. For a general discussion of the Department's treatment of secondary merchandise in this review, *see* the Department's April 19, 1995 decision memorandum.

For Dofasco, we used the date of order acknowledgement as date of sale for all sales made after July 4, 1993 (except sales made pursuant to long-term contracts) because this was the time at which price and quantity were fixed. Prior to July 4, 1993, we used date of shipment as date of sale because: (1) Order acknowledgements did not set price; and (2) Dofasco informed its customers that ''invoices will reflect prices at time of shipment.'' For Dofasco's sales made pursuant to long-term contracts, we used date of the contract as date of sale because the contract terms fixed price and quantity.

For Sorevco, we used the date of order confirmation as the date of sale because Sorevco acknowledges both price and quantity on its order acknowledgement. When Sorevco shipped more merchandise than the customer ordered, and such shipments were in excess of accepted industry tolerances, we used date of shipment as date of sale for the excess merchandise.

*MRM*

The Department used purchase price, as defined in section 772(b) of the Tariff Act, in calculating USP for MRM. USP was based on packed, delivered prices to customers in the United States.

We made deductions from purchase price for brokerage and handling, movement expenses, U.S. duties and discounts.

We used the date of shipment as the date of sale for both U.S. sales and home market sales because that is the date when price and quantity were fixed.

*Stelco*

The Department used purchase price, as defined in section 772(b) of the Tariff Act, in calculating USP for Stelco for cut-to-length plate. USP was based on packed, delivered prices to customers in the United States.

We made deductions from purchase price for movement expenses, brokerage and U.S. duties.

In calculating USP for sales of corrosion-resistant steel, the Department used purchase price, as defined in section 772(b) of the Act. USP was based on packed, delivered prices to customers in the United States.

We made deductions from purchase price for movement expenses, brokerage, U.S. duties and discounts and rebates.

The Department also used ESP, as defined in section 772(c) of the Act, in calculating USP for Stelco for corrosion-resistant steel. USP was based on packed, delivered prices to customers in the United States.

We made deductions from ESP for movement expenses (U.S. and foreign movement expenses, brokerage and handling); discounts and rebates; U.S. direct selling expenses such as warranties and service, billing corrections, other expenses (slitting and sheeting); credit expenses; U.S. indirect selling expenses such as technical services, inventory carrying costs, warehousing expenses, and bad debt; and commissions incurred in the U.S. market.

In addition, we made further deductions from ESP, where appropriate, for all value added to the ''corrosion-resistant'' steel in the United States, pursuant to section 772(e)(3) of the Act. The value added consists of the costs associated with the production of the further manufactured products, other than the costs associated with the imported ''corrosion-resistant'' steel, and a proportional amount of any profit related to the further manufacture. Profit was calculated by deducting all applicable expenses from the sales price. The total profit was then allocated proportionally to all components of cost. Only the profit attributable to the value added was deducted from ESP. Because Stelco USA contracts the further manufacturing, and its function is primarily that of a sales office, the company does not provide selling, general and administrative (SG&A) expenses directly attributed to further manufacturing. In place of allocating certain SG&A expenses to further manufacturing calculation, we have made an adjustment to the ESP sales listing to account for SG&A expenses.

**Foreign Market Value**

In calculating FMV, the Department used home market sales or constructed value (CV), as defined in section 773 of the Act.

To determine whether there was sufficient volume of sales in the home market to serve as the basis for calculating FMV, we compared the volume of home market sales to the volume of third country sales, in accordance with section 773(a)(1) of the Tariff Act. We found that sales in the home market constituted a sufficient basis for FMV, in accordance with 19 CFR 353.48(a).

Algoma, Dofasco, MRM and Stelco made home market sales to related customers. In order to determine whether sales to related parties might be appropriate to use as the basis of FMV, the Department compared prices of those sales to prices to unrelated parties, on a model-by-model basis. When possible, the Department used unrelated party sales at the same level of trade as the related party sales for this comparison.

In accordance with 19 CFR 353.58 and 353.55, we compared U.S. sales to home market sales made at the same level of trade, and in comparable commercial quantities, where possible.

Based on a review of the respondents' submissions, the Department determined that the respondents did not have to report any downstream sales through related parties since either there were no sales to related parties that are resold to unrelated customers as subject merchandise or sales to related parties that are resold to unrelated parties are a small percentage of home market sales.

The Department is treating certain product groups, which included certain grades of non-prime material or secondary merchandise, as non-prime material for purposes of matching U.S. and home market sales.

Based on the Department's previous determination of sales made at below the cost of production (COP) in the original LTFV investigation in accordance with section 773(b) of the Tariff Act, we determined that there were reasonable grounds to believe or suspect that, for this review period, Stelco and CCC had made sales of subject merchandise in the home market at prices less than the COP. As a result, we investigated whether Stelco and CCC sold such or similar merchandise in the home market at prices below the COP. In accordance with 19 CFR 353.51(c), we calculated COP for Stelco and CCC as the sum of reported materials, labor, factory overhead, and general expenses. We compared COP to home market prices, net of price adjustments, discounts, and movement expenses.

Based on petitioners' allegations, and in accordance with section 773(b) of the Act, the Department initiated an investigation to determine whether Dofasco and Sorevco had home market sales of corrosion-resistant steel and whether Algoma and MRM had home market sales of cut-to-length plate that were made at prices less than the COP.

In accordance with section 773(b) of the Tariff Act, in determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made in substantial quantities over an extended period of time, and whether such sales were made at prices which permitted recovery of all costs within a reasonable period of time in the normal course of trade.

In accordance with our normal practice, for each model for which less than 10 percent, by quantity, of the home market sales during the POR were made at prices below COP, we included all sales of that model in the computation of FMV. For each model for which 10 percent or more, but less than 90 percent, of the home market sales during the POR were priced below COP, we excluded those sales priced below COP, provided that they were made over an extended period of time. For each model for which 90 percent or more of the home market sales during the POR were priced below COP and were made over an extended period of time, we disregarded all sales of that model in our calculation and, in accordance with section 773(b) of the Tariff Act, we used the CV of those models, as described below. See, *e.g., Mechanical Transfer Presses from Japan, Final Results of Antidumping Duty Administrative Review,* 59 FR 9958 (March 2, 1994).

In accordance with section 773(b)(1) of the Tariff Act, to determine whether sales below cost had been made over an extended period of time, we compared the number of months in which sales below cost had occurred for a particular model to the number of months in which the model was sold. If the model was sold in fewer than three months, we did not disregard below-cost sales unless there were below-cost sales of that model in each month sold. If a model was sold in three or more months, we did not disregard below-cost sales unless there were sales below cost in at least three of the months in which the model was sold. We used CV as the basis for FMV when an insufficient number of home market sales were made at prices above COP. See, *e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Review,* 58 FR 64720, 64729 (Dec. 8, 1993).

We also used CV as FMV for those U.S. sales for which there were insufficient sales of the comparison home market model at or above COP and for those U.S. sales for which there was no contemporaneous sale of such or similar merchandise in the home market. We calculated CV in accordance with section 773(e) of the Tariff Act. We included the cost of materials, labor, and factory overhead in our calculations. Where the general expenses were less than the statutory minimum of 10 percent of the cost of manufacture (COM), we calculated general expenses as 10 percent of the COM. Where the actual profits were less than the statutory minimum of eight percent of the COM plus general expenses, we calculated profit as eight percent of the sum of COM plus general expenses.

We adjusted FMV for value-added taxes (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).

*Algoma*

In accordance with section 773 of the Tariff Act, for those U.S. models for which we were able to find a home-market such-or-similar match, we calculated FMV based on the packed, FOB or delivered prices to related and unrelated purchasers in the home market. We used prices to related purchasers only if such prices were made at arm's length. We made adjustments, where applicable, for inland freight, home market packing costs, discounts and rebates, home market direct selling expenses such as credit and warranty expenses. We made circumstances-of-sale adjustments for differences in physical characteristics. For comparison to purchase price sales, pursuant to section 773 of the Tariff Act, we made circumstance-of-sale adjustments to FMV for commissions incurred in the U.S. market, U.S. credit, warranty. We also adjusted FMV for packing expenses.

*CCC*

In accordance with section 773 of the Tariff Act, for those U.S. models for which we were able to find a home market such or similar match, we calculated FMV based on the packed, FOB or delivered prices to related and unrelated purchasers in the home market. We used prices to related purchasers only if such prices were made at arm's length. We made adjustments, where applicable, for inland freight, home market packing costs, discounts and rebates, direct selling expenses (warranties and credit), and packing expenses. We made circumstance-of-sale adjustments to FMV for differences in physical characteristics. For comparison to purchase price sales, pursuant to section 773 of the Tariff Act, we made circumstance-of-sale adjustments to FMV for U.S. direct selling expenses such as warranties, warehousing, credit, and commissions which were paid in the U.S. market. We also adjusted FMV for U.S. packing expenses. When comparisons were made to PP sales on which commissions were paid, we made an adjustment for home market indirect selling expenses to offset U.S. commissions. U.S. sales of merchandise that was further processed in the United States were matched to home market sales of merchandise identical or similar to the subject merchandise as it entered the United States. In such cases, we

adjusted FMV to account for the further processing in the United States.

*Dofasco/Sorevco*

In accordance with section 773 of the Tariff Act, for those U.S. models for which we were able to find a home market such or similar match and for which there were sufficient above-cost sales, we calculated FMV based on packed prices to customers. We made adjustments, where applicable, for Sorevco rebates, one customer-specific Dofasco rebate, four types of discounts, warranties, royalty payments for one product type, warehousing, imputed home market credit expenses, home market packing expenses and certain rebates which we reclassified as post sale price adjustments. Additionally, for one term of sale we deducted inland freight. As in the LTFV investigation, the Department used Dofasco's five reported levels of trade in which, according to Dofasco, pricing structure differs according to customer type: automotive, construction, service center, manufacturing, and converter.

We also made circumstance-of-sale adjustments, where appropriate, for imputed U.S. credit expenses, U.S. warranty expenses, foreign warehousing expenses for U.S. sales and U.S. royalty expenses (for one product type). We also adjusted for U.S. duty and brokerage (where applicable), U.S. packing expenses, differences in merchandise (when less than 20%) for similar products, and U.S. commissions. When comparisons were made to purchase price sales on which commissions were paid, we made an adjustment for home market indirect selling expenses to offset U.S. commissions.

For Dofasco's sales of secondary merchandise, the Department determined at verification that only six of the eleven product characteristics were reported accurately: type, process, coating metal, thickness, width, and form. Thus, the Department performed its model match for these sales based only on these six characteristics. For a general discussion of the Department's treatment of secondary merchandise in this review, see the Department's April 19, 1995 decision memorandum.

*MRM*

In accordance with section 773 of the Tariff Act, for those U.S. models for which we were able to find a home market such or similar match that had sufficient above-cost sales, we calculated FMV based on the packed, FOB or delivered prices to related and unrelated purchasers in the home market. We used prices to related purchasers only if such prices were made at arm's length. We made deductions, where applicable, for inland freight, rebates, home market direct selling expenses such as credit expenses and commissions incurred in the home market. We also adjusted FMV for differences in physical characteristics. For comparison to purchase price sales, pursuant to section 773 of the Tariff Act, we made circumstance-of-sale adjustments to FMV for commissions incurred in the U.S. market, and U.S. credit expenses.

*Stelco*

In accordance with section 773 of the Tariff Act, for those U.S. models for which we were able to find a home market such or similar match that had sufficient above-cost sales, we calculated FMV based on packed, delivered or ex-factory prices to related and unrelated purchasers in the home market. We used prices to related purchasers only if such prices were made at arm's length. For Stelco's sales of cut-to-length plate, we made adjustments, where applicable, for inland freight, discounts and rebates, packing expenses, home market direct selling expenses such as credit expenses and warranty expenses. We also adjusted FMV for differences in physical characteristics. For comparison to purchase price sales, pursuant to section 773 of the Tariff Act, we made circumstance-of-sale adjustments to FMV for U.S. warranty expenses and U.S. credit expenses. We also adjusted FMV for U.S. packing expenses.

For Stelco's sales of corrosion-resistant steel, in accordance with section 773 of the Tariff Act, for those U.S. models for which we were able to find a home market such or similar match, we calculated FMV based on the packed, delivered or ex-factory prices to related and unrelated purchasers in the home market. We used prices to related purchasers only if such prices were made at arm's length. We made adjustments, where applicable, for inland freight, discounts and rebates, packing expenses, home market direct selling expenses such as credit expenses and warranty expenses, home market indirect selling expenses such as technical services, inventory carrying costs, warehousing expenses and commissions incurred in the home market. We also adjusted FMV for differences in physical characteristics. For comparison to purchase price sales, pursuant to section 773 of the Tariff Act, we made for circumstance-of-sale adjustments for U.S. warranty expenses, U.S. credit expenses and U.S. sales commissions. We also adjusted FMV for U.S. packing expenses.

For Stelco's ESP sales of corrosion-resistant steel, pursuant to section 773(a)(4)(B) of the Act and 19 CFR 353.56(a)(2) we made adjustments, where applicable, for inland freight, discounts and rebates, packing expenses, home market direct selling expenses such as credit expenses and warranty expenses, home market indirect selling expenses such as technical services, inventory carrying costs, warehousing expenses, and commissions. We also adjusted FMV for differences in physical characteristics. For comparison to ESP sales, we made circumstance-of-sale adjustments for home market indirect selling expenses, including, home market technical services, inventory carrying costs and presale warehousing expenses up to the amount of indirect selling expenses and commissions incurred on U.S. sales. We also adjusted FMV for U.S. packing expenses.

In addition, we made further deductions from ESP, where appropriate, for all value added to the corrosion-resistant steel in the United States, pursuant to section 772(e)(3) of the Act.

**Preliminary Results of Review**

As a result of our comparisons of USP and FMV, we preliminarily determine that the following margins exist for the period February 4, 1993, through July 31, 1994:

| Manufacturer/Exporter | Margin (percent) |
|---|---|
| Corrosion-Resistant Steel: | |
| Dofasco, Inc. | 3.87 |
| Continuous Colour Coat | 1.88 |
| Stelco, Inc. | 13.95 |
| Cut-to-Length Plate: | |
| Algoma Steel Inc. | 2.61 |
| Manitoba Rolling Mills | 2.44 |
| Stelco, Inc. | 0.39 |

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 date. 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 the 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 these administrative reviews, as provided by section 751(a)(1) of the Tariff Act. A cash deposit of estimated antidumping duties shall be required on shipments of corrosion-resistant steel and cut-to-length plate from Canada as follows: (1) The cash deposit rates for the reviewed companies shall be those rates established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in these reviews or the original LTFV investigations, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in these reviews, the cash deposit rate will be the ''all others'' rate from the LTFV investigations *See Final Determination of Sales at Less Than Fair Value: Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Canada,* 58 FR 37099, 37121 (July 9, 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 will result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: August 8, 1995.

**Susan G. Esserman,**

*Assistant Secretary for Import Administration.*

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**[A–570–803]**

## Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China; Preliminary Results and Termination in Part of Antidumping Duty Administrative Reviews

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of preliminary results and termination in part of antidumping duty administrative reviews.

**SUMMARY:** In response to requests by two resellers of the subject merchandise, the Department of Commerce (the Department) is conducting administrative reviews of the antidumping duty orders on heavy forged hand tools, finished or unfinished, with or without handles, (HFHTs) from the People's Republic of China (PRC). The reviews cover two exporters of subject merchandise to the United States and the period February 1, 1993, through January 31, 1994. The reviews indicate the existence of dumping margins during the period of review.

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 reviews, we will instruct U.S. Customs to assess antidumping duties equal to the difference between United States price (U.S. price) and FMV.

Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** August 16, 1995.

**FOR FURTHER INFORMATION CONTACT:** Karin Price or Maureen Flannery, 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) 482–4733.

**SUPPLEMENTARY INFORMATION:**

### Background

On February 19, 1991, the Department published in the **Federal Register** (56 FR 6622) the antidumping duty orders on HFHTs from the PRC. On February 4, 1994, the Department published in the **Federal Register** (59 FR 5390) a notice of opportunity to request administrative reviews of these antidumping duty orders. On February 28, 1994, in accordance with 19 CFR 353.22(a), two resellers of the subject merchandise to the United States, Fujian Machinery & Equipment Import & Export Corporation (FMEC) and Shandong Machinery Import & Export Corporation (SMC), requested that we conduct administrative reviews of their exports of subject merchandise to the United States. We published the notice of initiation of these antidumping duty administrative reviews on March 14, 1994 (59 FR 11768). The notice of initiation was amended on June 15, 1994 (59 FR 30770) and July 15, 1994 (59 FR 36160). The Department is conducting these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

### Termination of Review in Part

On June 10, 1994, FMEC withdrew its request for a review of the order on picks and mattocks (picks/mattocks), and SMC withdrew its request for a review of the order on axes, adzes and other similar hewing tools (axes/adzes). Given the early stage of review at the time of FMEC's and SMC's withdrawal requests, we informed FMEC that it did not need to respond to the questionnaire with respect to picks/mattocks, and we informed SMC that it did not need to respond to the questionnaire with regard to axes/adzes. *See File Memorandum from Karin Price,* dated July 5, 1994, ''Telephone conversation regarding the withdrawal requests of respondents in the third administrative reviews of heavy forged hand tools, finished or unfinished, with or without handles, from the People's Republic of China,'' which is on file in the Central Records Unit (room B–099 of the Main Commerce Building). We hereby are terminating the review of the order on picks/mattocks with respect to FMEC and the review of the order on axes/adzes with respect to SMC, in accordance with 19 CFR 353.22(a)(5).

### Scope of These Reviews

Imports covered by these reviews are shipments of HFHTs from the PRC comprising the following classes or kinds of merchandise: (1) hammers and sledges with heads over 1.5 kg. (3.33 pounds) (hammers/sledges); (2) bars over 18 inches in length, track tools and wedges (bars and wedges); (3) picks/mattocks; and (4) axes/adzes.

HFHTs include heads for drilling, hammers, sledges, axes, mauls, picks, and mattocks, which may or may not be painted, which may or may not be finished, or which may or may not be imported with handles; assorted bar products and track tools including wrecking bars, digging bars and tampers; and steel woodsplitting wedges. HFHTs are manufactured through a hot forge operation in which steel is sheared to required length, heated to forging temperature and

formed to final shape on forging equipment using dies specific to the desired product shape and size. Depending on the product, finishing operations may include shot blasting, grinding, polishing and painting, and the insertion of handles for handled products. HFHTs are currently provided for under the following Harmonized Tariff System (HTS) subheadings: 8205.20.60, 8205.59.30, 8201.30.00, and 8201.40.60. Specifically excluded are hammers and sledges with heads 1.5 kg. (3.33 pounds) in weight and under, hoes and rakes, and bars 18 inches in length and under.

These reviews cover two exporters of HFHTs from the PRC, FMEC and SMC. The review period is February 1, 1993, through January 31, 1994.

**Separate Rates**

The business licenses of both FMEC and SMC indicate that they are owned by ''all the people.'' As stated in the *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China* (59 FR 22585, May 2, 1994) (*Silicon Carbide*), ''ownership by 'all of the people' does not require the application of a single rate.'' Accordingly, FMEC and SMC are eligible for consideration for separate rates.

To establish whether a company is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China* (56 FR 20588, May 6, 1991) (*Sparklers*), as amplified in *Silicon Carbide*. Under this policy, exporters in non-market-economy (NME) countries are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law and in fact, with respect to exports. Evidence supporting, though not requiring, a finding of *de jure* absence of government control includes: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control with respect to exports is based on four criteria: (1) whether the export prices are set by or subject to the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits and financing of losses; (3) whether each exporter has autonomy in making decisions regarding the selection of management; and (4) whether each exporter has the authority to negotiate and sign contracts.

We have found that the evidence on the record demonstrates an absence of government control, both in law and in fact, with respect to FMEC's and SMC's exports according to the criteria identified in *Sparklers* and *Silicon Carbide* for this period of review. For further discussion of the Department's preliminary determination that FMEC and SMC are entitled to separate rates, *see Decision Memorandum to Holly A. Kuga, Director, Office of Antidumping Compliance,* dated July 21, 1995, ''Separate rates for Fujian Machinery & Equipment Import & Export Corporation and Shandong Machinery Import & Export Corporation in the third administrative reviews of heavy forged hand tools, finished or unfinished, with or without handles, from the People's Republic of China,'' which is on file in the Central Records Unit (room B–099 of the Main Commerce Building).

**United States Price**

The Department used purchase price and exporter's sales price (ESP), in accordance with sections 772 (b) and (c) of the Act, in calculating U.S. price. We made deductions from purchase price and ESP sales, where appropriate, for brokerage and handling, foreign inland freight, ocean freight, and marine insurance. Ocean freight services were provided by both PRC-owned and non-PRC-owned companies. Where we knew that the company providing the ocean freight services was not a PRC-owned company, we used the actual rates charged; for ocean freight services provided by PRC-owned companies, we applied a weighted-average ocean freight rate derived from those sales for which we used actual ocean freight rates. Since marine insurance services were provided by PRC-owned companies, we based the deduction for marine insurance on surrogate values. We also used surrogate data to value foreign inland freight and brokerage and handling. We selected India as the surrogate country for reasons explained in the ''Foreign Market Value'' section of this notice.

Complete sales data for SMC's ESP sales have not been provided to the Department, despite the Department's requests for such data. In its original questionnaire response, SMC did not report its ESP sales, stating that SMC did not sell the subject merchandise to its U.S. subsidiary, CMC Pacific Tools, Inc. (Pacific Tools) during the period of review, despite the request in the questionnaire that ESP sales, *i.e.,* sales made to unrelated purchasers in the United States after the date the merchandise was imported into the United States by or for the account of the exporter, be reported. In our supplemental questionnaire, we asked SMC to report any ESP sales of subject merchandise made by Pacific Tools to unrelated customers in the United States during the period of review and to answer all questions in the original questionnaire regarding these sales. When it reported these ESP sales in its supplemental questionnaire response, SMC did not report any movement expenses for these sales, stating that these expenses had been reported in a questionnaire response submitted for the previous administrative reviews of this case. Since movement expenses were not reported for the record of these reviews, as best information available (BIA), we applied a weighted-average ocean freight rate derived from those PP sales for which we used actual ocean freight rates to adjust for ocean freight, and we used surrogate values to make deductions for all other applicable movement expenses. We also made a deduction for U.S. duties.

**Foreign Market Value**

For companies located in NME countries, section 773(c)(1) of the Act provides that the Department shall determine FMV using a factors of production methodology if (1) the merchandise is exported from a NME country, and (2) the information does not permit the calculation of FMV using home market prices, third country prices, or constructed value (CV) under section 773(a) of the Act.

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. None of the parties to these proceedings has contested such treatment in these reviews. Accordingly, we calculated FMV in accordance with section 773(c) of the Act and section 353.52 of the Department's regulations. We determined that India is comparable to the PRC in terms of per capita gross national product (GNP), the growth rate in per capita GNP, and the national distribution of labor, and is a significant producer of comparable merchandise. For further discussion of the Department's selection of India as the primary surrogate country, *see File Memorandum from Karin Price,* dated June 13, 1994, ''Telephone conversations regarding the surrogate country selection in the third administrative reviews of heavy forged hand tools, finished or unfinished, with or without handles, from the People's

Republic of China,'' which is on file in the Central Records Unit (room B–099 of the Main Commerce Building), with attached *Memorandum to Laurie Lucksinger,* dated March 18, 1993, ''AD Order on Heavy Forged Hand Tools from the People's Republic of China (case #A–570–803): Nonmarket-Economy Status and Surrogate Country Determinations.''

For purposes of calculating FMV, we valued PRC factors of production in the year in which production occurred as follows, in accordance with section 773(c)(1) of the Act:

- To value all direct materials used in the production of HFHTs, including steel, resin glue, paint, varnish, wood for handles, iron wedges, anti-rust oil, scrap steel, and dilution, we used the rupee per metric ton, per kilogram, or per cubic meter value of imports into India during April-December 1992, for production in 1992, and during April 1993–January 1994, for production in 1993, obtained from the *Monthly Statistics of the Foreign Trade of India, Volume II—Imports,* December 1992, and the *Monthly Statistics of the Foreign Trade of India, Volume II—Imports,* March 1994, respectively (*Indian Import Statistics*). Some of the factories in the PRC used imported steel for producing HFHTS, and, in these instances, we used the import price of the steel to value the relevant portion of steel which was imported. We made adjustments to include freight costs incurred between the suppliers and the HFHT factories. We also made an adjustment to the steel input factor for scrap and waste steel which was sold.
- For direct labor, we used the labor rates reported in the Business International Corporation reports *IL&T India,* released November 1992 and November 1993. This source breaks out labor rates between skilled, unskilled, semi-skilled, and foreman labor for 1993 and provides information on the number of labor hours worked per week.
- For factory overhead, we used information reported in the December 1992 and September 1994 *Reserve Bank of India Bulletin*. From this information, we were able to determine factory overhead as a percentage of total cost of manufacture. We included steel pellets used to remove oxidization from the tool heads and detergent used to clean the tool heads in factory overhead as these materials are not physically incorporated into the subject merchandise.
- For selling, general and administrative (SG&A) expenses, we used information obtained from the December 1992 and September 1994 *Reserve Bank of India Bulletin*. We calculated an SG&A rate by dividing SG&A expenses by the cost of manufacture. Since the calculated SG&A expense rate is less than 10 percent, we used the statutory minimum of 10 percent to calculate SG&A expenses.
- To calculate a profit rate, we used information obtained from the December 1992 and September 1994 *Reserve Bank of India Bulletin*. We calculated a profit rate by dividing the before-tax profit by the sum of those components pertaining to the cost of manufacturing plus SG&A. Since the calculated profit rate is less than 8 percent, we used the statutory minimum of 8 percent to calculate profit.
- To value the packing materials, including cartons (except for imported cartons used at some of the factories), pallets, anti-rust paper, anti-damp paper, plastic and iron straps, plastic bags, iron buttons and knots, synthetic fiber, and iron wire, we used import statistics for India obtained from the *Indian Import Statistics.* We adjusted these values to include freight costs incurred between the suppliers and the HFHT factories. Some of the factories used imported cartons for packing, and, in these instances, we used the import price of the cartons to value the relevant percentage of cartons which was imported.
- To value coal, we used the price of steam coal reported for 1990 in the International Energy Agency publication *Energy Prices and Taxes,* 2nd Quarter 1994. We adjusted the value of coal to reflect inflation through 1992 and 1993 using wholesale price indices of India (WPI) as published in the *International Financial Statistics* by the International Monetary Fund (IMF).
- To value electricity, we used the price of electricity for 1990 reported in the Asian Development Bank publication *Energy Indicators of Developing Member Countries of Asian Development Bank,* July 1992. We adjusted the value of electricity to reflect inflation through 1992 and 1993 using WPI published by the IMF.
- To value truck freight, we used the rates reported in a June 1992 cable from the U.S. Embassy in India submitted for the *Final Determination of Sales at Less Than Fair Value: Sulfanilic Acid from the People's Republic of China* (57 FR 29705, July 6, 1992) and an August 1993 cable from the U.S. Embassy in India submitted for the *Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers from the People's Republic of China* (58 FR 48833, September 20, 1993).
- To value rail freight, we used the price reported in a December 1989 cable from the U.S. Embassy in India submitted for the *Final Results of Antidumping Duty Administrative Review: Shop Towels of Cotton from the People's Republic of China* (56 FR 4040, February 1, 1991). We adjusted the rail freight rates to reflect inflation through 1992 and 1993 using WPI published by the IMF.

**Currency Conversion**

We made currency conversions in accordance with 19 CFR 353.60(a). Currency conversions were made at the rates certified by the Federal Reserve Bank.

**Best Information Available**

SMC did not provide factors-of-production data for one model, sales of which were first reported to the Department in SMC's supplemental questionnaire response. Since U.S. sales data for this model were submitted without the data necessary for the calculation of FMV, we must rely upon BIA, in accordance with section 776(1) of the Act, for these sales. As BIA, we are assigning a rate of 31.76 percent, which is the rate from the LTFV investigation for this class or kind of merchandise.

**Preliminary Results of the Reviews**

As a result of our reviews, we preliminarily determine that the following margins exist:

| Manufacturer/exporter | Time period | Margin (percent) |
|---|---|---|
| Fujian Machinery & Equipment Import & Export Corporation: | | |
| Axes/Adzes | 2/1/93–1/31/94 | 11.72 |
| Bars/Wedges | 2/1/93–1/31/94 | 30.40 |
| Hammers/Sledges | 2/1/93–1/31/94 | 12.17 |
| Shandong Machinery Import & Export Corporation: | | |
| Bars/Wedges | 2/1/93–1/31/94 | 28.54 |

| Manufacturer/exporter | Time period | Margin (percent) |
|---|---|---|
| Hammers/Sledges | 2/1/93–1/31/94 | 7.26 |
| Picks/Mattocks | 2/1/93–1/31/94 | 36.92 |

Parties to the proceedings may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. See section 353.38(d) of the Department's regulations. The Department will publish a notice of final results of these administrative reviews, which will include the results of its analysis of issues raised in any such comments.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and FMV may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of the final results of these administrative reviews for all shipments of HFHTs from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies named above which have separate rates will be the rates for those firms established in the final results of these administrative reviews; (2) for all other PRC exporters, the cash deposit rates will be the rates established in the LTFV investigations, the all-China rates; and (3) the cash deposit rates for non-PRC exporters of subject merchandise from the PRC will be the rates applicable to the PRC supplier of that exporter. The rates established in the LTFV investigations are 45.42 percent for hammers/sledges, 31.76 percent for bars/wedges, 50.81 percent for picks/mattocks, and 15.02 percent for axes/adzes. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

**Notification of Interested Parties**

This notice serves as a preliminary reminder to importers of their responsibility under section 353.26 of the Department's regulations 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.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and section 353.22 of the Department's regulations.

Dated: August 8, 1995.

**Susan G. Esserman,**

*Assistant Secretary for Import Administration.*

[FR Doc. 95–20207 Filed 8–15–95; 8:45 am]

BILLING CODE 3510–DS–P

**A–570–822**

## Certain Helical Spring Lock Washers From the People's Republic of China; Preliminary Results of Antidumping Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of preliminary results of the antidumping duty administrative review.

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain helical spring lock washers (HSLWs) from the People's Republic of China (PRC) in response to a request by the respondent, Zhejiang Wanxin Group Co., Ltd, (ZWG). This review covers shipments of this merchandise to the United States during the period October 15, 1993, through September 30, 1994.

We have preliminarily determined that sales have been made below foreign market value (FMV). If these preliminary results are adopted in our final results, we will instruct U.S. Customs to assess antidumping duties equal to the difference between United States price (USP) and FMV.

Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** August 16, 1995.

**FOR FURTHER INFORMATION CONTACT:** Donald Little or Maureen Flannery, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington D.C. 20230; telephone (202) 482–4733.

**Background**

The Department published in the **Federal Register** the antidumping duty order on HSLWs from the PRC on October 19, 1993 (58 FR 53914). On October 7, 1994, the Department published in the **Federal Register** (59 FR 51166) a notice of opportunity to request administrative review of the antidumping duty order on HSLWs from the PRC covering the period October 15, 1993, through September 30, 1994.

In accordance with 19 CFR 353.22(a)(1994), the respondent, ZWG, requested that we conduct an administrative review. We published a notice of initiation of this antidumping duty administrative review on November 14, 1994 (59 FR 56459). The Department is conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

**Applicable Statute and Regulations**

Unless otherwise indicated, all citations to the statute and the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

**Scope of Review**

The products covered by this review are HSLWs of carbon steel, of carbon alloy steel, or of stainless steel, heat-treated or non heat-treated, plated or non-plated, with ends that are off-line. HSLWs are designed to: (1) function as a spring to compensate for developed looseness between the component parts of a fastened assembly; (2) distribute the load over a larger area for screws or bolts; and (3) provide a hardened bearing surface. The scope does not include internal or external tooth washers, nor does it include spring lock washers made of other metals, such as copper.

HSLWs subject to this review are currently classifiable under subheading

7318.21.0000 of the Harmonized Tariff Schedule of the United States (HTS). Although the HTS subheading is provided for convenience and Customs purposes, the written description of the scope of this proceeding is dispositive.

This review covers one exporter of HSLWs from the PRC, ZWG, and the period October 15, 1993, through September 30, 1994.

**Separate Rates**

To establish whether a company operating in a state-controlled economy is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China* (56 FR 20588, May 6, 1991) (*Sparklers*), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China* (59 FR 22585, May 2, 1994) (*Silicon Carbide*). Under this policy, exporters in non-market economies (NMEs) are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law and in fact, with respect to exports. Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: 1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; 2) any legislative enactments decentralizing control of companies; and 3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control over exports is based on four factors: 1) whether each exporter sets its own export prices independently of the government and without the approval of a government authority; 2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; 3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and 4) whether each exporter has autonomy from the government regarding the selection of management.

During the less than fair value (LTFV) investigation of this case, the Department determined that ZWG, then known as Hangzhou Spring Washer Plant, warranted a company-specific dumping margin according to the criteria identified in *Sparklers*. (*See Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers From the People's Republic of China*, 58 FR 48833 (September 20, 1993) (*Lock Washers*).) We have found that the evidence on the record of this review also demonstrates an absence of government control, both in law and in fact, with respect to ZWG's exports according to the criteria identified in *Sparklers*, and an absence of government control with respect to the additional criteria identified in *Silicon Carbide*. For further discussion of the Department's preliminary determination that ZWG is entitled to a separate rate, *see Decision Memorandum to Holly A. Kuga, Director, Office of Antidumping Compliance*, dated July 21, 1995, ''Separate Rates in the First Administrative Review of Certain Helical Spring Lock Washers from the People's Republic of China,'' which is on file in the Central Records Unit (room B099 of the Main Commerce Building).

**United States Price**

For sales made by ZWG, we based USP on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold to unrelated purchasers in the United States prior to importation into the United States.

We calculated purchase price based on the FOB, CNF, and CIF price to unrelated purchasers. We made deductions, where appropriate, for brokerage and handling, foreign inland freight, ocean freight, and marine insurance. We valued brokerage and handling, foreign inland freight, and marine insurance deductions using surrogate data based on Indian costs. ZWG reported amounts for ocean freight based, in part, on services provided by shipping companies based in the PRC. For the portion of the shipment expenses from the PRC port to Hong Kong provided by PRC-owned transportation, we calculated a separate charge using surrogate data based on Indian costs. We selected India as the surrogate country for the reasons explained in the ''Foreign Market Value'' section of this notice.

**Foreign Market Value**

For all companies located in NME countries, section 773(c)(1) of the Act provides that the Department shall determine FMV using a factors-of-production methodology if (1) the merchandise is exported from an NME country, and (2) the information does not permit the calculation of FMV using home market prices, third country prices, or constructed value (CV) under section 773(a) of the Act.

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. None of the parties to this proceeding has contested such treatment in this review. Accordingly, we calculated FMV based on factors of production in accordance with section 773(c) of the Act and section 353.52 of the Department's regulations. We determined that India is comparable to the PRC in terms of per capita gross national product (GNP), the growth rate in per capita GNP, and the national distribution of labor, and is a significant producer of comparable merchandise. For this review, we chose India as the most comparable surrogate on the basis of the above criteria, and have used publicly available information relating to India to value the various factors of production. (*See Memorandum from Director, Office of Policy to Division Director, Office of Antidumping Compliance*, dated June 9, 1995, ''Lock Washers from the People's Republic of China (PRC): Nonmarket Economy Status and Surrogate Country Selection,'' and the memorandum from the analyst to the file, dated July 20, 1995, ''India: Significant Production of Comparable Merchandise,'' which are on file in the Central Records Unit (room B099 of the Main Commerce Building).

We valued the factors of production as follows:

- For steel wire rods, we used a per kilogram value obtained from the *Monthly Statistics of Foreign Trade of India* for the period April 1993 through March 1994. Using wholesale price indices (WPI) obtained from the *International Financial Statistics*, published by the International Monetary Fund (IMF). We adjusted these values to reflect inflation through the period of review (POR). We made further adjustments to include freight costs incurred between the supplier and ZWG.
- For chemicals used in the production and plating of HSLWs, we used per kilogram values obtained from the *Monthly Statistics of Foreign Trade of India*. We adjusted these rates to reflect inflation through the POR using WPI published by the IMF. We made further adjustments to include freight costs incurred between the supplier and ZWG.
- For hydrochloric acid, we based the value on an Indian price quote used in the *Final Determination of Sales at Less Than Fair Value: Coumarin from the People's Republic of China* (59 FR 66895, December 28, 1994) (*Coumarin*), because the Indian Import Statistics for hydrochloric acid were found to be

aberrational. We adjusted the value used in *Coumarin* to reflect inflation through the POR using WPI published by the IMF.

- For direct labor, we used the labor rates reported in the Business International Corporation report *IL&T India*, released November 1993. This source breaks out labor rates between skilled, unskilled, and semi-skilled labor for 1993 and provides information on the number of labor hours worked per week. We adjusted these rates to reflect inflation through the POR using WPI published by the IMF.
- For factory overhead, we used information reported in the September 1994 *Reserve Bank of India Bulletin*. From this information, we were able to determine factory overhead as a percentage of the total surrogate cost of manufacture.
- For selling, general and administrative (SG&A) expenses, we used information obtained from the September 1994 *Reserve Bank of India Bulletin*. We calculated an SG&A rate by dividing SG&A expenses by the cost of manufacture. Since the calculated SG&A expense rate is less than 10 percent of the surrogate cost of manufacture, we used the statutory minimum of 10 percent.
- To calculate a profit rate, we used information obtained from the September 1994 *Reserve Bank of India Bulletin*. We calculated a profit rate by dividing the before-tax profit by the cost of manufacturing plus SG&A. Since the calculated profit rate is less than 8 percent, we used the statutory minimum of 8 percent to calculate profit.
- To value the packing materials, including paper cartons, pallets, wood brackets, steel straps, plastic bags, and adhesive tape, we used import statistics for India obtained from the *Indian Import Statistics*. We adjusted these rates to reflect inflation through the POR using WPI published by the IMF. We adjusted these values to include freight costs incurred between the suppliers and ZWG.
- To value coal, we used per kilogram value obtained from the *Monthly Statistics of Foreign Trade of India*. We adjusted these rates to reflect inflation through the POR using WPI published by the IMF.
- To value electricity, we used the price of electricity for 1993 reported in the *Confederation of Indian Industries Handbook of Statistics*. We adjusted the value of electricity to reflect inflation through the POR using WPI published by the IMF.
- To value water, we used the Asian Development Bank's *Water Utilities Data Book for the Asian and Pacific Region*, November 1993. We adjusted the value of water to reflect inflation through the POR using WPI published by the IMF.
- To value truck and shipping freight, we used the rates reported in an August 1993 cable from the U.S. Consulate in India submitted for *Lock Washers*. We adjusted the value to reflect inflation through the POR using WPI published by the IMF.
- To value rail freight, we used the price reported in a December 1989 cable from the U.S. Embassy in India submitted for the *Final Results of Antidumping Duty Administrative Review: Shop Towels of Cotton from the People's Republic of China* (56 FR 4040, February 1, 1991). We adjusted the rail freight rates to reflect inflation through the POR using WPI published by the IMF.

**Currency Conversion**

We made currency conversions in accordance with 19 CFR 353.60(a). Currency conversions were made at the rates certified by the Federal Reserve Bank.

**Preliminary Results of the Review**

We preliminarily determine that the following dumping margin exists:

| Manufacturer/exporter | Time period | Margin (percent) |
|---|---|---|
| Zhejiang Wanxin Group Co., Ltd. . | 10/15/93–09/30/94 | 22.81 |

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of HSLWs from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) for ZWG, which has a separate rate, the cash deposit rate will be the company-specific rate established in the final results of this review; (2) for all other PRC exporters, the cash deposit rate will be 128.63 percent, the rate established in the LTFV investigation of this case, the PRC rate; and (3) for non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter.

These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: August 8, 1995.

**Susan G. Esserman,**

*Assistant Secretary for Import Administration.*

[FR Doc. 95–20212 Filed 8–15–95; 8:45 am]

BILLING CODE 3510–DS–P

**[A–570–838]**

## Honey From the People's Republic of China; Suspension of Investigation

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of suspension of investigation; honey from the People's Republic of China.

**SUMMARY:** The Department of Commerce (the Department) has suspended the antidumping investigation on honey from the People's Republic of China (PRC). The basis for the suspension is an agreement by the Government of the

PRC to restrict the volume of direct or indirect exports to the United States of honey products from all PRC producers/exporters, thus, preventing the suppression or undercutting of price levels of domestic products by imports of the merchandise under investigation.

**EFFECTIVE DATE:** August 16, 1995.

**FOR FURTHER INFORMATION CONTACT:** James Doyle or Lisa Yarbrough, 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) 482–3793.

**SUPPLEMENTARY INFORMATION:**

**Case History**

On October 24, 1994, the Department initiated an antidumping duty investigation on honey from the PRC based on a petition filed by members of the American Beekeeping Federation and the American Honey Producers Association (59 FR 54434, October 31, 1994) (petitioners). The International Trade Commission issued an affirmative preliminary injury determination on November 25, 1994 (59 FR 60655). On March 20, 1995, the Department preliminarily determined that imports of honey from the PRC are being sold at less than fair value in the United States (60 FR 14725).

On March 16, 1995, the China Chamber of Commerce for Foodstuffs, Native Produce and Animal By-Products Importers and Exporters, (the Chamber) and 28 respondent exporters (the respondents), listed in the ''Continuation of Suspension of Liquidation'' section of this notice, requested that the Department postpone the final determination. On March 30, 1995, we did so (60 FR 17514, April 6, 1995).

On March 22, 1995, respondents filed two ministerial error allegations regarding the preliminary determination and the valuation of raw honey and steel drums. The Department rejected these allegations (*See* Memorandum from The Team, Office of Antidumping Investigations, to Barbara R. Stafford, Deputy Assistant Secretary for Investigations, dated April 14, 1995).

On April 27, 1995, petitioners alleged that critical circumstances exist with respect to imports of honey from the PRC. Accordingly, the Department, on May 3, 1995, requested that respondents provide monthly volume and value shipment data for exports of honey to the United States. They did so on May 15, 1995. On May 30, 1995, the Department issued its preliminary critical circumstances determination (60 FR 29824, June 6, 1995).

In June 1995, we conducted verifications at the Ministry of Foreign Trade and Economic Cooperation (MOFTEC), the Chamber, Kunshan Xinlong Foods, Ltd. (Kunshan Xinlong), Jiangsu Native Produce Import and Export (Jiangsu Native) and its supplier Jiangsu Sweet, Jiangxi Native Produce Import and Export (Jiangxi Native), and its suppliers Jiangxi Ao Shan Duo Qi Beverage Factory (Ao Shan) and Qinghai Provincial Bee Products (Qinghai Bee), and Zhejiang Native Produce & Animal By-product Import and Export (Zhejiang Native) and its supplier Hangzhou Lewei Food Factory (Hangzhou Lewei). Verification reports were issued in June 1995.

On July 3, 1995, the Assistant Secretary for Import Administration and representatives of the Chinese government initialed a proposed suspension agreement.

Case briefs were filed by petitioners, respondents, and the National Honey Packers and Dealers Association (the NHPDA) on July 3, 1995. Rebuttal briefs were submitted by each of these parties on July 7, 1995. A public hearing was held on July 11, 1995.

Comments regarding the proposed suspension agreement were filed by petitioners, respondents, and the NHPDA on July 3, 1995. Petitioners filed rebuttal comments on July 26, 1995.

**Scope of the Agreement**

The products covered by this investigation are natural honey, artificial honey containing more than 50 percent natural honey by weight, and preparations of natural honey containing more than 50 percent natural honey by weight. The subject products include all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The subject merchandise is currently classifiable under subheadings 0409.00.00, 1702.90.50, 2106.90.61, and 2106.90.69 of the *Harmonized Tariff Schedule of the United States* (HTSUS).

**Period of Investigation**

The period of investigation (POI) is May 1, 1994, through October 31, 1994.

**Suspension of Investigation**

The Department consulted with the parties to the proceeding and has considered the comments submitted with respect to the proposed suspension agreement. The signed suspension agreement reflects the decisions of the Department with respect to many of the issues parties raised in their comments on the proposed agreement.

We have determined that the agreement will prevent the suppression or undercutting of price levels of honey in the United States, that the agreement can be monitored effectively, and that the agreement is in the public interest. We find, therefore, that the criteria for suspension of an investigation pursuant to Section 734(l) of the Tariff Act of 1930, as amended (the ''Act''), have been met. The terms and conditions of the agreement, signed August 2, 1995, are set forth in Annex 1 to this notice.

Pursuant to Section 734(f)(2)(A) of the Act, effective (date of publication of **Federal Register** notice), the suspension of liquidation of all entries entered or withdrawn from warehouse, for consumption of honey from the PRC, as directed in our notice of ''Preliminary Determination of Sales at Less Than Fair Value: Honey from the People's Republic of China'' is hereby terminated. Any cash deposits on entries of honey from the PRC pursuant to that suspension of liquidation shall be refunded and any bonds shall be released.

Notwithstanding the suspension agreement, the Department will continue the investigation if we receive such a request in accordance with Section 734(g) of the Act within 20 days after the date of publication of this notice. This notice is published pursuant to Section 734(f)(1)(A) of the Act.

Dated: August 7, 1995.

**Susan G. Esserman,**

*Assistant Secretary for Import Administration.*

**Annex 1: Agreement Suspending the Antidumping Investigation on Honey From the People's Republic of China**

For the purpose of encouraging free and fair trade in honey, establishing more normal market relations, and preventing the suppression or undercutting of price levels of the domestic product, the United States Department of Commerce (''the Department'') and the Government of the People's Republic of China (''PRC'') enter into this suspension agreement (''the Agreement'').

Pursuant to this Agreement, the Government of the PRC will restrict the volume of direct or indirect exports to the United States of honey products from all PRC producers/exporters, subject to the terms and provisions set forth below.

On the basis of this Agreement, pursuant to the provisions of Section 734(l) of the Tariff Act of 1930, as

amended (the ''Act'') (19 U.S.C. 1673c(l)), the Department shall suspend its antidumping investigation with respect to honey produced in the PRC, subject to the terms and provisions set forth below. Further, the Department will instruct the U.S. Customs Service to terminate the suspension of liquidation of, and release any cash deposit or bond posted on, the products covered by this Agreement as of the effective date of this Agreement.

*I. Definitions*

For purposes of this Agreement, the following definitions apply:

A. ''Date of Export'' for imports of subject merchandise into the United States shall be considered the date the Quota Certificate was issued.

B. ''Parties to the Proceeding'' means any interested party, within the meaning of Section 353.2(k) of the Department's Regulations, which actively participates through written submissions of factual information or written argument.

C. ''Indirect Exports'' means arrangements as defined in Section III.E of this Agreement and exports from the PRC through one or more third countries, whether or not such exports are sold in one or more third countries prior to importation into the United States.

D. For purposes of this Agreement, ''United States'' shall comprise the customs territory of the United States of America (the 50 States, the District of Columbia and Puerto Rico) and foreign trade zones located in the territory of the United States of America.

E. ''For consumption'' means material sold in retail form, or in bulk form to end-users. The material shall not be resold except as a result of force majeure.

F. ''End-user'' means an entity, such as a retailer or an industrial purchaser (*e.g.*, a baker or manufacturer), which consumes subject merchandise.

G. ''Quota Certificate'' is the document which serves as both a quota certificate and a certificate of origin. A Quota Certificate must accompany all shipments of subject merchandise from the PRC to the United States, and must contain all of the information enumerated in the Appendix (U.S. sales), except Date of Entry information and Final Destination.

H. ''Relevant Period'' for the export limits of this Agreement means the period August 1 through July 31.

*II. Product Coverage*

The products covered by this Agreement (''subject merchandise'') are natural honey, artificial honey containing more than 50 percent natural honey by weight, and preparations of natural honey containing more than 50 percent natural honey by weight. The subject products include all grades and colors of honey whether in liquid, creamed, comb, comb cut, or chunk form, and whether packaged for retail or in bulk form.

The subject merchandise is currently classifiable under subheadings 0409.00.00, 1702.90.50, 2106.90.61, and 2106.90.69 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope is dispositive.

*III. Export Limits*

A. The export limits for subject merchandise in each Relevant Period shall be 43,925,000 pounds plus or minus a maximum of six percent per year of quota based upon the U.S. honey market growth in each Relevant Period. The export limits for each Relevant Period shall be allocated in semi-annual quota allocation periods. No more than 60% of the export limits for any Relevant Period can be allocated in any given semi-annual quota allocation period. Deductions from the export limits shall be made based on the ''Date of Export'', as defined in Section I.

B. On or after the effective date of this Agreement, the Government of the PRC will restrict the volume of direct or indirect exports of subject merchandise to the United States, and the transfer or withdrawal from inventory of subject merchandise (consistent with the provisions of Section III.D), in accordance with the export limits then in effect.

C. A delivery may not be made for more than the entire amount of quota allocated for that semi-annual quota allocation period. Any amount delivered during a Relevant Period shall not, however, when cumulated with all prior deliveries in such Relevant Period, exceed the annual quota for that Relevant Period.

D. Any inventories of subject merchandise currently held in the United States by a Chinese entity and imported into the United States between December 20, 1994 (the date corresponding to the Department's critical circumstances determination) and the effective date of this Agreement will be subject to the following conditions:

1. Such inventories will not be transferred or withdrawn from inventory for consumption in the United States without a Quota Certificate issued by the Government of the PRC. Any such transfers or withdrawals from inventory shall be deducted from the export limits in effect at the time the Quota Certificate is issued.

2. A request for a Quota Certificate under this provision shall be accompanied by a report specifying the original date of export, the date of entry into the United States, the identity of the original exporter and importer, the customer, a complete description of the product (including lot numbers and other available identifying documentation), and the quantity expressed in pounds.

3. In the event that there is a surge of sales of subject merchandise from such inventory, the Department will decrease the export limits to take into account such sales.

E. Any arrangement involving the exchange, sale, or delivery of honey products from the PRC, to the degree it results in the sale or delivery in the United States of honey products from a country other than the PRC, is subject to the requirements of Section V and will be counted toward the export limits. Any such transaction that does not comply with the requirements of Section V will be deducted from the export limits pursuant to Section VII.

F. Where subject merchandise is imported into the United States and is subsequently re-exported, or re-packaged and re-exported, the export limits shall be increased by the amount of pounds re-exported. Such increase will be applicable to the Relevant Period corresponding to the time of such re-export. Such increase will be applied only after the Department receives, and has the opportunity to verify, evidence demonstrating original importation, any re-packaging, and subsequent exportation. The re-exported material must be identical to the imported material.

G. Quota Certificates for a given Relevant Period may not be issued after July 31, except that Quota Certificates not so issued may be issued during the first three months of the following Relevant Period, up to a maximum of 15 percent of the export limit for that following Relevant Period. Such ''carried-over'' quota shall be counted against the export limits applicable to the previous Relevant Period.

Quota Certificates for up to 15 percent of the export limits for a subsequent Relevant Period may be issued as early as June 1 of the preceding Relevant Period. Such ''carried-back'' quota shall be counted against the export limits applicable to the following Relevant Period.

H. For the first 90 days after the effective date of this Agreement, subject merchandise shall be admitted into the United States with a ''Quota Certificate/ Certificate of Origin (Temporary Papers).''

The volume of any such imports will be deducted from the export limits applicable to the first Relevant Period. A full reporting of any such imports, which must correspond to the United States sales information detailed in the Appendix, must be submitted to the Department no later than 30 days after the conclusion of the 90 day period. This data must be sorted on the basis of date of export.

*IV. Reference Price*

A. Subject merchandise will not be sold below the reference price. Each HTS category of material shall have its own reference price, and all such reference prices shall be calculated in the same manner.

B. The reference price, issued quarterly by the Department, shall be released by September 1, December 1, March 1, and June 1 of each year and shall be effective on October 1, January 1, April 1, and July 1, respectively. The reference price for August 4 through September 30 of the first Relevant Period shall be issued and effective on August 4. Either party is entitled to request consultations regarding the calculation of reference prices.

C. The reference price equals the product of 92 percent and the weighted-average of the honey unit import values from all other countries for the most recent six months of data available at the time the reference price is calculated. The source of the unit import values will be publicly available United States trade statistics from the United States Bureau of the Census.

D. The Government of the PRC will ensure that the PRC unit values of subject imports will equal or exceed the reference price at equivalent points in the transaction chain. The reference price will be at a level in the transaction chain as far upstream as possible (i.e., F.O.B.). The Government of the PRC will ensure that contracts and all relevant documentation will be available to the Department and will be subject to verification.

E. Subject merchandise imported after the effective date of the Agreement, exported from the PRC prior to August 2, 1995, and sold pursuant to a contract in effect on or before July 3, 1995, shall not be subject to reference price restrictions. Consistent with Section III.H., the volume of such imports shall be deducted from the export limits.

*V. Quota Certificate*

A. The Government of the PRC will restrict the volume of direct or indirect exports of subject merchandise by means of semi-annual quota allocations and Quota Certificates. Quota Certificates shall be issued by the Ministry of Foreign Trade and Economic Cooperation (''MOFTEC'') for all direct or indirect exports of subject merchandise to the United States in accordance with the export limits in Section III and the reference price in Section IV.

B. Thirty days following the semi-annual allocation of quota rights for any Relevant Period, MOFTEC shall provide to the Department a report identifying each quota recipient and the volume of quota which each recipient has been accorded (''report of quota allocation results'').

C. Before it issues a Quota Certificate, MOFTEC will ensure that the Relevant Period's quota volume is not exceeded and that the price for the subject merchandise is at or above the reference price.

D. The Government of the PRC shall take action, including the imposition of penalties, as may be necessary to make effective the obligations resulting from the price restrictions, export limits, and Quota Certificates. The Government of the PRC will inform the Department of any violations concerning the price restrictions, export limits and/or Quota Certificates which come to its attention and the action taken with respect thereto.

The Department will inform the Government of the PRC of violations concerning the price restrictions, export limits, and/or Quota Certificates which come to its attention and the action taken with respect thereto.

E. Quota Certificates will be issued sequentially, endorsed against the export limits for the Relevant Periods, and will reference the report of quota allocation results for the appropriate Relevant Period.

F. Quota Certificates must be issued no earlier than one month before the day, month, and year on which the merchandise is accepted by a transportation company, as indicated in the bill-of-lading or a comparable transportation document, for export. Quota Certificates must contain an English language translation.

G. On or after the effective date of this Agreement, the United States shall require presentation of a Quota Certificate as a condition for entry of subject merchandise into the United States. The United States will prohibit the entry of any subject merchandise not accompanied by a Quota Certificate.

*VI. Implementation*

In order to effectively restrict the volume of exports of honey to the United States, the Government of the PRC agrees to implement the following procedures:

A. Establish, through MOFTEC, a quota certification program for all exports of subject merchandise to, or destined directly or indirectly for consumption in, the United States, no later than 90 days after the effective date of this Agreement.

B. Ensure compliance by any official PRC institution, chamber, or other entities authorized by the Government of the PRC, all Chinese producers, exporters, brokers, and traders of the subject merchandise, and their related parties, with all procedures established in order to effectuate this Agreement.

C. Collect information from all Chinese producers, exporters, brokers, and traders of the subject merchandise, and their related parties, on the sale of the subject merchandise.

D. Impose strict sanctions, such as penalties or prohibition from participation in the export limits allowed by the Agreement, in the event that any Chinese or Chinese-related party does not comply in full with all the terms of the Agreement.

*VII. Anticircumvention*

A. The Government of the PRC will take all appropriate measures under Chinese law to prevent circumvention of this Agreement. It shall respond promptly to conduct an inquiry into any and all allegations of circumvention, including allegations raised by the Department, and shall complete such inquiries in a timely manner (normally within 45 days). The Government of the PRC shall notify the Department of the results of its inquiries within ten days of the conclusion of such inquiries. Within 15 days of a request from the Department, the Government of the PRC shall share with the Department all facts known to the Government of the PRC regarding its inquiries, its analysis of such facts and the results of such inquiries. The Government of the PRC will require all Chinese exporters of honey to include a provision in their contracts for sales to countries other than the United States that the honey sold through such contracts cannot be re-exported, transhipped or swapped to the United States, or otherwise used to circumvent the export limits of this Agreement. The Government of the PRC will also establish appropriate mechanisms to enforce this requirement.

B. If, in an inquiry pursuant to paragraph A, the Government of the

PRC determines that a Chinese company has participated in a transaction that resulted in circumvention of the export limits of this Agreement, then the Government of the PRC shall impose penalties on such company including, but not limited to, denial of access to the honey quota. Additionally, the Government of the PRC shall deduct an amount of honey equivalent to the amount involved in such circumvention from the available quota and shall immediately notify the Department of the amount deducted. If sufficient quota is not available in the current Relevant Period, then the remaining amount necessary shall be deducted from the subsequent Relevant Period.

C. If the Government of the PRC determines that a company from a third country has circumvented the Agreement and the parties agree that no Chinese entity participated in or had knowledge of such activities, then the parties shall hold consultations for the purpose of sharing evidence regarding such circumvention and reaching mutual agreement on the appropriate steps to be taken to eliminate such circumvention, such as the Government of the PRC prohibiting sales of Chinese honey to the company responsible or reducing honey exports to the country in question. If the parties are unable to reach mutual agreement within 45 days, then the Department may take appropriate action, such as deducting the amount of honey involved in such circumvention from the available quota, taking into account all relevant factors. Before taking such action, the Department will notify the Government of the PRC of the facts and reasons constituting the basis for the Department's intended action and will afford the Government of the PRC ten days in which to comment.

D. If the Department determines that a Chinese entity participated in circumvention, the parties shall hold consultations for the purpose of sharing evidence regarding such circumvention and reaching mutual agreement on an appropriate resolution of the problem. If the parties are unable to reach mutual agreement within 45 days, the Department may take appropriate action, such as deducting the amount of honey involved in such circumvention from the available quota. Before taking such action, the Department will notify the Government of the PRC of the facts and reasons constituting the basis for the Department's intended action and will afford the Government of the PRC ten days in which to comment.

E. The Department shall direct the U.S. Customs Service to require all importers of honey into the United States, regardless of stated country of origin, to submit at the time of entry a written statement certifying that the honey being imported was not obtained under any arrangement, swap, or other exchange which would result in the circumvention of the export limits established by this Agreement. Where the Department has reason to believe that such a certification has been made falsely, the Department will refer the matter to Customs or the Department of Justice for further action.

F. Given the fungibility of the world honey market, the Department will take the following factors into account in distinguishing normal honey market arrangements, swaps, or other exchanges from arrangements, swaps, or other exchanges which would result in the circumvention of the export limits established by this Agreement:

1. existence of any verbal or written arrangements which would result in the circumvention of the export limits established by this Agreement;
2. existence of any arrangement as defined in Section III.E that was not reported to the Department pursuant to Section VIII.A;
3. existence and function of any subsidiaries or affiliates of the parties involved;
4. existence and function of any historical and/or traditional trading patterns among the parties involved;
5. deviations (and reasons for deviation) from the above patterns, including physical conditions of relevant honey facilities;
6. existence of any payments unaccounted for by previous or subsequent deliveries, or any payments to one party for merchandise delivered or swapped by another party;
7. sequence and timing of the arrangements; and
8. any other information relevant to the transaction or circumstances.

G. ''Swaps'' include, but are not limited to:

Ownership swaps—involve the exchange of ownership of any type of honey product(s), without physical transfer. These may include exchange of ownership of honey products in different countries, so that the parties obtain ownership of products located in different countries; or exchange of ownership of honey products produced in different countries, so that the parties obtain ownership of products of different national origin.

Flag swaps—involve the exchange of indicia of national origin of honey products, without any exchange of ownership.

Displacement swaps—involve the sale or delivery of any type of honey product(s) from China to an intermediary country (or countries) which can be shown to have resulted in the ultimate delivery or sale into the United States of displaced honey products of any type, regardless of the sequence of the transaction.

H. The Department will enter its determinations regarding circumvention into the record of the Agreement.

*VIII. Monitoring*

The Government of the PRC will provide to the Department such information as is necessary and appropriate to monitor the implementation of and compliance with the terms of this Agreement. The Department of Commerce shall provide semi-annual reports to the Government of the PRC indicating the volume of imports of the subject merchandise to the United States, together with such additional information as is necessary and appropriate to monitor the implementation of this Agreement.

A. Reporting of Data

Beginning on the effective date of this Agreement, the Government of the PRC shall collect and provide to the Department the information set forth, in the agreed format, in the Appendix. All such information will be provided to the Department by April 30th of each year for exports during the period from August 1 through January 31st. In addition, such information will be provided to the Department by October 31st for sales from February 1st through July 31st, or within 90 days of a request made by the Department. Such information will be subject to the verification provision identified in Section VIII.C of this Agreement. The Department may disregard any information submitted after the deadlines set forth in this Section or any information which it is unable to verify to its satisfaction.

Aggregate quantity and value of sales by HTS category to each third country will be provided to the Department by April 30th of each year for exports during the period from August 1st of the previous year through January 31st. In addition, such quantity and value information will be provided to the Department by October 31st for sales from February 1st through July 31st.

Transaction specific data for all third country sales will also be reported on the schedule provided above in the format provided in the Appendix. However, if the Department concludes that the transaction specific data is not necessary for a given period, it will

notify the Government of the PRC at least 90 days before the reporting deadline that transaction specific sales data need not be reported. If the Department determines that such data is relevant in connection with Section VII and requests information on transactions for one or more third countries during a period for which the Department waived complete reporting, the Government of the PRC will provide the data listed in the Appendix for those specific transactions within 90 days of the request.

Both governments recognize that the effective monitoring of this Agreement may require that the PRC provide information additional to that which is identified above. Accordingly, the Department may establish additional reporting requirements, as appropriate, during the course of this Agreement.

The Department shall provide notice to the Government of the PRC of any additional reporting requirements no later than 45 days prior to the period covered by such reporting requirements unless a shorter notice period is mutually agreed.

B. Other Sources for Monitoring

The Department will review publicly-available data as well as Customs Form 7501 entry summaries and other official import data from the Bureau of the Census, on a monthly basis, to determine whether there have been imports that are inconsistent with the provisions of this Agreement.

The Department will monitor Bureau of the Census IM–115 computerized records, which include the quantity and value of each entry. Because these records do not provide other specific entry information, such as the identity of the producer/exporter which may be responsible for such sales, the Department may request the U.S. Customs Service to provide such information. The Department may request other additional documentation from the U.S. Customs Service.

The Department may also request the U.S. Customs Service to direct ports of entry to forward an Antidumping Report of Importations for entries of the subject merchandise during the period this Agreement is in effect.

C. Verification

The Government of the PRC will permit full verification of all information related to the administration of this Agreement, on an annual basis or more frequently, as the Department deems necessary to ensure that the PRC is in full compliance with the terms of the Agreement. Such verifications may take place in association with scheduled consultations whenever possible.

*IX. Disclosure and Comment*

A. The Department shall make available to representatives of each party to the proceeding, under appropriately-drawn administrative protective orders consistent with the Department's Regulations, business proprietary information submitted to the Department semi-annually or upon request, and in any administrative review of this Agreement.

B. Not later than 30 days after the date of disclosure under Section VIII.A, the parties to the proceeding may submit written comments to the Department, not to exceed 30 pages.

C. During the anniversary month of this Agreement, each party to the proceeding may request a hearing on issues raised during the preceding Relevant Period. If such a hearing is requested, it will be conducted in accordance with Section 751 of the Act (19 U.S.C. 1675) and applicable regulations.

*X. Consultations*

The Government of the PRC and the Department shall hold consultations regarding matters concerning the implementation, operation including the calculation of reference prices, and/or enforcement of this Agreement. Such consultations will be held each year during the anniversary month of this Agreement. Additional consultations may be held at any other time upon request of either the Government of the PRC or the Department.

*XI. Violations of the Agreement*

A. Violation

''Violation'' means noncompliance with the terms of this Agreement caused by an act or omission in accordance with Section 353.19 of the Department—s Regulations.

The Government of the PRC and the Department will inform the other party of any violations of the Agreement which come to their attention and the action taken with respect thereto.

Imports in excess of the export limits set out in this Agreement shall not be considered a violation of this Agreement or an indication the Agreement no longer meets the requirements of Section 734(l) of the Act where such imports are minimal in volume, are the result of technical shipping circumstances, and are applied against the export limits of the following year.

Prior to making a determination of an alleged violation, the Department will engage in emergency consultations. Such consultations shall begin no later than 14 days from the day of request and shall provide for full review, but in no event will exceed 30 days. After consultations, the Department will provide the Government of the PRC 10 days within which to provide comments. The Department will make a determination within 20 days.

B. Appropriate Action

If the Department determines that this Agreement is being or has been violated, the Department will take such action as it determines is appropriate under Section 734(i) of the Act and Section 353.19 of the Department's Regulations.

*XII. Duration*

The export limits provided for in Section III of this Agreement shall remain in force from the effective date of this Agreement through August 1, 2000.

The Department will, upon receiving a proper request no later than August 1, 1999, conduct an administrative review under Section 751 of the Act. The Department expects to terminate this Agreement and the underlying investigation no later than August 1, 2000, provided that the PRC has not been found to have violated the Agreement in any substantive manner. Such review and termination shall be conducted consistent with Section 353.25 of the Department's Regulations.

The Government of the PRC may terminate this Agreement at any time upon notice to the Department. Termination shall be effective 60 days after such notice is given to the Department. Upon termination at the request of the Government of the PRC, the provisions of Section 734(i) of the Act shall apply.

*XIII. Other Provisions*

A. In entering into this Agreement, the Government of the PRC does not admit that any sales of the merchandise subject to this Agreement have been made at less than fair value or that such sales have materially injured, or threatened material injury to, an industry or industries in the United States.

B. The Department finds that this Agreement is in the public interest; that effective monitoring of this Agreement by the United States is practicable; and that this Agreement will prevent the suppression or undercutting of price levels of United States domestic honey products by imports of the merchandise subject to this Agreement.

C. The Department does not consider any of the obligations concerning exports of honey to the United States

undertaken by the Government of the PRC pursuant to this Agreement relevant to the question of whether firms in the underlying investigation would be entitled to separate rates, should the investigation be resumed for any reason.

D. The English language version of this Agreement shall be controlling.

E. For all purposes hereunder, the Department and the signatory Government shall be represented by, and all communications and notices shall be given and addressed to:

*Department of Commerce*

U.S. Department of Commerce, Assistant Secretary, for Import Administration, International Trade Administration, Washington, D.C. 20230

*Government of the PRC*

Ministry of Foreign Trade and Economic Cooperation, Deputy Director General, 2, Dong Chang An Street, Beijing, Post Code 100731, People's Republic of China

*XIV. Effective Date*

The effective date of this Agreement suspending the antidumping investigation on honey from the PRC, August 2, 1995.

Signed on this second day of August, 1995.

For the U.S. Department of Commerce.

**Susan G. Esserman,**

*Assistant Secretary for Import Administration.*

MOFTEC for the Government of the People's Republic of China.

**Wang Tian Ming,**

*Minister-Councillor, Embassy of the People's Republic of China in the United States.*

## Appendix

In accordance with the established format, the Government of the PRC shall collect and provide to the Department all information necessary to ensure compliance with this Agreement. This information will be provided to the Department on a semi-annual basis, or upon request.

The Government of the PRC will collect and maintain sales data to the United States, in the home market, and to countries other than the United States, on a continuous basis and provide the prescribed information to the Department.

The Government of the PRC will provide a narrative explanation to substantiate all data collected in accordance with the following formats.

*Report of Inventories*

Report, by location, the inventories held by the PRC in the United States and imported into the United States between the period beginning December 20, 1994, through the effective date of the Agreement.

1. Quantity: Indicate original units of measure and in pounds.
2. Location: Identify where the inventory is currently being held. Provide the name and address for the location.
3. Titled Party: Name and address of party who legally has title to the merchandise.
4. Quota Certificate Number: Indicate the number(s) relating to each entry now being held in inventory.
5. Certificate of Origin Number(s): Indicate the number(s) relating to each sale or entry.
6. Date of Original Export: Date the quota certificate/certificate of origin is issued.
7. Date of Entry: Date the merchandise entered the United States or the date book transfer took place.
8. Original Importer: Name and address.
9. Original Exporter: Name and address.
10. Complete Description of Merchandise: Include lot numbers and other available information.

*United States Sales*

MOFTEC will provide all Quota Certificates, which shall contain the following information with the exception of item #9, date of entry, and item #13, final destination.

1. Quota Certificate/Certificate of Origin Number(s): Indicate the number(s) relating to each sale and/or entry.
2. Complete Description of Merchandise: Include lot numbers and other available information including the HTS category to the 10 digit level.
3. Quantity: Indicate in original units of measure and in pounds.
4. Total Sales Value: Indicate currency used.
5. Unit Price: Indicate currency used.
6. Date of Sale: The date all terms of order are confirmed.
7. Sales Order Number(s): Indicate the number(s) relating to each sale and/or entry.
8. Date of Export: Date the quota certificate is issued.
9. Date of Entry: Date the merchandise entered the United States or the date book transfer took place.
10. Importer of Record: Name and address.
11. Customer: Name and address of the first party purchasing from the PRC exporter.
12. Customer Relationship: Indicate whether the customer is related or unrelated to the PRC exporter.
13. Final Destination: Name and address of the end-user for consumption in the United States.
14. Quota Allocated to Exporter: Indicate the total amount of quota allocated to the individual exporter during the Relevant Period.
15. Quota Remaining: Indicate the remaining quota available to the individual exporter during the Relevant Period.
16. Other: i.e., used as collateral, will be re-exported, etc.

*Sales Other Than United States*

Pursuant to Section VIII, paragraph A, the Government of the PRC will provide country-specific sales volume and value information for all sales of subject merchandise to third countries.

1. Quota Certificate/Certificate of Origin Number(s): Indicate the number(s) relating to each sale and/or entry.
2. Quantity: Indicate in original units of measure sold and/or entered and in metric tons.
3. Date of Sale: The date all terms of order are confirmed.
4. Sales Order Number(s): Indicate the number(s) relating to each sale and/or entry.
5. Date of Export: Date the quota certificate is issued.
6. Date of Entry: Date the merchandise entered the United States or the date a book transfer took place.
7. Importer of Record: Name and address.
8. Customer: Name and address of the first party purchasing from the PRC exporter.
9. Customer Relationship: Indicate whether the customer is related or unrelated.
10. Final Destination: Name and address of the end-user for consumption.
11. Other: i.e., used as collateral, will be re-exported, etc.

[FR Doc. 95–20297 Filed 8–15–95; 8:45 am]

BILLING CODE 3510–DS–P

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**[A–588–813]**

## Light-Scattering Instruments and Parts Thereof From Japan; 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 petitioner, Wyatt Technology Corporation (Wyatt), the Department of

Commerce (the Department) is conducting the fourth administrative review of the antidumping duty order on light-scattering instruments (LSIs) and parts thereof from Japan. The review covers one manufacturer/exporter, Otsuka Electronics Co., Ltd. (Otsuka), and entries of the subject merchandise to the United States during the period November 1, 1993 through October 31, 1994.

We have preliminarily determined, using the best information available (BIA), that dumping margins exist with respect to Otsuka. Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** August 16, 1995.

**FOR FURTHER INFORMATION CONTACT:** G. Leon McNeill or Maureen Flannery, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 482–4733.

**SUPPLEMENTARY INFORMATION:**

## Background

On November 19, 1990, the Department published in the **Federal Register** an antidumping duty order on LSIs and parts thereof from Japan (55 FR 48144). On November 2, 1994, the petitioner, Wyatt, requested that we conduct an administrative review in accordance with section 353.22(a) of the Department's regulations (19 CFR 353.22(a)). We initiated the review covering the period November 1, 1993 through October 31, 1994 (59 FR 64650, December 15, 1994). The Department is now conducting the review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

## Applicable Statutes and Regulations

Unless otherwise stated, 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

This review covers imports of LSIs and parts thereof from Japan. The Department defines such merchandise as LSIs and the parts thereof, specified below, that have classical measurement capabilities, whether or not also capable of dynamic measurement. Classical measurement (also known as static measurement) capability usually means the ability to measure absolutely (*i.e.*, without reference to molecular standards) the weight and size of macromolecules and submicron particles in solution, as well as certain molecular interaction parameters, such as the so-called second viral coefficient. (An instrument that uses single-angle instead of multi-angle measurement can only measure molecular weight and the second viral coefficient.) Dynamic measurement (also known as quasi-elastic measurement) capability refers to the ability to measure the diffusion coefficient of molecules or particles in suspension and deduce therefrom features of their size and size distribution. LSIs subject to this review employ laser light and may use either a single-angle or multi-angle technique.

The following parts are included in the scope of this administrative review when they are manufactured according to specifications and operational requirements for use only in an LSI as defined in the preceding paragraph: scanning photomultiplier assemblies, immersion baths (to provide temperature stability and/or refractive index matching), sample-containing structures, electronic signal-processing boards, molecular characterization software, preamplifier/discriminator circuitry, and optical benches. LSIs subject to this review may be sold inclusive or exclusive of accessories such as personal computers, cathode ray tube displays, software, or printers. LSIs are currently classifiable under Harmonized Tariff Schedule (HTS) subheading 9027.30.40. LSI parts are currently classifiable under HTS subheading 9027.90.40. HTS subheadings are provided for convenience and U.S. Customs Service purposes. The written product description remains dispositive. Different items with the same name as subject parts may enter under subheading 9027.90.40. To avoid the unintended suspension of liquidation of non-subject parts, those items entered under subheading 9027.90.40 and generally known as scanning photomultiplier assemblies, immersion baths, sample-containing structures, electronic signal-processing boards, molecular characterization software, preamplifier/discriminator circuitry, and optical benches must be accompanied by an importer's declaration to the Customs Service stating that they are not manufactured for use in a subject LSI.

This review covers entries of the subject merchandise manufactured by Otsuka and entered during the period November 1, 1993 through October 31, 1994.

## Preliminary Results of Review

Otsuka has not responded to the Department's questionnaire, sent on March 27, 1995. The Department, therefore, determines that Otsuka is an uncooperative respondent. As a result, in accordance with section 776(c) of the Act, we have determined that the use of BIA is appropriate. Whenever, as here, a company refuses to cooperate with the Department, or otherwise significantly impedes an antidumping proceeding, we use as BIA the higher of (1) the highest of the rates found for any firm for the same class or kind of merchandise in the less-than-fair-value (LTFV) investigation or prior administrative reviews; or (2) the highest rate found in this review for any firm for the same class or kind of merchandise. (*See Antifriction Bearings from France, et. al; Final Results of Review*, 58 FR 39729 (July 26, 1993).) As BIA, we assigned the rate of 129.71 percent, which is the highest rate for any company from both the prior review and the LTFV investigation. Consequently, we preliminarily determine that the following dumping margin exists for the period November 1, 1993 through October 31, 1994:

| Manufacturer/exporter | Margin (percent) |
|---|---|
| Otsuka Electronics Co., Ltd ..... | 129.71 |

Any interested party may request a hearing within 10 days of publication of this notice. Any hearing will be held 44 days after the date of publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the publication date of this notice. Rebuttal briefs, limited to issues raised in the case briefs, 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 result of its analysis of issues raised in any such case briefs or hearing.

The following deposit requirements shall 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 by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company shall be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (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

shall be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review by the Department, the cash deposit rate will be 129.71 percent, the all other rate established in the LTFV investigation.

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 preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: August 4, 1995.

**Susan G. Esserman,**

*Assistant Secretary for Import Administration.*

[FR Doc. 95–20206 Filed 8–15–95; 8:45 am]

BILLING CODE 3510–DS–P

**[A–401–603]**

## Stainless Steel Hollow Products From Sweden; Termination of Antidumping Duty Administrative Reviews, Final Results of Changed Circumstances Antidumping Duty Administrative Review, and Revocation In Part of Antidumping Duty Order

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of termination of antidumping duty administrative reviews, final results of changed circumstances antidumping duty administrative review, and revocation in part of antidumping duty order.

**SUMMARY:** On December 3, 1987, the Department of Commerce (the Department) published an antidumping duty order on seamless stainless steel hollow products (SSHP) from Sweden. On November 5, 1992, the Department published an amended antidumping duty order to include welded SSHP in the scope of the order. On January 23, 1992 and on February 23, 1993, the Department initiated administrative reviews of the antidumping duty order with regard to seamless SSHP, covering the periods December 1, 1990 through November 30, 1991, and December 1, 1991 through November 30, 1992, respectively. We are now revoking the order in part, with regard to seamless SSHP, based on the fact that this portion of the order is no longer of interest to domestic parties. Accordingly, we are now terminating these reviews.

**EFFECTIVE DATE:** August 16, 1995.

**FOR FURTHER INFORMATION CONTACT:** Amy S. Wei or Zev Primor, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–5253.

**SUPPLEMENTARY INFORMATION:**

### Background

On December 3, 1987, the Department published an antidumping duty order on seamless SSHP from Sweden (52 FR 45985). On December 13, 1991, Sandvik AB, AB Sandvik Steel, and the Sandvik Steel Company (collectively, Sandvik), the respondent, requested the fourth administrative review of the antidumping duty order, covering the period December 1, 1990 through November 30, 1991. On January 23, 1992, the Department initiated the administrative review with regard to seamless SSHP (57 FR 2704). On November 5, 1992, the Department published an amended antidumping duty order to include welded SSHP in the scope of the order (57 FR 52761). On December 4, 1992, Sandvik requested the fifth administrative review of the antidumping duty order, covering the period December 1, 1991 through November 30, 1992. On February 23, 1993, the Department initiated this administrative review with regard to seamless SSHP (58 FR 11026). On February 9, 1995, AL Tech Specialty Steel Corporation (AL Tech) and the United Steelworkers of America (USWA), the only petitioners in this proceeding who are involved in the production of seamless SSHP, submitted a request for a changed circumstances administrative review and partial revocation of the order with regard to seamless SSHP. In addition, AL Tech and USWA requested that the partial revocation be effective retroactive to December 1, 1990, thereby terminating the currently pending fourth and fifth administrative reviews. AL Tech and USWA made this request based on the fact that the order with regard to seamless SSHP is no longer of interest to the petitioners.

We preliminarily determined that AL Tech's and USWA's affirmative statement of no interest constitutes good cause for conducting a changed circumstances review. Consequently, on July 24, 1995, the Department published a notice of initiation and preliminary results of changed circumstances antidumping duty administrative review to determine whether to revoke the order in part (60 FR 37876). We gave interested parties an opportunity to comment on the preliminary results of this changed circumstances review. We received no comments.

### Scope of Review

The merchandise covered by this changed circumstances review are seamless stainless steel hollow products including pipes, tubes, hollow bars, and blanks of circular cross section, containing over 11.5 percent chromium by weight. This merchandise is currently classified under subheadings 7304.41.00 and 7304.49.00 of the Harmonized Tariff Schedule (HTS). The HTS numbers are provided for convenience and Customs purposes. The written description remains dispositive.

This changed circumstances administrative review covers all manufacturers/exporters of seamless SSHP from Sweden.

### Final Results of Review; Partial Revocation of Antidumping Duty Order; Termination of Antidumping Duty Administrative Reviews

The affirmative statement of no interest by AL Tech and USWA constitutes changed circumstances sufficient to warrant partial revocation of the order. Therefore, the Department is partially revoking the order on SSHP from Sweden, with regard to seamless SSHP, in accordance with sections 751(b) and (d) and 782(h) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 353.25(d)(1). This partial revocation applies to all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after December 1, 1990. Accordingly, the Department is terminating the fourth and fifth reviews.

The Department will instruct the U.S. Customs Service (Customs) to proceed with liquidation, without regard to antidumping duties, of all unliquidated entries of seamless SSHP entered, or withdrawn from warehouse, for consumption on or after December 1, 1990. The Department will further instruct Customs to refund with interest any estimated duties collected with respect to unliquidated entries of seamless SSHP entered, or withdrawn

from warehouse, for consumption on or after December 1, 1990, in accordance with section 778 of the Act.

This notice also serves as a reminder to parties subject to administrative protection 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 the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This changed circumstances administrative review, partial revocation of the antidumping duty order, termination of the fourth and fifth administrative reviews, and notice are in accordance with sections 751(b) and (d) and 782(h) of the Act and sections 353.22(f) and 353.25(d) of the Department's regulations.

Dated: August 9, 1995.

**Susan G. Esserman,**

*Assistant Secretary for Import Administration.*

[FR Doc. 95–20298 Filed 8–15–95; 8:45 am]

BILLING CODE 3510–DS–P

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**[C–357–404]**

## Certain Apparel From Argentina; Preliminary Results of Countervailing Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of preliminary results of countervailing duty administrative review.

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order on certain apparel from Argentina. We preliminarily determine the net bounty or grant to be zero for Agrest, S.A. (Agrest), Comercio Internacional, S.A. (Comercio), IVA, S.A. (IVA), and Leger, S.A. (Leger), 15.87 percent *ad valorem* for Pulloverfin, S.A. (Pulloverfin) and 0.76 percent *ad valorem* for all other companies for the period January 1, 1991 through December 31, 1991. If the final results remain the same as these preliminary results of administrative review, we will instruct the U.S. Customs Service to assess countervailing duties as indicated above. Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** August 16, 1995.

**FOR FURTHER INFORMATION CONTACT:** Lorenza Olivas or Judy Kornfeld, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 482–2786.

**SUPPLEMENTARY INFORMATION:**

### Background

On March 12, 1985, the Department published in the **Federal Register** (50 FR 9846) the countervailing duty order on certain apparel from Argentina. On March 5, 1992, the Department published a notice of ''Opportunity to Request an Administrative Review'' (57 FR 7910) of this countervailing duty order. We received a timely request for review from the Amalgamated Clothing and Textile Workers Union.

We initiated the review, covering the period January 1, 1991 through December 31, 1991 (POR), on April 13, 1992 (57 FR 12797). The review covers 5 manufacturers/exporters of the subject merchandise, which accounted for substantially all exports of certain apparel during the POR, and 10 programs. (*See Memorandum to Barbara E. Tillman from Team Regarding Certain Apparel from Argentina* dated January 14, 1995, on file in the public file of the Central Records Unit, Room B–099 of the Department of Commerce).

### Applicable Statute and Regulations

The Department is conducting this administrative 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. However, references to the Department's *Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments*, 54 FR 23366 (May 31, 1989) (*Proposed Regulations*), are provided solely for further explanation of the Department's countervailing duty practice. Although the Department has withdrawn the particular rulemaking proceeding pursuant to which the *Proposed Regulations* were issued, the subject matter of these regulations is being considered in connection with an ongoing rulemaking proceeding which, among other things, is intended to conform the Department's regulations to the Uruguay Round Agreements Act. *See* 60 FR 80 (Jan. 3, 1995).

### Scope of the Review

The subject merchandise is certain apparel from Argentina. During the review period, this merchandise was classifiable under the following HTS numbers, which are based on the amended conversion of the scopes of the countervailing duty order. *See, Certain Textile Mill Products From Mexico, Certain Apparel From Argentina, and Certain Apparel From Thailand* (58 FR 4151; January 13, 1993).

6104.41.00, 6104.43.10, 6104.44.10, 6104.51.00, 6104.53.10, 6104.61.00, 6104.63.15, 6105.10.00, 6105.20.20, 6106.10.00, 6106.20.10, 6106.90.10, 6109.90.20, 6110.10.20, 6110.20.20, 6111.10.00, 6112.41.00, 6112.49.00, 6115.20.00, 6115.91.00, 6115.93.10, 6115.99.14, 6116.91.00, 6116.93.15, 6201.12.20, 6202.11.00, 6202.13.30, 6202.91.10, 6202.91.20, 6202.92.20, 6202.93.40, 6203.22.30, 6203.42.40, 6204.11.00, 6204.13.10, 6204.19.10, 6204.21.00, 6204.31.20, 6204.33.40, 6204.39.20, 6204.41.20, 6204.42.30, 6204.43.30, 6204.44.30, 6204.51.00, 6204.53.20, 6204.59.20, 6204.61.00, 6204.63.25, 6204.69.20, 6205.10.20, 6206.20.30, 6206.40.25, 6209.10.00, 6209.20.10, 6209.20.50, 6209.90.30, 6211.12.30, 6211.41.00, 6214.30.00, 6214.40.00.

### Best Information Available (BIA) for Pulloverfin

Section 776(c) of the Act requires the Department to use BIA ''whenever a party or any other person refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation . . . .''

In this review, Pulloverfin, a producer/exporter of the subject merchandise, did not respond to the Department's initial and supplemental questionnaires; therefore, we are assigning Pulloverfin a rate based on BIA. In determining what rate to use as BIA, the Department follows a two-tiered methodology. The Department normally assigns lower BIA rates to those respondents who cooperated in an administrative review and rates based on more adverse assumptions to respondents who did not cooperate. Since Pulloverfin did not cooperate, we are assigning a BIA rate of 15.87 percent *ad valorem*, which is the highest rate from any prior proceeding of this order and which is the rate Pulloverfin received in the investigation (*See, Final Affirmative Countervailing Duty Determinations and Countervailing Orders: Certain Textile Mill Products and Apparel from Argentina* (50 FR 9846; March 12, 1985)).

**Calculation Methodology for Assessment and Cash Deposit Purposes**

In accordance with our normal practice, we calculated the net bounty or grant on a country-wide basis by first calculating the bounty or grant rate for each company subject to the administrative review. We then weight-averaged the rate received by each company using as the weight its share of total Argentine exports to the United States of subject merchandise, including all companies, even those with de minimis and zero rates. We then summed the individual companies' weight-averaged rates to determine the bounty or grant rate from all programs benefitting exports of subject merchandise to the United States.

Since the country-wide rate calculated using this methodology was above de minimis, as defined by 19 CFR 355.7 (1994), we proceeded to the next step and examined the net bounty or grant rate calculated for each company to determine whether individual company rates differed significantly from the weighted-average country-wide rate, pursuant to 19 CFR 355.22(d)(3). All companies subject to the review had significantly different net bounty or grant rates during the review period pursuant to 19 CFR 355.22(d)(3). These companies are treated separately for assessment and cash deposit purposes. All other companies are assigned the country-wide rate.

**Analysis of Programs**

*I. Program Previously Determined to Confer Bounties or Grants*

Rebate of Indirect Taxes (Reembolso/ Reintegro)

The Reembolso program provides a cumulative tax rebate paid upon export and is calculated as a percentage of the f.o.b. invoice price of the exported merchandise. As stated in § 355.44(d)(4)(ii) of the Proposed Regulations (54 FR 23382), the Department will find that the entire amount of any such rebate is countervailable unless the following conditions are met: (1) the program operates for the purpose of rebating prior stage cumulative indirect taxes and/or import charges; (2) the government accurately ascertained the level of the rebate; and (3) the government reexamines its schedules periodically to reflect the amount of actual indirect taxes and/or import charges paid. In prior investigations and administrative reviews of the Argentine Reembolso program, the Department determined that these conditions have been met (See, *e.g., Leather Wearing Apparel from Argentina, Final Results of Countervailing Duty Administrative Review* (56 FR 10410; March 12, 1991); *Certain Apparel from Argentina, Final Results of Countervailing Duty Administrative Review* (56 FR 41823; August 23, 1991).

However, once a rebate program meets this threshold, the Department must still determine in each case whether there is an overrebate; that is, the Department must still analyze whether the rebate exceeds the total amount of indirect taxes and import duties borne by inputs that are physically incorporated into the exported product. If the rebate exceeds the amount of allowable indirect taxes and import duties on physically incorporated inputs, the Department will, pursuant to § 355.44(d)(4)(i) of the *Proposed Regulations*, find a countervailable benefit equal to the difference between the Reembolso rebate rate and the allowable rate determined by the Department (*i.e.,* the overrebate).

To determine whether there was an overrebate during the review period, the Department requested the Government of Argentina (GOA) to provide information on any changes to the Reembolso program for certain apparel. According to the information provided, the Reembolso program continued to be governed by Decree 1555/86, which modified the Reembolso program and set precise and transparent guidelines to implement the refund of indirect taxes and import charges. The decree established three broad rebate levels covering all products and industry sectors. The rates for levels I, II and III were 10 percent, 12.5 percent, and 15 percent, respectively. Based on the GOA's 1986 calculation of the tax incidence in the apparel industry, this industry was classified in level II.

In April 1989, the GOA suspended cash payment of rebates under the Reembolso program. Pursuant to the Emergency Economic Law dated September 25, 1989 (Law 23,697), the suspension of cash payments was continued for an additional 180 days. Rebates accrued during the suspension period were to be paid in export credit bonds. On March 4, 1990, the entire program was suspended for 90 days by Decree 435/90. Decree 1930/90 suspended cash payments of the reembolso for an additional 12-month period.

Decree 612/91, dated April 10, 1991, reinstated cash payments of the indirect tax rebates and import charges and reduced the rate for the apparel industry from 12.5 percent to 8.3 percent. Decree 1011/91, dated May 29, 1991, abolished Decree 1555/86 and incorporated the reduced rebate rates introduced by Decree 612/91. Therefore, during the POR, rebates were suspended from January 1 through April 10, 1991, and the rebate rate was 8.3 percent from April 11 through December 31, 1991.

Using the information provided in the questionnaire response, we calculated the allowable tax incidence for the subject merchandise based on the 1986 study which was in effect during the review period. We found that the rebate of indirect taxes did not exceed the total amount of allowable cumulative indirect taxes and/or import charges paid on physically incorporated inputs, and prior stage indirect taxes levied on the exported product at the final stage of production. Therefore, we preliminarily determine that there was no benefit from this program during the POR. In future reviews, we will continue to examine this program to determine if there is an overrebate.

*II. Other Programs*

We examined the following programs and preliminarily determine that exporters of apparel did not apply for or receive benefits under them during the review period:

- Tax Deduction Under Decree 173/85
- Exemption from Stamp Taxes Under Decree 186/74
- Industrial Parks
- Low Cost Loans for Projects Outside of Buenos Aires
- Tucaman Regional Tax Incentives
- Patagonion Regional Tax Incentives
- Incentives for Exports from Southern Ports
- Corrientes Regional Tax Incentive
- Export Financing

**Preliminary Results of Review**

For the period January 1, 1991, through December 31, 1991, we preliminarily determine the net bounty or grant to be zero for Agrest, Comercio, IVA, and Leger, 15.87 percent *ad valorem* for Pulloverfin and 0.76 percent *ad valorem* for all other companies. In accordance with 19 CFR 255.7, any rate less than 0.5 percent *ad valorem* is *de minimis.*

If the final results of this review remain the same as these preliminary results, the Department intends to instruct the U.S. Customs Service to assess countervailing duties as follows for all shipments of the subject merchandise exported from Argentina on or after January 1, 1991 and on or before December 31, 1991: zero for Agrest, Comercio, IVA and Leger; 15.87 percent *ad valorem* for Pulloverfin and 0.76 percent *ad valorem* for all other companies.

The Department also intends to instruct the U.S. Customs Service to collect a cash deposit of estimated countervailing duties of zero percent of the f.o.b. invoice price on all shipments of this merchandise from Agrest, Comercio, IVA and Leger, and to collect a cash deposit of 15.87 percent of the f.o.b. invoice price on all shipments of this merchandise from Pulloverfin and 0.76 percent of the f.o.b. invoice price on shipments of this merchandise from other companies from Argentina entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. *See* 19 CFR 355.38(b). Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Parties who submit written arguments in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under section 355.38(c), are due. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

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 355.22.

Dated: August 8, 1995.

**Susan G. Esserman,**

*Assistant Secretary for Import Administration.*

[FR Doc. 95–20201 Filed 8–15–95; 8:45 am]

BILLING CODE 3510–DS–P

**[C–549–802]**

## Ball Bearings and Parts Thereof From Thailand; Preliminary Results of a Countervailing Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of preliminary results of countervailing duty administrative review.

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order on ball bearings and parts thereof from Thailand. We preliminarily determine the total bounty or grant to be 1.33 percent *ad valorem* for all companies for the period January 1, 1993, through December 31, 1993. If the final results remain the same as these preliminary results of administrative review, we will instruct the U.S. Customs Service to assess countervailing duties as indicated above. We invite interested parties to comment on these preliminary results.

**EFFECTIVE DATE:** August 16, 1995.

**FOR FURTHER INFORMATION CONTACT:** Dana Mermelstein or Kelly Parkhill, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230, telephone: (202) 482–2786.

**SUPPLEMENTARY INFORMATION:**

### Background

On May 3, 1989, the Department published in the **Federal Register** (54 FR 19130) the countervailing duty order on ball bearings and parts thereof from Thailand. On May 4, 1994, the Department published in the **Federal Register** a notice of ''Opportunity to Request Administrative Review'' (59 FR 23051) of this countervailing duty order. On May 31, 1994, Torrington Company, the petitioner, requested an administrative review of the order. On May 31, 1994, Pelmec Thai Ltd. (Pelmec), NMB Thai Ltd. (NMB Thai), and NMB Hi-Tech Bearings Ltd. (NMB Hi-Tech), the respondent companies in prior reviews, also requested an administrative review.

On June 15, 1994 (59 FR 30770), we initiated the review, covering the period January 1, 1993, through December 31, 1993. The review covers nine programs and three related producers/exporters, NMB Thai, Pelmec, and NMB Hi-Tech, which are wholly owned by Minebea Co., Ltd., of Japan.

### Applicable Statute and Regulations

The Department is conducting this administrative 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 Review

Imports covered by this review are ball bearings and parts thereof. Such merchandise is described in detail in Appendix A to this notice. The *Harmonized Tariff Schedule* (HTS) item numbers listed in Appendix A are provided for convenience and Customs purposes. The written description remains dispositive.

### Calculation Methodology

In the first administrative review, respondents claimed that the F.O.B. value of the subject merchandise entering the United States is greater than the F.O.B. price charged by the companies in Thailand (57 FR 26646; June 15, 1992). They explained that this discrepancy is due to a mark-up charged by the parent company, located in a third country, through which the merchandise is invoiced. However, the subject merchandise is shipped directly from Thailand to the United States and is not transshipped, combined with other merchandise, or repackaged with other merchandise. In other words, for each shipment of subject merchandise, there are two invoices and two corresponding F.O.B. export prices: 1) the F.O.B. export price at which the subject merchandise leaves Thailand, and on which subsidies from the Royal Thai Government (RTG) are earned by the companies, and upon which the subsidy rate is calculated; and 2) the F.O.B. export price which includes the parent company mark-up, and which is listed on the invoice accompanying the subject merchandise as it enters the United States, and upon which the cash deposits are collected and the countervailing duty is assessed. In prior reviews, we verified on a transaction-specific basis the direct correlation between the invoice which reflects the F.O.B. price on which the subsidies are earned and the invoice which reflects the marked-up price that accompanies each shipment as it enters the United States.

Respondents argued that the calculated ad valorem rate should be adjusted by the ratio of the export value from Thailand to the export value charged by the parent company to the

U.S. customer so that the amount of countervailing duties collected would reflect the amount of subsidies bestowed. The Department agreed and made this adjustment in prior administrative reviews (57 FR 26646, June 15, 1992; and 58 FR 36392, July 7, 1993). Since the mark-up is not part of the export value upon which the respondents earn bounties or grants, the Department has followed the methodology adopted in prior administrative reviews, and calculated the *ad valorem* rate as a percentage of the original export value from Thailand and then multiplied this rate by the adjustment ratio—the original export value from Thailand divided by the marked-up value of the goods entering the United States.

We did not calculate a separate rate for each company because NMB Thai, Pelmec, and NMB Hi-Tech are wholly owned by one parent company, and are therefore related. *See Final Affirmative Countervailing Duty Determination: Grain-Oreiented Electrical Steel (GOES) from Italy* (59 FR 18357, 18366, April 18, 1994). As a result of this relationship, we considered the three companies as one corporate entity in our calculations. We calculated the bounty or grant by first totalling the benefits received by the three companies for each program used. Dividing these sums by the total Thai export value for the three companies, we calculated the unadjusted bounty or grant for each program used. As described above, we adjusted these rates by multiplying them by the ratio of the original export price from Thailand to the marked-up price of the goods entering the United States. Finally, we summed the adjusted bounty or grant for each program, to arrive at the total country-wide bounty or grant.

**Analysis of Programs**

*1. Investment Promotion Act of 1977 - Sections 31, 28 and 36(1)*

The Investment Promotion Act of 1977 (IPA) is administered by the Board of Investment (BOI) and is designed to provide incentives to invest in Thailand. In order to receive IPA benefits, each company must apply to the BOI for a Certificate of Promotion (license), which specifies goods to be produced, production and export requirements, and benefits approved. These licenses are granted at the discretion of the BOI and are periodically amended or reissued to change benefits or requirements. Each IPA benefit for which a company is eligible must be stated specifically in the license.

The BOI licenses for Pelmec, NMB Thai and NMB Hi-Tech all originally included export requirements. In the *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Ball Bearings and Parts Thereof from Thailand* (54 FR 19130; May 3, 1989), we determined that because the receipt of benefits under the IPA licenses was contingent upon export performance, these benefits were countervailable. However, effective January 1, 1990, producers of electronic parts (BOI Category 4.6) became eligible to apply to have export requirements eliminated from their BOI licenses. Most of the subject merchandise is classified by BOI under Category 4.6, and consequently, NMB Thai, NMB Hi-Tech, and Pelmec all applied for eliminations of their export requirements. NMB Thai's export requirements were lifted effective October 16, 1992, for one license, and effective November 9, 1992, for its three remaining licenses. The export requirements for NMB Hi-Tech's two licenses were lifted effective February 26, 1990, and November 19, 1990. Export requirements were eliminated from two of Pelmec's three licenses, effective November 9, 1992. However, because the BOI considers some of the subject merchandise produced by Pelmec under one of its BOI licenses to be ''ball bearings and parts for *general industry*,'' the export requirement has not been eliminated completely from its remaining license. Since export requirements remain in place for certain ball bearings subject to the countervailing duty order and the subject merchandise constitutes one class or kind of merchandise, we preliminarily determine that IPA benefits continued to be tied to export performance for manufacturers of subject merchandise during the review period.

Effective April 1, 1993, the BOI issued new policies and criteria for investment promotion in BOI Announcement Number 1/1993. Under BOI Announcement Number 1/1993, tax and duty privileges for promoted projects approved after April 1, 1993, are contingent upon location of the promoted company in one of three types of investment promotion zones. Through BOI Announcement Number 2/1993, which also became effective on April 1, 1993, the BOI revised its list of activities eligible for investment promotion. In this revised list, all types of ball bearings and parts thereof were reclassified under industrial category 4.8, ''Manufacture of fabricated metal products, including metal parts for automotive and electronic products.'' The BOI Announcement Number 2/1993 specifies that promoted projects approved after April 1, 1993, and classified under category 4.8 must be located in industrial promotion zones 2 or 3. Furthermore, export performance continues to be a requirement for certain IPA benefits in zones 2 or 3.

We preliminarily determine that IPA benefits are countervailable because during the review period IPA benefits continued to be tied to export performance for manufacturers of subject merchandise.

NMB Thai and NMB Hi-Tech received benefits under three sections of the IPA during the review period: IPA Sections 31, 28, and 36(1). Pelmec received benefits under IPA Sections 28 and 36(1).

*Section 31:* IPA Section 31 allows companies an exemption from payment of corporate income tax on profits derived from promoted exports. NMB Thai and NMB Hi-Tech claimed an income tax exemption under Section 31 on the income tax return filed during the review period.

*Section 28:* Prior to 1992, IPA Section 28 allowed companies to import fixed assets free of import duties, the business tax, and the local tax. However, effective January 1, 1992, the RTG eliminated both the business and the local tax and instituted a value added tax (VAT) system.

According to Section 21(4) of the VAT Act, if Section 28 benefits were granted by the BOI to a company before January 1, 1992, that company, when importing fixed assets under Section 28, would continue to be subject to the business tax provisions under Chapter IV, Title II, of the Revenue Code before being amended by the VAT Act. In accordance with Section 21(4), the company would be required to pay the business and local taxes only if its BOI license requirements were violated. Section 21(4) of the VAT Act applies to Pelmec, NMB Thai, and NMB Hi-Tech because all of their licenses were granted before January 1, 1992, and contain Section 28 benefits. The respondents argued in their questionnaire response that given the provisions of the VAT Act and, specifically, Section 21(4), their exemption from the business and local taxes no longer constitutes a benefit to the companies because 1) no other companies are required to pay the business and local taxes, and 2) under Section 21(4), payment of the business and local taxes serves only as a penalty for noncompliance with BOI license requirements. We verified that under the new VAT law, companies are no longer required to pay business and local taxes with the exception of the

noncompliance penalty noted above. For these reasons, we preliminarily determine that the business and local tax exemptions under Section 28 no longer constitute a countervailable benefit for companies subject to Section 21(4) of the VAT Act.

However, under provisions of Section 21(4) of the VAT Act, companies that were granted Section 28 benefits under the IPA before January 1, 1992, are not required to pay VAT on imports of fixed assets. In the 1992 and 1993 administrative reviews, the respondents argued that this exemption from VAT on imports of fixed assets did not constitute a benefit to the companies because all companies are effectively exempted from VAT on their imports of fixed assets. According to Section 82 of the VAT Act, the VAT liability is computed by subtracting the ''input tax'' (the VAT paid) from the ''output tax'' (the VAT collected). Consequently, companies that pay VAT on imports of fixed assets are effectively exempted from this VAT payment as they receive a credit for the VAT they paid on purchases of all inputs, including imports of fixed assets, when their monthly VAT liability is computed. In the 1992 administrative review, we examined this issue at verification. We confirmed that under the VAT system, companies receive credit for the VAT paid on the purchases of inputs and, as a result, no VAT is effectively paid by companies on these purchases. Since VAT liability is computed on a monthly basis, any possible time-value-of-money benefit under Section 21(4) of the VAT Act in this review would be insignificant. On this basis, we preliminarily determine that the exemption of the VAT on imports of fixed assets under Section 21(4) of the VAT Act does not constitute a countervailable benefit to the companies specified in Section 21(4). In future administrative reviews, however, the Department will continue to examine provisions of the VAT Act, including Section 21(4), to ascertain that no countervailable benefits are being provided to manufacturers of subject merchandise.

Since the business and local tax exemptions under Section 28 of the IPA and the VAT exemption under Section 21(4) of the VAT Act do not confer countervailable benefits to companies subject to Section 21(4) of the VAT Act, we preliminarily determine that only the exemptions of import duties on fixed assets under Section 28 of the IPA continue to provide countervailable benefits to the respondent companies which were all subject to Section 21(4) of the VAT Act during the review period.

*Section 36(1):* IPA Section 36(1) allows companies to import essential materials (non-fixed assets that are not physically incorporated into the exported good) free of import duties. Pelmec, NMB Thai, and NMB Hi-Tech all claimed such exemptions during the review period.

To calculate the benefit from Sections 31, 28, and 36(1) of the IPA, we followed the same methodology that has been used in prior administrative reviews (*see, e.g.,* 58 FR 16174, March 25, 1993; 57 FR 9413, March 18, 1992). For Section 31, we calculated the benefit by calculating the difference between what each company paid in corporate income tax during the review period and what it would have paid absent the exemption. We did this by multiplying the corporate income tax rate in effect during the review period by the amount of each company's income that was exempted from income tax. For Sections 28 and 36(1), we calculated the benefit by obtaining the amount of import duties that would have been paid on the imports absent the exemption. We then added all duty and tax savings under all the IPA programs and divided this aggregate benefit by the total export value of the subject merchandise (all companies in this review continued to receive IPA benefits contingent upon export performance under the pre-April 1, 1993, BOI regulations; therefore, we calculated the benefit using total exports rather than total sales). We then made the adjustment for the parent company mark-up discussed in the ''Calculation Methodology'' section above. On this basis, we preliminarily determine the bounty or grant from IPA Sections 31, 28 and 36(1) to be 1.33 percent *ad valorem* during the review period.

*2. Electricity Discounts for Exporters*

Electricity discounts for exporters were terminated effective January 1, 1990. However, because government authorities can defer action on company applications for up to five years, residual benefits are possible up to five years after termination of the program. Because this program was contingent upon exports, we preliminarily determine that it constitutes an export subsidy.

NMB Thai received such residual benefits during the review period. We calculated the benefit attributable to these residual benefits by dividing the amount of the electricity discount by the total F.O.B. export value of subject merchandise. We then made the adjustment for the parent company mark-up discussed in the ''Calculation Methodology'' section above. On this basis, we preliminarily determine the bounty or grant from residual electricity discounts to be less than 0.005 percent *ad valorem* during the review period.

*3. Tax Certificates for Exporters*

The RTG issues tax certificates to exporters of record which are transferable and which rebate indirect taxes and import duties levied on inputs used to produce exports. This rebate program is provided for in the ''Tax and Duty Compensation of Exported Goods Produced in the Kingdom Act'' (Tax and Duty Act).

The Thai Ministry of Finance computes the value of the rebate rates under the Tax and Duty Act based on the *Basic Input-Output Table of Thailand* (I–O table). Using this table, the Ministry computes the value of total inputs (both imported and domestic) at ex-factory prices, and the import duties and indirect taxes on each input. As determined in the *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Ball Bearings and Parts Thereof from Thailand* (54 FR 19130; May 3, 1989), these rebates are countervailable only to the extent that the remissions of duties and taxes exceed those actually levied on physically incorporated inputs.

Prior to 1992, there were two rates for tax certificates, the ''A'' rate, which rebated import duties and business taxes, and the ''B'' rate, which rebated only business taxes. Exporters of the subject merchandise were eligible for the ''B'' rate only. Because of their IPA benefits, they were ineligible to receive the ''A'' rate.

Effective January 1, 1992, as a result of the adoption of the VAT, the ''B'' rate was terminated and the ''A'' rate was revised to rebate only import duties. Accordingly, none of the companies under review were eligible to apply for or earn rebates under this program during the review period. Based on prior Department practice, we countervailed the benefits under the Tax Certificates program at the time the tax certificates were earned. *See, e.g., Final Affirmative Countervailing Duty Determination: Carbon Steel Butt-Weld Pipe Fittings from Thailand,* 55 FR 1695, 1699 (January 18, 1990). All tax certificates received during the 1993 review period were earned in prior years and were countervailed in prior review periods. As no tax certificates were earned during the review period, we preliminarily determine that producers of the subject merchandise received no bounty or grant from the tax

certificate program during the review period.

*4. Other Programs*

We also examined the following programs and preliminarily determine that the exporters of the subject merchandise did not apply for or receive benefits under these programs during the review period:

- Export Packing Credits
- Rediscount of Industrial Bills
- Export Processing Zones
- IPA Sections 33 and 36(4)
- Reduced Business Taxes for Producers of Intermediate Goods for Export Industries
- International Trade Promotion Fund

**Preliminary Results of Review**

As a result of our review, we preliminarily determine the total bounty or grant to be 1.33 percent *ad valorem* for the period January 1, 1993, through December 31, 1993.

If the final results of this review remain the same as the preliminary results, the Department intends to instruct the Customs Service to assess countervailing duties of 1.33 percent of the F.O.B. invoice price on all shipments from Thailand of the subject merchandise exported on or after January 1, 1993, and on or before December 31, 1993. The Department also intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 1.33 merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Interested parties may request disclosure of the calculation methodology and may request a hearing within 10 days of the date of publication of this notice. Case briefs or other written comments from interested parties may be submitted not later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttal comments, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication of this notice. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with section 355.38(e) of the Department's regulations.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 355.38(c), are due. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief, or at a hearing.

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 355.22).

Dated: August 8, 1995.

**Susan G. Esserman,**

*Assistant Secretary, for Import Administration.*

**Appendix A**

**Scope of the Review**

The products covered by this review, ball bearings, mounted or unmounted, and parts thereof, are described below.

**Ball Bearings, Mounted or Unmounted, and Parts Thereof**

These products include all antifriction bearings which employ balls as the rolling element. During the review period, imports of these products were classifiable under the following categories: antifriction balls; ball bearings with integral shafts; ball bearings (including radial ball bearings) and parts thereof; ball bearing type pillow blocks and parts thereof; ball bearing type flange, take-up, cartridge, and hanger units, and parts thereof; and other bearings (except tapered roller bearings) and parts thereof. Wheel hub units which employ balls as the rolling element are subject to the review. Finished but unground or semiground balls are not included in the scope of this review. Imports of these products are currently classifiable under the following HTS item numbers: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

This review covers all of the subject bearings and parts thereof outlined above with certain limitations. With regard to finished parts (inner race, outer race, cage, rollers, balls, seals, shields, etc.), all such parts are included in the scope of this review. For unfinished parts (inner race, outer race, rollers, balls, etc.), such parts are included if (1) they have been heat treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are not covered by this review are those where the part will be subject to heat treatment after importation.

[FR Doc. 95–20213 Filed 8–15–95; 8:45 am]

BILLING CODE 3510–DS–P

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**[C–301–003; C–301–601]**

## Roses and Other Cut Flowers From Colombia; Miniature Carnations From Colombia; Preliminary Results of Countervailing Duty Administrative Reviews of Suspended Investigations

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Preliminary Results of Countervailing Duty Administrative Reviews of Suspended Investigations.

**SUMMARY:** The Department of Commerce (the Department) is conducting administrative reviews of the agreements suspending the countervailing duty investigation on roses and other cut flowers (roses) from Colombia and the countervailing duty investigation on miniature carnations (minis) from Colombia. These reviews cover the period of review (POR) January 1, 1993, through December 31, 1993, and eleven programs. We preliminarily determine that the Government of Colombia (GOC) and the signatories/exporters of roses and minis have complied with the terms of the suspension agreements. We invite interested parties to comment on these results.

**EFFECTIVE DATE:** August 16, 1995.

**FOR FURTHER INFORMATION CONTACT:** Jean Kemp or Stephen Jacques, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–3793.

**SUPPLEMENTARY INFORMATION:**

**Applicable Statute and Regulations**

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. However, references to the Department's *Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments* (54 FR 23366 (May 31, 1989)) (*Proposed Regulations*), are provided solely for further explanation of the Department's countervailing duty practice. Although the Department has withdrawn the particular rulemaking proceeding pursuant to which the *Proposed Regulations* were issued, the

subject matter of these regulations is being considered in connection with an ongoing rulemaking proceeding which, among other things, is intended to conform the Department's regulations of the Uruguay Round Agreements Act (*See* 60 FR 80 (January 3, 1995)).

**Background**

On January 5, 1994, the Department published in the **Federal Register** (59 FR 564) a notice of ''Opportunity to Request an Administrative Review'' for the 1993 review period. On January 31, 1994 the Colombian Association of Flower Exporters (Asocoflores) requested administrative reviews of the suspended countervailing duty investigations covering roses and minis for the 1993 period. On February 17, 1994, the Department initiated these reviews (59 FR 7979). The Department is now conducting these reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act), and 19 CFR 355.22.

**Scope of Review**

The products covered by these administrative reviews constitute two separate ''classes or kinds'' of merchandise: roses and minis from Colombia. During the POR, such merchandise covered by these suspension agreements was classifiable under *Harmonized Tariff Schedule* (HTS) item numbers 0603.10.60, 0603.10.70, 0603.10.80, and 0603.90.00 for roses, and 0603.10.30 for minis. The HTS item numbers are provided for convenience and Customs purposes. The written descriptions remain dispositive.

These reviews of the suspended investigations involve over 800 Colombian flower growers/ exporters of roses, over 100 Colombian flower growers/exporters of minis, as well as the GOC. We verified the responses from six growers/exporters of the subject merchandise: Flores La Conchita German Ribon E. en C. (roses and minis); Tuchany, S.A. (roses); Flores de Exportacion, S.A. (roses and minis); Queen's Flowers of Colombia Ltda. (roses and minis); Florval, S.A. (roses and minis); and Flores de Funza, S.A. (roses and minis) (collectively, the six companies). The suspension agreement for minis covers ten programs: (1) Tax Reimbursement Certificate Program; (2) BANCOLDEX (funds for the promotion of exports); (3) Plan Vallejo; (4) Free Industrial Zones; (5) Export Credit Insurance; (6) Countertrade; (7) Research and Development; (8) Instituto de Fomento Industrial (IFI); (9) Financier de Desarrollo Territorial (FINDETER); and (10) Fondo Financiero de Proyectos de Desarrollo (FONADE). The suspension agreement for roses covers the ten programs listed above, as well as (11) Air Freight Rates.

**Analysis of Programs**

We examined the following programs subject to the suspension agreements:

*(1) Tax Reimbursement Certificate Program*

The ''Certificado de Reembolso Tributario'' (CERT) or Tax Reimbursement Certificate program allows exporters to receive a full or partial rebate on indirect taxes based on the value of their exports of specific products to specific destinations. The GOC determines the CERT levels based on product and market conditions.

Under the terms of the suspension agreements, Colombian flower growers/ exporters will be apply for, or receive, tax certificates or other rebates, remissions, or exemptions under the CERT program for exports of the subject merchandise to the United States and Puerto Rico. Moreover, since 1987, when the GOC restructured the CERT program, the level of CERT payments for exports of the subject merchandise to the United States and Puerto Rico wee set at zero. Therefore, exporters of the subject merchandise are no longer eligible to receive countervailable benefits.

At verification, we examined documentation at the GOC and found that this program was not used by exporters of the subject merchandise for exports to the United States and Puerto Rico during the POR. In addition, at verification of the six companies, we examined documentation and confirmed that they did not use the program for exports of the subject merchandise to the United States and Puerto Rico during the POR. Therefore, we preliminarily determine that the GOC has eliminated the subsidy on the subject merchandise by abolishing this program for exports of the subject merchandise to the United States and Puerto Rico and that this program did not confer any countervailable benefits upon exports of the subject merchandise to the United States and Puerto Rico during the POR.

*(2) BANCOLDEX*

On January 2, 1992, the former Fondo de Promocion de Exportaciones (PROEXPO) transferred from a government-administered fund to a commercial bank and was renamed Banco de Comercio Exterior de Exterior (BANCOLDEX). The same resolutions continued to govern export loans granted by BANCOLDEX as previously granted by PROEXPO.

There are six major BANCOLDEX credit lines: Short-term working capital Colombian peso (peso) loans; medium-term working capital peso loans; short- and long-term working capital U.S. dollar (dollar) loans; long-term capitalization peso loans; long-term capitalization dollar loans; and long-term fixed investment loans. In accordance with Departmental practice, we will treat medium-term working capital peso loans as long-term working capital peso loans.

Under the terms of the suspension agreements, Colombian flower growers/ exporters will not apply for, or receive any export financing for BANCOLDEX other than that offered on non-preferential terms, and at or above the established Department benchmark interest rates. For the roses and minis suspension agreements in the *Roses and Other Cut Flowers from Colombia and Miniature Carnations from Colombia: Final Results of Countevailing Duty Administrative Reviews of Suspended Investigations,* (published concurrently with this notice), the Department established new benchmark interest rates for all short- and long-term peso loans. The Department's short-term benchmark interest rate is nominal DTF (the Colombian Central Bank time deposit rate, the ''Depositos a Termino Fijo'') plus 3.66 percentage points, and for long-term loans nominal DTF plus 3.66 percentage points and 0.25 percentage point for each additional year after the first. This change in the benchmark interest rates will be effective 14 days after publication of the final results for the administrative reviews 1991 and 1992 (*See Roses and Other Cut Flowers from Colombia and Miniature Carnations from Colombia: Final Results of Countevailing Duty Administrative Reviews of Suspended Investigations,* (published concurrently with this notice). As discussed below, we preliminarily determine to maintain those benchmark rates.

**Colombian Peso Loans**

At verification, we examined GOC documents and confirmed that BANCOLDEX charged interest rates on its short- and long-term peso loans above the established Department benchmark interest rates in effect during the POR. In addition, we found that BANCOLDEX issued the loans on non-preferential terms. We also examined the six companies' accounting records which confirmed that the companies received BANCOLDEX peso loans for the subject merchandise on non-preferential terms and at interest rates at

or above the Department benchmark rates for exports of the subject merchandise to the United States and Puerto Rico in effect during the POR. Therefore, we preliminary determine that BANCOLDEX did not confer any countervailable benefits upon exports of the subject merchandise to the United States and Puerto Rico during the POR.

In order to update previous benchmark rates determined by the Department, we reviewed interest rates in Columbia to define what interest rate benchmarks were appropriate for future BANCOLDEX loans. In the case of short- and long-term peso BANCOLDEX loans, the Department confirmed at verification that the GOC adopted rates based on the Colombian fixed deposit rate, DTF, because the DTF rates more accurately reflect interest rate fluctuations in the market. While the Department verified that there is no single, predominant source of alternative financing in Columbia, we have determined that the independent government agency, FINAGRO (Fondo para el financiameinto del Sector Agropecuario), a major intermediary lender to the agricultural sector, is an appropriate alternative source of financing for the Department's benchmarks. FINAGRO is the successor to the Fondo Financiero Agropecuario (FFA).

The most recent FINAGRO short-term rate is equal to DTF plus up to 6 percentage points. Because the Department is unable to set the benchmark as a range (i.e., DTF plus up to 6 percentage points), the Department established a benchmark rate applying the methodology used in the final determination for the 1991 and 1992 administrative reviews (*See Roses and Other Cut Flowers and Miniature Carnations from Columbia; Final Results of Countervailing Duty Administrative Reviews of Suspended Investigations*; (published concurrently with this notice). In calculating the prospective benchmarks for short- and long-term peso loans, the Department preliminarily determines that the most recent verified weighted-average interest rate on all loans financed by FINAGRO through Caja Agraria, *i.e.*, DTF plus 3.66 percentage points is the appropriate benchmark for short-term financing.

Consequently, the Department preliminarily determines that the appropriate benchmark for the short-term peso loans rate is the nominal DTF plus 3.66 percentage points. The Department also preliminarily determines that the appropriate benchmark for long-term peso loans is the nominal DTF plus 3.66 percentage points, plus an additional 0.25 percentage points for each year after the first, including any grace period, reflecting the spread between BANCOLDEX short- and long-term loans. Loans provided at or above the benchmark will not be considered preferential.

**U.S. Dollar Loans**

At verification, we examined GOC documents and confirmed that BANCOLDEX issued short- and long-term dollar loans. In the case of short- and long-term dollar loans, there were no benchmark rates in effect during the POR, because these loans were introduced in 1991, *i.e.*, after the last completed reviews of the suspension agreements.

In order to establish dollar benchmark rates. we followed the same calculation methodology as in the final notice for *Roses and Other Cut Flowers and Miniature Carnations from Columbia; Final Results of Countervailing Duty Administrative Reviews of Suspended Investigations;* (published concurrently with this notice). We confirmed at verification that during the POR, BANCOLDEX loan interest rates on dollar loans charged to Colombian flower growers/exporters were based upon the London Interbank Offered Rate (LIBOR) plus a variable spread. The Department determines that LIBOR will be the basis of the benchmark for dollar loans, because LIBOR is used as the basis for dollar loan interest rates in Colombia. Therefore, the Department preliminarily determines that for the short-term dollar loans the Department's benchmark for dollar-based loans in Colombia will be the six-month LIBOR rate in effect at the time of the loan plus 1.52 percentage points. Based on the same methodology used for short-term dollar loan benchmark, we preliminarily determine that for long-term dollar loans the Department's benchmark for dollar-based loans in Colombia will be the six-month LIBOR rate in effect at the time of the loan plus 2.82 percentage points.

It should be noted that the rate specified here was calculated based on effective, not nominal, interest rates; the effective rate is the equivalent to the nominal rate calculated on the basis of interest being payable at the end of the quarter. BANCOLDEX should set the nominal interest rate for dollar-based loans at a level that is high enough to ensure that the effective interest rate of these loans are at or above the Department's new benchmark.

*(3) Plan Vallejo*

Plan Vallejo was established in 1967 under decree 444. Its purpose is to exempt exporters from certain indirect taxes and customs duties assessed on imported capital equipment used to produce finished products for export. The Instituto Colombiano de Comercio Exterior (INCOMEX) administers the Plan Vallejo program.

Under the terms of the suspension agreements, Colombian flower growers/exporters will not apply for or receive any benefits from duty and tax exemptions for capital equipment under Plan Vallejo for exports of the subject merchandise to the United States and Puerto Rico. At verification, we examined the GOC's documentation and confirmed that this program was not used by the exporters of the subject merchandise for exports to the United States and Puerto Rico during the POR. Also, GOC officials stated that, during the POR, no flower producer applied for Plan Vallejo benefits. In addition, we verified that the six companies did not use the program for capital equipment during the POR. Therefore, we preliminarily determine that this program did not confer any countervailable benefits upon exports of the subject merchandise of the United States and Puerto Rico during the POR. In addition, we preliminarily determine that Plan Vallejo has been abolished for the subject merchandise in Resolution 1212 since flower growers are ineligible to receive benefits for exports to the United States and Puerto Rico.

*(4) Free Industrial Zones*

In December 1985, Law 109 established Free Industrial Zones (FIZs) for industrial and service sector purposes. Certain regions in Colombia are designated as FIZs.

At verification, we examined documentation at the Ministry of Foreign Trade and determined that there were not any flower producers located in FIZs. Therefore, we preliminarily determine that this program did not confer any countervailing benefits upon exports of the subject merchandise to the United States and Puerto Rico during POR. We also preliminarily determine that during the POR the GOC had eliminated the subsidy on this merchandise by abolishing this program for the merchandise.

*(5) Export Credit Insurance*

Decree 444, issued in 1967, established the Export Credit Insurance program. Under the Export Credit Insurance program a company may receive insurance to cover certain commercial expenses (transportation, custom duties, insurance expenses, etc.) that it would have difficulty covering as a result of the insolvency of its foreign

client. Several commodities are ineligible for the program: coffee in certain forms, crude leather, oil and by-products, precious and semiprecious stones, gold, perishable goods, and others. The subject merchandise is classified under the ''perishable goods'' category which renders all exports of the subject merchandise ineligible for the program.

Under the terms of the suspension agreements, Colombian flower growers/exporters shall notify the Department in writing prior to applying for any benefit from the Export Credit Insurance program for exports of the subject merchandise to the United States and Puerto Rico. Because we did not receive any such notification and confirmed that subject merchandise is ineligible for this program, we preliminarily determine that this program did not confer any countervailable benefits upon exports of the subject merchandise to the United States and Puerto Rico during the POR. We also preliminarily determine that the GOC has eliminated the subsidy by abolishing this program for the subject merchandise.

*(6) Countertrade*

Law 48 of 1983 established a special system for three types of exchange arrangements: (1) countertrade; (2) compensation offsets; and (3) three-way trade. GOC officials have stated that in 1986, Decree 1459 terminated the exchange system and there has been no follow-up legislation which would re-establish the exchange system. We confirmed that this program had been terminated on that date. Therefore, we preliminarily determine that this program did not confer any countervailing benefits upon exports of the subject merchandise to the United States and Puerto Rico during the POR. We also preliminarily determine that the GOC has eliminated the subsidy by abolishing this program for the subject merchandise.

**Other Programs**

Although not specifically listed in the suspension agreements, we examined the following programs:

*(7) Research and Development*

Columbian flower exporters, on a voluntary basis, allowed the Central Bank to withhold a certain percentage of the CERT rebates earned on exports of the subject merchandise to the United States and Puerto Rico and other countries for research and development from January 1983 (the effective date of the original suspension agreement) through November 1985, when the rebate rate for roses and other cut flowers subject to the suspension agreement was reduced to zero. In 1985, the GOC issued Resolution 10, which established a fund from the CERT payments that were withheld for the cultivation of and general and technological research on all flowers. The resolution requires that any funds expended under this resolution be disbursed in a manner consistent with the suspension agreements. The resolution 10 account was officially closed in October 1991 and no contributions were made to the account during the POR. Therefore, we preliminarily determine that this program did not confer any countervailable benefits upon exports of the subject merchandise to the United States and Puerto Rico during the POR. We also preliminarily determine that the GOC has eliminated the subsidy on the merchandise by abolishing this program for the subject merchandise.

*(8) Instituto de Fomento Industrial (IFI) Loans*

The Instituto de Fomento Industrial, or Institute for the Promotion of the Industrial Sector, is a branch of the Colombian Ministry of Economic Development. It provides financing to all sectors of the Colombian economy and to large and small companies. Companies with assets above 1.25 billion pesos may borrow directly from IFI, while smaller companies may borrow funds from IFI which are rediscounted through financial intermediaries.

Two IFI credit lines are available to only exporters. These include a credit line for new exporters and relocation of export enterprises, and the ANDEAN Trade Preference Act (ATPA) line of credit. The other IFI credit lines are available to all enterprises. These include a commercial sector line of credit, a line of credit for free zones, a line of credit for working capital, a line of credit for capital equipment, a capitalization line of credit, ordinary resource loans, a line of credit for motel and tourist projects, and a line of credit for market studies. Loans are available in both pesos and dollars.

Loan terms and rates vary by credit line and length of the loan. Fixed asset dollar loans are available for five-year terms at LIBOR plus five percentage points. Peso working capital loans are available for terms of up to three years at TCC (DTF) plus five percentage points. Long-term peso loans are available for terms up to seven years at TCC plus six percentage points plus a 0.25 percentage point for each additional year after the fifth. ATPA loans are available in pesos for up to four years at TCC plus five percentage points for working capital loans and for terms of up to twelve years for fixed asset peso loans at TCC plus five percentage points plus a 0.25 percentage point for each year after the fifth. In addition, ATPA fixed asset loans are available in dollars at LIBOR plus five percentage points plus 0.25 for each year after the fifth.

We verified that the non-export lines of credit provided by IFI were granted to a broad range of Colombian industry sectors including: agriculture, mining, textiles, metallic products, financial establishments, and chemicals, rubber and plastics. Therefore, we preliminarily determine that IFI's non-export lines of credit are not provided to a specific enterprise or industry or group thereof and that they are not countervailable.

Furthermore, we verified that no Colombian flower growers/exporters received loans under the two export credit lines during the POR. We preliminarily determine that the GOC and the Colombian flower growers/exporters of the subject merchandise were in compliance with the suspension agreements because IFI's export credit lines were not used by Colombian flower growers/exporters of the subject merchandise during the POR. However, flower growers/exporters of the subject merchandise are eligible to apply for and receive IFI's export credit lines. Any such loans must be on non-preferential terms, and at or above the Department's most recent benchmarks (*See* Section II.c of the suspension agreements). We preliminarily determine that the short- and long-term benchmarks for IFI loans are the same as those for BANCOLDEX peso and dollar financing apply (*See* Section 2 above).

*(9) Financiera de Desarrollo Territorial (FINDETER)*

FINDETER, a government financial entity, finances state and municipal governments and governmental entities to promote urban and regional development projects relating to infrastructure and development in the public sector. The Department verified that all projects are aimed to improve the public sector, and that Colombian flower growers/exporters are not eligible to receive FINDETER loans. Therefore, we preliminarily determine that FINDETER financing is not countervailable for exports of the subject merchandise to the United States and Puerto Rico during the POR.

*(10) Fondo Financiero de Proyectos de Desarrollo (FONADE)*

FONADE is an industrial and commercial state entity owned by the National Department of Planning. FONADE finances feasibility studies on pre-investment projects that are not conditioned on exporting. The main client is the National Institute for Road Development. We verified that no Colombian flower growers/exporters of the subject merchandise applied for or received financing from FONADE during the POR. Therefore, we preliminarily determine that FONADE's financing was not used by Colombian flower growers/exporters of the subject merchandise during the POR.

**Program Specific to the Roses and Other Cut Flowers' Suspension Agreement**

*(11) Air Freight Rates (apply only to the roses suspension agreement)*

The Departmento Administrativo de la Aeronautica Civil (DAAC) is the government agency that develops, maintains and regulates air transport and air space activities. Section D(3) of the suspension agreement states that the Department may consider rescinding the agreement if the air freight rates paid by cut flower exporters approach the government-mandated maximum rates set by the DAAC because such rates might be indicative of government control rather than the result of competitive forces.

At verification, we examined the companies' air freight bills and found that the rates negotiated between the flower producers and air freight carriers were between the minimum and maximum rates permitted and did not approach the maximum. Therefore, we preliminarily determine that this program did not confer any countervailable benefits upon exports of the subject merchandise to the United States and Puerto Rico during the POR.

**Preliminary Results of Review**

We preliminarily determine that the GOC and signatory companies have complied with all the terms of the suspension agreements during the period January 1, 1993 through December 31, 1993. In addition, we preliminarily determine that the peso and dollar benchmarks established in the 1991 and 1992 administrative reviews of these suspended investigations will continue to apply to loans after the date of publication of the final results of these administrative reviews, and until revised by the Department (*See Roses and Other Cut Flowers and Miniature Carnations from Colombia; Final Results of Countervailing Duty Administrative Reviews of Suspended Investigations;* (published concurrently with this notice).

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues in those comments, must be filed not later than 37 days after the date of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first workday thereafter. The Department will publish the final results of its analysis of issues raised in any such written comments or at a hearing. This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: August 8, 1995.

**Susan G. Esserman,**

*Assistant Secretary for Import Administration.*

[FR Doc. 95–20300 Filed 8–15–95; 8:45 am]

BILLING CODE 3510–DS–M

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**[C–301–003; C–301–601]**

## Roses and Other Cut Flowers From Colombia; Miniature Carnations From Colombia; Final Results of Countervailing Duty Administrative Reviews of Suspended Investigations

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Final Results of Countervailing Duty Administrative Reviews of Suspended Investigations.

**SUMMARY:** On October 18, 1994, the Department of Commerce (''the Department'') published the preliminary results of its administrative reviews of the agreements suspending the countervailing duty investigations on roses and other cut flowers (roses) from Colombia and on miniature carnations (minis) from Colombia. We gave interested parties an opportunity to comment on the preliminary results. After reviewing all the comments received, we determine that the Government of Colombia (GOC) and producers/exporters of roses and minis have complied with the terms of the suspension agreements during the periods January 1, 1991, through December 31, 1991, and January 1, 1992, through December 31, 1992.

**EFFECTIVE DATE:** August 16, 1995.

**FOR FURTHER INFORMATION CONTACT:** Jean Kemp and Stephen Jacques, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., N.W., Washington, D.C. 20230; telephone: (202) 482–3793.

**SUPPLEMENTARY INFORMATION:**

**Applicable Statute and Regulations**

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. However, references to the Department's *Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments* (54 FR 23366; May 31, 1989) (*Proposed Regulations*), are provided solely for further explanation of the Department's countervailing duty practice. Although the Department has withdrawn the particular rulemaking proceeding pursuant to which the *Proposed Regulations* were issued, the subject matter of these regulations is being considered in connection with an ongoing rulemaking proceeding which, among other things, is intended to conform the Department's regulations of the Uruguay Round Agreements Act (*See* 60 FR 80 (January 3, 1995)).

**Background**

On October 18, 1994, the Department published in the **Federal Register** (59 FR 52,514) the preliminary results of its administrative reviews of the agreements suspending the countervailing duty investigations on roses and minis from Colombia (*See Roses and Other Cut Flowers From Colombia; Suspension of Investigation,* 48 FR 2,158 (January 18, 1983); *Roses and Other Cut Flowers From Colombia; Final Results of Countervailing Duty Administrative Review and Revised Suspension Agreement,* 51 FR 44,930 (December 15, 1986); and *Miniature Carnations from Colombia; Suspension of Countervailing Duty Investigation,* 52 FR 1,353 (January 13, 1987)). We have now completed these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act), and 19 CFR 355.22.

**Scope of Review**

The products covered by these administrative reviews constitute two ''classes or kinds'' of merchandise: roses and minis from Colombia. During the PORs, such merchandise covered by these suspension agreements was classifiable under *Harmonized Tariff Schedule* (HTS) item numbers 0603.10.60, 0603.10.70, 0603.10.80, and

0603.90.00 for roses, and 0603.10.30 for minis. The HTS item numbers are provided for convenience and Customs purposes. The written descriptions remain dispositive.

These reviews of the suspended investigations involve over 450 Colombian flower growers/exporters of roses, over 100 Colombian flower growers/exporters of minis, as well as the GOC. We verified the response from four producers/exporters of the subject merchandise: Floramerica, Inc. (roses and minis); Jardines de los Andes S.A. (roses and minis); Agrosuba, Ltda. (roses and minis) and Horticultura de la Sabana (minis) (collectively, the four companies). The suspension agreement for minis covers seven programs: (1) Tax Reimbursement Certificate Program; (2) PROEXPO/BANCOLDEX (funds for the promotion of exports); (3) Plan Vallejo; (4) Free Industrial Zones; (5) Export Credit Insurance; (6) Countertrade; and (7) Research and Development. The suspension agreement for roses covers the seven programs listed above, as well as (8) Air Freight Rates.

**Analysis of Comments Received**

We gave interested parties an opportunity to comment on the preliminary results. Also, at the request of the GOC, we held a public hearing on January 9, 1995. We received comments from the respondents, the GOC and Association de Flores (Asocolflores), and the petitioners, the Floral Trade Council (FTC).

*Comment 1:* The FTC asserts that both suspension agreements allow the Department to terminate the suspension agreements if producers/exporters account for less than 85 percent of the total exports of the subject merchandise to the United States and Puerto Rico. Further, the FTC claims that there is effectively no suspension agreement for the minis since the GOC does not have an up-to-date list of signatories during the periods of review (PORs) (*See Roses and Other Cut Flowers From Colombia; Final Results of Countervailing Duty Administrative Review and Revised Suspension Agreement,* 51 FR 44,930, and 44,933 (December 15, 1986); and *Miniature Carnation from Colombia; Suspension of Countervailing Duty Investigation,* 52 FR 1,353 and 1,356 (January 13, 1987)).

*Department's Position:* The suspension agreement on minis states that should exports to the United States by the producers and exporters account for less than 85 percent of the subject merchandise imported directly or indirectly into the United States from Colombia, the Department *may* attempt to negotiate an agreement with additional producers or exporters or *may* terminate this Agreement and reopen the investigation under 19 CFR 355.18(b)(3)(c) of the Commerce Regulations.

We have found that the GOC has not maintained an up-to-date list of signatories for both suspension agreements. However, the GOC reported, and the Department verified, information for *all* producers/exporters during the PORs, regardless of whether they had signed the suspension agreements. At verification, we reviewed the Colombian Custom Authority's list of all flower companies exporting minis to the United States and Puerto Rico for 1991 and 1992 (*See* verification exhibits D–VIII and D–IX). In addition, the Department reviewed and verified at each GOC agency information for all producers of the subject merchandise, regardless of their signatory status. At the Banco de la Republica (the Central Bank), we checked computer records of U.S. and Puerto Rican country identification codes showing that no CERT payments were made to any flower growers/exporters for shipments of the subject merchandise. At PROEXPO/BANCOLDEX, we reviewed and verified all loans issued and outstanding in 1991 (*See* also Government Verification Report) and we have determined that the Colombian flower growers/exporters have complied with the terms of the suspension agreements during the PORs. Similarly, we verified that no countervailable benefits were granted to or received by any flower growers/exporters for Plan Vallejo, Air Freight Rates, Free Industrial Zones, and Export Credit Insurance Program. Based on this evidence, the Department verified more than 85 percent of the Colombian flower growers/exporters during the PORs. Consequently, the Department will neither renegotiate the minis suspension agreement with the GOC and the growers/exporters of the subject merchandise, nor terminate the suspension agreements, nor reopen the investigation. However, the Department may require respondents to update the list of signatories of the suspension agreements for future administrative reviews.

*Comment 2:* The FTC contends that the GOC is unable to monitor the ultimate shipment destination of exports for which CERT rebates were granted and therefore unable to monitor compliance with the suspension agreements with regard to the CERT program (*See Miniature Carnations from Colombia; Final Results of Countervailing Duty Administrative Review and Determination not to Terminate Suspended Investigation,* 59 FR 10,790, and 10,793 (March 8, 1994); FTC Public Factual Submission at Exhibits 9 and 10 (August 1, 1992); FTC Public Request for Verification (July 23, 1993)).

*Department's Position:* We disagree with petitioners. At verification, the Department reviewed documentation provided by the four companies and by the Central Bank, including applications and records of official government approval and disapproval for CERT payments. The Department also examined export documents (DEX) and other shipping documents to determine destinations of shipments receiving CERT payments, and verified that no shipments of the subject merchandise received CERT payments. We also verified documentation at the four companies confirming that the GOC did not grant CERT payments on subject merchandise (*See* verification reports for each company). Thus, we have determined that the GOC has adequately monitored the suspension agreements and has provided the Department of relevant reports in accordance with the terms of the suspension agreements (*See* also *Miniature Carnations from Colombia; Final Results of Countervailing Duty Administrative Review and Determination not to Terminate Suspended Investigation,* 59 FR 10,790 (Comment 7) (March 8, 1994)).

*Comment 3:* The FTC asserts that export documents offer no objective support for the conclusion that CERT payments were made only for third-country exports. The FTC contends that the GOC granted CERT payments on certain shipments which may either have been transhipped to the United States without traveling the entire distance to Canada and Europe or have been reshipped to the United States from the Netherlands Antilles and Panama (*See Associacion Colombiana de Exportadores v. United States,* 704 F. Supp. 1114 (CIT 1989), *aff'd* 901 F.2d 1089, *cert. denied* 498 U.S. 848 (1990)). Moreover, the FTC cites the BANCOLDEX annual report for 1992 and asserts that the GOC admitted that Panama and the Netherlands Antilles ''have been traditionally identified as destinations for fictitious and over-invoiced exports'' in order to receive CERT rebates, and that ''it was precisely for this reason that the CERT program was abolished for these countries in early 1992.'' The FTC asserts that the sheer volume shipped to Panama and the Netherlands Antilles indicates that it was a substantial conduit for transhipment (*See Fresh Cut Roses from Colombia and Ecuador, Inv. Nos. 731–*

*TA–684–85,* USITC Pub. 2766, at C–7 (March 1994)). Consequently, the FTC alleges that this is a *prima facie* breach of the suspension agreements, which are no longer in the public interest, and that the Department is required pursuant to 19 U.S.C. 1671c(i) to resume the investigation and/or issue countervailing duty orders.

The GOC argues that the value of total exports of all Colombian products to Panama (or even the Netherlands Antilles) does not indicate that a single flower was transshipped through the Netherlands Antilles. Contrary to FTC's assertions, the GOC explains that bananas and flowers are not the largest of Colombia's non-traditional exports; however, they are the largest agricultural exports.

*Department's Position:* The suspension agreements obligate Colombian growers/exporters to renounce CERT payments on exports of the subject merchandise to the United States and Puerto Rico. Additionally, in January 1987, the GOC set the level of CERT payments at zero percent for exports of the subject merchandise. At verification, the Department fully verified the non-receipt of CERT payments on exports of the subject merchandise by reviewing the Central Bank's CERT printouts by destination. At the four companies, we examined several third-country sales, including sales to Panama and the Netherlands Antilles, by reviewing the export documents (DEXs), the receipt of payments, and airway bills. In addition, we examined the ultimate destination of specific sales of the subject merchandise. Based on the findings of verification, we found no evidence to support an allegation of transshipment or reshipment of the subject merchandise. As a result, we have determined that with respect to this issue the GOC and the flower growers/exporters were in compliance with the suspension agreements during the PORs.

*Comment 4:* The FTC argues that since CERT rebates are not necessarily tied to third-country exports, the Department should reconsider its position that ''rebates tied to exports to third countries do not benefit the production of export of the subject merchandise.''

*Department's Position:* It is the Department's policy that rebates tied to exports to third countries do not benefit the production or export of the subject merchandise destined for the United States. We found no evidence in the questionnaire responses or at verification that would cause us to reconsider our position (*See Miniature Carnations from Colombia; Final Results of Countervailing Duty Administrative Review and Determination not to Terminate Suspended Investigation,* 59 FR 10,790 (Comment 7) (March 8, 1994)). The Department verified that Colombian exporters only received CERT payments based on exports to countries other than the United States during the PORs. The Department has determined that CERT payments benefit only those shipments to which they are tied, and not to shipments of subject merchandise to the United States.

*Comment 5:* The FTC asserts that the GOC did not comply with the suspension agreements with regard to Colombian peso (peso) loans for the following reasons:

First, the FTC claims that were the Department to compare the interest rates on 1991 and 1992 PROEXPO/BANCOLDEX (BANCOLDEX) loans to the weighted-average commercial lending published by the International Monetary Fund (IMF) or the FFA/FINAGRO (FINAGRO) rates during the PORs, the Department would find that Colombian flower growers/exporters received loans at preferential interest rates.

Second, the FTC asserts that the Department should not equate compliance with pre-established benchmark interest rates with compliance with the terms of the suspension agreement covering minis, because under the minis suspension agreement the Colombian flower growers/exporters have two distinct obligations: (1) not not apply for or receive financing at preferential terms; and (2) not to apply for or receive financing other than that offered at or above the most recent benchmark interest rates determined by the Department.

Finally, the FTC argues that if the Department's 1989 benchmark for minis were to be applied to 1991 and 1992 loans received for roses, the Department would likely find Colombian producers/exporters receiving BANCOLDEX loans at preferential rates during the PORs. The 1989 minis benchmarks set by the Department were tied to the ''Depositors a Termino Fijo'' (DTF) interest rate, which is based on Colombian financial institution's 90-day deposit rates, and was set at DTF plus one percentage point. The FTC asserts that the annual average DTF rate compared to a sample of individual loan rates for roses exporters shows these exporters received preferential loans. Consequently, the FTC asserts that the suspension agreements should either be revised or found unworkable.

The GOC argues that all Colombian flower producers/exporters of minis and roses have fully complied with the terms of their respective suspension agreements. Furthermore, the GOC asserts that the FTC incorrectly applies the minis benchmark interest rates to loans for exports of roses. The GOC explains that the current benchmarks for roses and minis differ, not because there is a defect in the suspension agreements or because of the Department's approach, but instead because the FTC had requested a review of only the minis suspension agreement in 1989. Regardless, the GOC claims that loans issued to roses growers/exporters met the benchmarks established under the minis suspension agreement.

*Department's Position:* The Department disagrees with the FTC. The Department has determined in previous reviews that any changes to benchmark interest rates for the suspension agreements should be set prospectively, since suspension agreements are forward looking (*Miniature Carnations From Colombia; Final Results of Countervailing Duty Administrative Review and Determination Not To Terminate Suspended Investigation,* 59 FR 10,790, and 10,795 (March 8, 1994)). Because the Department's benchmarks are prospective and are based on an appropriate alternative source of financing, loans at or above the benchmark did not confer any countervailable benefits. Furthermore, the Department verified that the Colombian flower growers/exporters of the subject merchandise have fulfilled the two distinct obligations in the suspension agreements: (1) not to apply for or receive financing at preferential terms; and (2) not to apply for or receive financing other than that offered at or above the most recent benchmark interest rates determined by the Department.

At verification, the Department reviewed all loans issued by BANCOLDEX during the PORs, in particular the four companies we visited at verification, and found that the loans granted were on terms consistent with the suspension agreements. Additionally, because BANCOLDEX loans were pegged to the floating DTF rate, and the DTF rate fluctuated widely over the review periods, we did not compare the rate on an individual loan with the annual average DTF rate. Therefore, Colombian flower growers/exporters did not apply for or receive financing at preferential terms, and the Department determines that the GOC did not confer any countervailable benefits during the PORs, and that signatories complied with the terms of

the suspension agreements for the BANCOLDEX programs during the PORs.

Finally, the Department agrees with the respondents that because the suspension agreements are two separate agreements, it is erroneous to apply the 1989 minis benchmark interest rates to the roses suspension agreement.

*Comment 6:* The FTC asserts that the Department should reconsider its use of the subsidized FINAGRO interest rate, when establishing new short- and long-term benchmarks. The FTC argues instead that the Department use weighted-average interest rates of available non-government-related financing at commercial lending rates maintained by the Central Bank during the PORs. In addition, the FTC asserts that the Department is not required to look to interest rates available to the agricultural sector, when the rates are not available to flower growers/exporters (*See Rice From Thailand; Preliminary Results of Countervailing Duty Administrative Review*, 57 FR 8,437 and 8,439 (March 10, 1992)).

The FTC asserts that if the Department decides to base its peso loan benchmarks on FINAGRO interest rates, then it should use the maximum interest rates for large producers, *i.e.*, DTF plus 6 percentage points. In addition, the FTC argues that the Department should adjust the interest rates to reflect the spread between short- and long-term BANCOLDEX loans. The FTC argues that the Department should not establish a two-tier benchmark system, or a range of interest rate benchmarks, because there would be no criteria by which the Department could determine what is preferential

The GOC assets that the FTC offers no basis upon which the Department could support a change from a FINAGRO based benchmark to weighted-average interest rates on available non-government-related financing at commercial lending rates. The GOC argues that FINAGRO lending rates are appropriate because the rates are not enterprise or industry specific, which otherwise would make them a counteravailable subsidy (*See Final Affirmative Countervailing Duty Determination: Miniature Carnations from Columbia*, 52 FR 32,033, and 32,037 (August 25, 1987); and *Roses and Other Cut Flowers From Colombia; Final Results of Countervailing Duty Administrative Review and Revised Suspension Agreement*, 51 FR 44,930, and 44,932 (December 15, 1986)).

The GOC asserts that the Department's benchmarks for peso loans (DTF plus 6 percentage points, plus 0.25 percentage point for each year after the first year) are not the actual FINAGRO rates. Instead, the appropriate benchmark interest rates set by the Departments should be in accordance with FINAGRO's specified interest rates of January 24, 1992, *i.e.*, DTF plus 2 percentage points for small producers and DTF plus up to 6 for large producers, with no provisions for an additional one quarter percentage point for long-term loans. The GOC asserts that the actual interest rate paid by the borrower is determined by arm's-length negotiations between the borrower and the financial intermediary and that the FINAGRO's specified interest rates serve as a cap for any loans issued by the intermediary bank.

*Department's Position*: While the Department verified that there is no single, predominant source of alternative financing in Colombia, we have determined that FINAGRO, a major intermediary lender to the agricultural sector, is an appropriate alternative source of financing for the Department's benchmarks. Because there is insufficient information on the record about nongovernment-related financing at commercial rates, we have determined that it is inappropriate to weight average the commercial interest rates.

The most recent FINAGRO short-term rate is equal to the Colombian fixed deposit rate, DTF, plus up to 6 percentage points. We agree with petitioners that by establishing a range of interest rate benchmarks (*i.e.*, DTF plus up to 6 percentage points), as suggested by respondents, there is in effect no benchmark because this would be equivalent to setting the benchmark (minimum rate) at DTF—a rate that does not reflect commercial rates or an alternative rate of financing. Therefore, the Department determines that the most recent verified average interest rate on all loans (administrative review 1993) financed by FINAGRO through Caja Agraria, *i.e.*, nominal DTF plus 3.66 percentage points, is the appropriate benchmark for short-term financing. These interest rates were verified in the concurrent 1993 administrative review (*See Government Verification Report 1993–Administrative Review of Countervailing Duty Suspension Agreements on Roses and Other Cut Flowers and Miniature Carnations from Colombia* (July 21, 1995)). Since BANCOLDEX also administered long-term loans, we determine that the same nominal DTF plus 3.66 percentage points, plus an additional 0.25 percentage point for each year after the first is the appropriate benchmark. Furthermore, loans provided at or above the benchmark will not be considered preferential (*See* Comments 5 and 9).

The Department determines not to adopt the two-tier interest rate system (borrowers can receive different interest rates depending on the size of the company) because BANCOLDEX loans are not issued on the basis on the size of flower growers.

The Department determines that the short- and long-term benchmarks for peso denominated financing will be effective 14 days after the date of publication of the final results of these administrative reviews.

*Comment 7:* The FTC requests that the Department weight-average Caja Agraria interest rates with FINAGRO rates as done in previous reviews. In the case that there is conflicting data, the FTC suggests rejecting such data and using best information available.

In response, the GOC claims that the reported Caja Agraria interest rates are lower than reported FINAGRO rates (Submission of June 3, 1994) and further argues that the submitted information does not conflict with rates provided in the questionnaire response, which were reported as applicable rates for different denomination loans.

*Department's Position:* The Department disagrees with petitioners. FINAGRO is the major alternative source of agricultural financing in Colombia that provides rediscount rates to intermediary banks in Colombia. We have determined that because information submitted by respondents about Caja Agraria rates conflicts with what we found at verification and because Caja Agraria's interest rates are similar to the rates offered by FINAGRO, FINAGRO interest rates represent the best alternative source of financing for agricultural entities in Colombia.

*Comment 8:* The FTC asserts that the Department should use effective rather than nominal interest rates. The FTC contends that effective rates are a more accurate measure of a subsidy and reflect a considerably higher rate. The FTC asserts that nominal rates vary widely, since commissions and other surcharges can add to the cost of a loan. In addition, the FTC asserts, the GOC has not established that the financial intermediary does not assess surcharges for its services or use of its own funds in financing loans.

In response, the GOC argues that the nominal and effective interest rates are equivalent, because the nominal rate is the rate expressed as if interest were due at the beginning of each quarter, while the effective rate is the equivalent rate calculated on the basis of interest being payable at the end of the quarter. Furthermore, the GOC argues that there

are no surcharges by financial intermediaries on BANCOLDEX loans for the portion of the loan provided by the financial intermediary.

*Department's Position:* We agree with respondents. The Department determines that the nominal and effective interest rates are equivalent, as stated by respondents. In addition, the Department verified that there are no surcharges by financial intermediaries on BANCOLDEX loans for the portion of the loan provided by the financial intermediary. Therefore, we will continue using nominal interest rates.

*Comment 9:* The FTC contends that the Department must determine whether Colombian flower growers/exporters have received U.S. dollar (dollar) loans at preferential interest rates. To the extent that the suspension agreements restrict the Department's ability to administer the law, the FTC asserts that the agreements must be terminated or amended for the PORs.

The FTC asserts that the Department should determine the countervailability of dollar loans administered by BANCOLDEX during the PORs because none of the international lending and development institution funding (*i.e.*, the Corporation Andina de Fomento (CAF), Banco Latinoamericano de Exportaciones (BLADEX) and Fondo Latinoamericano de Reservas (FLAR)) satisfy the three criteria established by the *North Star Steel Ohio v. United States*, 824 F. Supp. 1074 (CIT 1993); First, the GOC partially funded FLAR and CAF and FLAR is located in Colombia, that is a ''country under the agreement.'' Second, the FTC asserts that ''the terms and benefits'' of FLAR, CAF and BLADEX are ''within the purview of the GOC'' since BANCOLDEX controls the administration of these programs and the distribution of funds. Third, the FTC contends that the U.S. Government did not fund either CAF or BLADEX.

The GOC asserts that since the source of funds for the dollar loans was not the GOC but international lending and development institutions, there is no legal basis for the Department to declare them countervailable, regardless of the interest rate (*See* Proposed CVD Regulations, 54 FR 23,366, 23,374, and 23,382 (May 31, 1989) Section 355.44(o).

*Department's Position:* We disagree with respondents. Respondents suggest that the BANCOLDEX loans funded by the dollars secured from CAF, FLAR, and BLADEX are non-countervailable because these are international development or lending institutions. It is long-standing Department policy that loans from international institutions, such as the World Bank or the Inter-American Development Bank (IADB), are not countervailable subsidies (*See Final Affirmative Countervailing Duty Determination: Fuel Ethanol from Brazil*, 51 FR 3361, 3375 (January 27, 1986); *Final Results of Countervailing Duty Administrative Review; Oil Country Tubular Goods from Argentina (OCTG)*, 56 FR 64493 (December 10, 1991); and *North Star Steel of Ohio v. United States*, 824 F. Supp. 1074, and 1079 (CIT 1993)). Nevertheless, as demonstrated below, whether the CAF, FLAR, and BLADEX are international development or lending institutions is irrelevant for this review.

When determining the countervailability of funding supplied by international institutions, the Department's analysis considers not only the source of the funding for a particular program, but how those funds are administered. The Department analyzes whether the international institution or the government in the recipient country controls the administration, the terms, conditions, and interest rate of the loan program. *OCTG*, 56 FR at 64496. In this context, the Department is careful to ''distinguish the countervailable benefit accruing from the government's action from the benefits to the borrower extended by the international lending institution.'' *North Star Steel*, 824 F. Supp. at 1079.

According to Article 21 of the 7th Law (January 11, 1991), the Colombian Congress in its General Rules for Foreign Trade called for the creation of the Banco de Comercio Exterior de Colombia S.A. (BANCOLDEX) as a financial institution linked to the Ministry of Foreign Trade. This law enabled the GOC to replace PROEXPO with BANCOLDEX and to regulate BANCOLDEX's legal and operational aspects. In November 1991, the GOC passed decree 2505 officially establishing BANCOLDEX and defining its legal nature, function, rights, and obligations. The business purpose of BANCOLDEX consists mainly, but not exclusively, of the promotion of activities related to exports. To this end, BANCOLDEX acts as a discount or rediscount bank, rather than as a direct intermediary. Despite the change in name from PROEXPO to BANCOLDEX, the same GOC resolutions which governed export loans granted by PROEXPO govern those granted by BANCOLDEX.

In the *North Star Steel* case cited above, the Court affirmed the Department's determination that IADB loans were not countervailable because the financing was from an international lending institution and the Government of Argentina had no control over the administration of the loans. In similar cases, the Department has found a subsidy where a portion of the loans was provided by the government of the recipient country involved (*Ethanol*, 51 FR at 3375). In all cases, it is the Department's policy, where the funding is international in nature, to examine the administration of the funding, *i.e.*, the origin and nature of the loan terms, to determine what party or parties control the funds. In the *OCTG* case cited above, the international lending institution set the interest rates on its loans while the Argentina government provided only guarantees and had no control over the interest rate set by the lending institution (*See OCTG*, 56 FR 64496).

The BANCOLDEX loan programs are an updated version of the PROEXPO loan programs with the addition of the dollar loan program. The GOC resolutions governing the BANCOLDEX programs are identical to the PROEXPO resolutions. Most importantly, BANCOLDEX loans, including the terms and benefits applicable to those loans, are within the GOC's control. The interest rates, terms, and conditions of the BANCOLDEX dollar loans are set or controlled by the GOC through the governing resolutions, *i.e.*, Resolutions 13/91 and 4/92. Therefore, despite the source of the funding for the dollar loans, the Department determines that the dollar loans administered by BANCOLDEX are potentially countervailable and the Department has calculated dollar benchmarks accordingly (*See* Comment 10 below).

*Comment 10:* the FTC asserts that, by using the annual weighted-average effective U.S. prime lending rates reported in the *Federal Reserve* rather than one quarter of 1994 as done in the preliminary determination, the Department would find that the dollar denominated BANCOLDEX loans issued during the PORs were preferential (the weighted-average U.S. lending rate for 1992 was 8.72 percent, compared to the dollar denominated loans issued to the five leading exporters of roses and minis in 1992; *See* Public questionnaire response). Consequently, the FTC requests that the Department either terminate the suspension agreements or remove their reference to benchmarks and determine compliance with the suspension agreements based on current rates for 1991 and 1992.

However, the FTC argues that should the Department decide to establish prospective benchmarks, the Department should include dollar benchmarks for BANCOLDEX loans for

the following reasons: the Department cannot know whether dollar loans will continue to be funded by international financial institutions or whether BANCOLDEX will convert non-funded, peso-based loans to dollar-based loans. Furthermore, the FTC argues that it is unclear whether international lending institutions will continue to supply the funding to BANCOLDEX for these loans.

When setting dollar benchmarks, the FTC argues that instead of the GOC's proposed benchmark based on the average rate for fixed and floating loans under $1 million, the Department should compare interest rates on BANCOLDEX loans to the U.S. Prime rate for comparable commercial financing as published by the *Fedeal Reserve (See Certain Steel Products from Mexico,* 58 FR 37,358 (Dep't Comm. 1993)). Or at minimum, the FTC argues that the Department should establish multiple benchmarks reflecting different size loans at fixed or floating rates.

The GOC disagrees with the proposed benchmark and contends that the Department should adopt the following: first, the Department should use the average lending rate for loans under $1 million, because some BANCOLDEX loans at issue are not limited to amounts under $100,000. Second, because some of the BANCOLDEX dollar loans are floating rates, the GOC claims that the Department should average the *Federal Reserve's* short-term floating and fixed rate for loans under $1 million. Third, the GOC asserts that the Department should use the most recent published terms of *Federal Reserve* lending statistics. Fourth, the GOC contends that the Department should convert its Prime-base benchmark to a London Interbank Offered Rate (LIBOR) based benchmark, by taking the appropriate Prime-based benchmark rate spread, and adding the average spread between Prime and LIBOR. If not converted to LIBOR, it will create severe administrative problems for BANCOLDEX to be working simultaneously with two different base rates. Finally, because the rates published in the *Federal Reserve Bulletin* are compound interest rates, the GOC asserts that the Department should permit the GOC to freely set the nominal interest rate at whatever level is necessary to ensure that the effective interest rate equals or exceeds the proposed benchmark.

Consequently, because the actual rate on short-term BANCOLDEX loans exceeded the GOC's proposed benchmark rate, there is no basis for requiring producers/exporters to renegotiate any outstanding loans. If any dollar loans nonetheless did have to be refinanced or repaid, the GOC contends that the Department must allow time for this process to occur (*See* Comment 9).

*Department's Position:* The Department agrees with respondents that the calculation of the dollar loan benchmark in the Department's preliminary determination was incorrect because it was not necessarily representative of dollar-based interest rates in Colombia. The Department has, therefore, modified its calculation of the dollar loan benchmark in the following manner, which is consistent with the Department's prior practice (*See Final Affirmative Countervailing Duty Determination: Certain Steel Products from Mexico;* 58 FR 37358 (July 9, 1993)) (*See* Calculation Memo (July 21, 1995)).

The Department determines that LIBOR will be the basis of the benchmark for dollar loans, because LIBOR is used as the basis for dollar loan interest rates in Colombia. Therefore, the Department's benchmark for dollar-based loans in Colombia will be the six-month LIBOR rate in effect at the time of the loan plus 1.52 percentage points. The Department determines that the short- and long-term benchmarks for dollar denominated financing will be effective 14 days after the date of publication of the final results of these administrative reviews (*See* Comment 11 below).

It should be noted that the rate specified here was calculated based on effective, not nominal, interest rates; the effective rate is the equivalent to the nominal rate calculated on the basis of interest being payable at the end of the quarter. BANCOLDEX will now be required to set the nominal interest rates for dollar-based loans at a level that is high enough to ensure that the effective interest rates of these loans are at or above the Department's new benchmark.

*Comment 11:* The GOC asserts that if any dollar loan needs to be refinanced or repaid, the Department should grant 90 days after the publication of the final results for the process of refinancing to occur. This is the same period initially established in the minis suspension agreement (52 FR 1355, para. II.B., 1986).

*Department's Position:* We agree with respondents. The Department, therefore, determines that the effective date for completing the repayment and/or refinancing of any outstanding dollar and peso loans to meet the new short and long-term dollar and peso benchmarks is 90 days after publication of these final results in the **Federal Register**.

*Comment 12:* The FTC claims that under the terms of the suspension agreements the Department is forced to apply outdated/subsidized benchmark interest rates to determine ''compliance'' with the suspension agreements. The FTC objects to the Department's practice in setting prospective and outdated benchmark interest rates to determine compliance with the terms of the suspension agreements and argues that the Department should either terminate the suspension agreements with respect to the BANCOLDEX program, or, at least, amend the agreements by prohibiting Colombia growers from receiving loans at non-preferential rates. The FTC asserts that the Department should refrain from establishing fixed benchmark interest rates, and instead the Department should determine a benchmark for each review period by adhering to the precedents set in the *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order, Steel Wire Rope from Thailand,* 56 FR 46299 (September 11, 1991); and *Final Results of the Administrative Review for Rice from Thailand,* 59 FR 8,906, and 8,907 (1994).

The FTC claims that the suspension agreements are not in the public interest because Colombian flower growers/exporters can ''technically'' comply with the terms of the suspension agreements while at the same time receive loans at preferential interest rates. Because the benchmarks are outdated, the FTC asserts, they are incapable of eliminating the net subsidy on flowers. Thus, the FTC contends that if Colombian flower growers continue to receive loans at preferential interest rates, the Department should either impose countervailing duties or fashion a suspension agreement that eliminates the subsidy, offsets the subsidy completely, or ceases the exports.

In addition, the FTC asserts that the Department cannot predict future interest rates, especially since interest rates fluctuated widely between 19 and 32 percent during the POR, or predict what Colombian flower growers/exporters could receive in non-peso based interest rates years after establishing benchmarks which may not be applicable to unforeseen loan programs.

The GOC contends that there are several reasons why loans are non-preferential: First the Department establishes its benchmark interest rates as a spread above a base rate—this ties the benchmark interest rate to a market indicator like the DTF, Prime rate, and/or LIBOR—and no longer as a fixed interest rate benchmark. Second, GOC

keeps BANCOLDEX interest rates in line with overall interest rate levels regardless of the Department's benchmarks. Finally, prospective benchmarks could be to the advantage, *i.e.*, too low, but just as well to the disadvantage, *i.e.*, too high, for the Colombia flower growers/exporters.

*Department's Position:* The Department disagrees with petitioners. The Department determines that suspension agreements are forward looking, and that the Department sets benchmark interest rates prospectively (*See Miniature Carnations from Colombia: Final Results of Countervailing Duty Administrative Review;* 56 FR 14240 (April 8, 1991) and *Miniature Carnations from Colombia; Final Results of Countervailing Duty Administrative Review and Determination Not To Terminate Suspended Investigation;* 59 FR 10790, (March 8, 1994.)).

At verification, the Department examined documentation that indicated that BANCOLDEX charged interest rates on its short- and long-term loans above the Department's established benchmark rates in effect during the POR. The Department also found that the companies received BANCOLDEX loans on terms consistent with the suspension agreements. Consequently, we have determined that signatories were in compliance with the terms of the suspension agreements for the BANCOLDEX programs. Since BANCOLDEX loans were above the benchmark rates, the Department determines that the GOC did not confer any countervailable benefits through the BANCOLDEX programs during the POR. The Department finds that signatories complied with the suspension agreements' benchmarks and avoided countervailable benefits during the POR, resulting in a situation analogous to non-use for the BANCOLDEX programs by Colombian flower growers/exporters of the subject merchandise. Therefore, there is no basis for petitioners claim that suspension agreements are not in the public interest.

To ensure timely updates of the benchmarks for BANCOLDEX financing, however, the Department may request information on FINAGRO, commercial dollar loans and other alternative sources of financing in Colombia outside of the annual administrative review process (*See* Section III. Monitoring of the Agreement in *Roses and Other Cut Flowers from Colombia: Final Results of Countervailing Duty Administrative Review and Revised Suspension Agreement* 51 FR 44930 and 44933 (December 15, 1986) and *Suspension of Countervailing Duty Investigation: Miniature Carnations from Colombia* 52 FR 1353 and 1355 (January 13, 1987)).

*Comment 13:* The FTC asserts that according to 19 CFR 355.19(b), the Department can revise the suspension agreements if it ''has reason to believe that the signatory government or exporters have violated an agreement or that an agreement no longer meets the requirements of section 704(d)(1) of the Act.'' The FTC claims that respondents have violated the terms of the suspension agreements during the PORs (*See* Comments 5 and 9).

The GOC argues that all Colombian flower producers/exporters of minis and roses have fully complied with the terms of their respective suspension agreements and that it supports the Department's past policy of having suspension agreements be forward looking, and that the Department sets benchmarks interest rates prospectively.

The GOC asserts that there is no need to amend or clarify the suspension agreements and it was inappropriate for the Department to have requested comments from interested parties for the following reasons: first, the suspension agreements cannot be unilaterally amended or clarified by the Department or the Colombian flower growers/exporters. Second, the Department has no power to amend or clarify the agreements without the consent of all signatories. Third, the Department should first raise the issue with the signatories and negotiate an amendment, which then can be subject to public comments (*See* 19 CFR 355.18(g)).

The GOC contends that there is no basis for considering to amend the suspension agreements Because dollar loans were provided by international financial institutions, the GOC asserts that the loans are non-countervailable and there is no need for the Department to determine whether these loans were granted on non-preferential terms.

The GOC argues that based on FTC's proposed amendments of the suspension agreements (*See* Comment 12), no Colombian flower grower/exporter would sign such an agreement where signatories would agree to a blanket commitment to that all PROEXPO/BANCOLDEX loans have to be ''non-preferential'' without any understanding as to how the Department would interpret that term. Further, the GOC argues that suspension agreements are supposed to provide certainty so that when BANCOLDEX loans are issued the GOC knows what rate must be charged to comply with the suspension agreements.

*Department's Position:* The Department has determined not to initiate an amendment to the suspension agreements, based on the information received. The Secretary has no reason to believe at this time that the exporters of the subject merchandise have violated the suspension agreements or that the agreements no longer meet the requirements of section 704(d)(1). Consequently, the Department will not currently renegotiate the suspension agreements with the GOC and the producers/exporters of the subject merchandises and will not terminate the suspension agreements and reopen the investigation.

**Final Results of Reviews**

After considering all of the comments received, we determine that the GOC and the Colombian flower growers/exporters of the subject merchandise have complied with the terms of the suspension agreements for the periods January 1, 1991, through December 31, 1991, and January 1, 1992, through December 31, 1992. In addition, we determine that the peso and U.S. dollar benchmarks established in this final notice will be effective 14 days after the date of publication of this notice. Moreover, the Department determines that the effective date for completing the repayment and/or refinancing for any outstanding peso and U.S. dollar loans to meet the new short- and long-term benchmarks in 90 days after publication of these final results in the **Federal Register**.

These administrative reviews and notice are in accordance with sections 751(a)(1)(C) of the Tariff Act (19 U.S.C. 1675(a)(1)(C)) and 19 CFR 355.22 and 355.25.

Dated: August 8, 1995.

**Susan G. Esserman,**

*Assistant Secretary for Important Administration.*

[FR Doc. 95–20299 Filed 8–15–95; 8:45 am]

BILLING CODE 3510–DS–M

## National Oceanic and Atmospheric Administration

### Monterey Bay National Marine Sanctuary Advisory Council; Open Meeting

**AGENCY:** Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

**ACTION:** Monterey Bay National Marine Sanctuary Advisory Council Open Meeting.

**SUMMARY:** The Advisory Council was established in December 1933 to advise NOAA's Sanctuaries and Reserves Division regarding the management of the Monterey Bay National Marine Sanctuary. The Advisory Council was convened under the National Marine Sanctuaries Act.

**TIME AND PLACE:** Friday, August 25, 1995, from 8:30 until 4:30. The meeting will be held at the Holiday Inn, 611 Ocean Street, Santa Cruz, California.

**AGENDA:** General issues related to the Monterey Bay National Marine Sanctuary are expected to be discussed, including an update from the Sanctuary Manager, reports from the working groups, an update on the Sanctuary license plate marketing program, and a discussion about improving public relation efforts for the Sanctuary.

**PUBLIC PARTICIPATION:** The meeting will be open to the public. Seats will be available on a first-come, first-served basis.

**FOR FURTHER INFORMATION CONTACT:** Jane Delay at (408) 647–4246 or Elizabeth Moore at (301) 713–3141.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

**David L. Evans,**

*Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.*

[FR Doc. 95–20312 Filed 8–15–95; 8:45 am]

**BILLING CODE 3510–08–M**

**[I.D. 080795B]**

## Marine Mammals

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

**ACTION:** Issuance of scientific research permit no. 966 (P586).

**SUMMARY:** Notice is hereby given that Continental Shelf Associates (Principal Investigator: Stephen Viada), 759 Parkway Street, Jupiter, FL 33477–9596 has been issued a permit to take the marine mammals and sea turtles listed below for purposes of scientific research.

**ADDRESSES:** The permit and related documents are available for review upon written request or by appointment, in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298 (508/281–9250); and

Director, Southeast Region, NMFS, 9721 Executive Center Drive, N., St. Petersburg, FL 33702–2432 (813/893–3141).

**SUPPLEMENTARY INFORMATION:** On April 5, 1995, notice was published in the **Federal Register** (60 FR 17315) that a request for a scientific research permit to take cetaceans and sea turtles had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*) and the Regulations Governing the Taking, Importing, and Exporting of Endangered Fish and Wildlife (50 CFR part 222).

The permit authorized the holder to take by close approach (within 650 ft (198 m)) of a fixed-wing aircraft at a speed of 80–140 mph (128–220 km/h) an unspecified number of Atlantic bottlenose dolphins, (*Tursiops truncatus*), common dolphins (*Delphinus delphis*), striped dolphin (*Stenella coeruleoalba*), Atlantic spotted dolphins (*Stenella frontalis*), harbor porpoise (*phocoena*), Risso's dolphins (*Grampus griseus*), Atlantic white-sided dolphins (*Lagenorhynchus acutus*), rough-toothed dolphins (*Steno bredanensis*), long-finned pilot whales (*Globicephala melaena*), short-finned pilot whales (*Globicephala macrorhynchus*), pygmy sperm whales (*Kogia breviceps*), dwarf sperm whales (*Kogia simus*), Cuvier's beaked whales (*Ziphius cavirostris*), dense beaked whales (*Mesoplodon densirostris*), Antillean beaked whales (*Mesoplodon europaeus*), true's beaked whales (*Mesoplodon mirus*), white whales (*Delphinapterus leucas*), sperm whales (*Physeter macrocephalus*), fin whales (*Balaenoptera physalus*), minke whales (*Balaenoptera acutorostrata*), blue whales (*Balaenoptera musculus*), sei whales (*Balaenoptera borealis*), humpback whales (*Megaptera novaeangliae*), Northern right whales (*Eubalaena glacialis*), killer whales (*Orcinus orca*), Bryde's whales (*Balaenoptera edeni*), and pygmy killer whales (*Feresa attenuata*), 180 leatherback sea turtles (*Dermochelys coriacea*) and 270 loggerhead sea turtles (*Caretta caretta*) to document presence, density, and distribution. Surveys will be conducted through October 1996 in Norfolk, VA, and Mayport, FL, and will encompass the continental shelf edge (300–600 ft (91–213 m) depth contours). The results of the aerial survey will provide an adequate biological assessment of the two proposed survey areas with respect to habitat utilization by marine mammals and marine turtles and aid in selecting a candidate site for shock testing the SEAWOLF submarine.

Issuance of this permit, as required by the ESA, was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the species which are the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: August 2, 1995.

**Ann D. Terbush,**

*Chief, Permits & Documentation Division, National Marine Fisheries Service.*

[FR Doc. 95–20203 Filed 8–15–95; 8:45 am]

**BILLING CODE 3510–22–F**

**[I.D. 080795C]**

## Marine Mammals

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

**ACTION:** Issuance of modification to permit no. 778 (P772#59).

**SUMMARY:** Notice is hereby given that on August 3, 1995, Permit No. 778, issued to the NMFS, Southwest Fisheries Science Center, La Jolla, CA 92038, was modified.

**ADDRESSES:** The modification and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Suite 13130 Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (310/980–4001); and

Coordinator, Pacific Area Office, Southwest Region, National Marine Fisheries Service, 2570 Dole Street, Room 106, Honolulu, HI 96822–2396 (808/973–2987).

**SUPPLEMENTARY INFORMATION:** The subject modification has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of §§ 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR

part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

The permittee is authorized to increase the number of seals authorized to be retagged under the permit from 100 to 250. This modification involves no increase in the originally authorized take of 1200 monk seals.

Dated: August 3, 1995.

**Gary M. Barone,**

*Acting Chief, Permits & Documentation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 95–20205 Filed 8–15–95; 8:45 am]

**BILLING CODE 3510–22–F**

**[I.D. 080795D]**

## Marine Mammals

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

**ACTION:** Issuance of modification to permit no. 898 (P772#65).

**SUMMARY:** Notice is hereby given that on August 3, 1995, Permit No. 898, issued to NMFS, Southwest Fisheries Science Center, La Jolla, CA 92038, was modified.

**ADDRESSES:** The modification and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Suite 13130 Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (310/980–4001); and

Coordinator, Pacific Area Office, Southwest Region, National Marine Fisheries Service, 2570 Dole Street, Room 106, Honolulu, HI 96822–2396 (808/973–2987).

**SUPPLEMENTARY INFORMATION:** The subject modification has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of§§ 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

The permittee is authorized to include up to 25 adult monk seals among those seals authorized to be tagged under the permit, as well as to instrument with portable camcorders up to 12 of the 25 monk seals previously authorized to be instrumented. This modification involves no increase in the originally authorized take of 1500 monk seals.

Dated: August 3, 1995.

**Gary M. Barone,**

*Acting Chief, Permits & Documentation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 95–20204 Filed 8–15–95; 8:45 am]

**BILLING CODE 3510–22–F**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of an Import Limit and Charges for Certain Cotton Textile Products Produced or Manufactured in the People's Republic of China

August 11, 1995.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting a limit and import charges.

**EFFECTIVE DATE:** August 18, 1995.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of the 1995 limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6703. For information on embargoes and quota re-openings, call (202) 482–3715.

**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).

The 1994 limit for Category 342 is being increased by application of swing. Also, import charges for goods exported during 1994 are being adjusted. As a result, the 1995 limit for Category 342, which is currently filled, will re-open.

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). Also see 59 FR 3847, published on January 27, 1994; and 59 FR 65760, published on December 21, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**Rita D. Hayes,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

August 11, 1995.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 24, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on August 18, 1995, you are directed to amend further the directive dated January 24, 1994 to increase the limit for Category 342 to 271,586 dozen [1], as provided under the terms of the current bilateral textile agreement between the Governments of the United States and the People's Republic of China.

You are directed to deduct 15,390 dozen, for goods exported during 1994, from the charges made to the limit established in the directive dated December 16, 1994 for textile products in Category 342, produced or manufactured in China and exported during 1995. This same amount shall be charged to Category 342 for the period January 1, 1994 through December 31, 1994.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to 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. 95–20295 Filed 8–15–95; 8:45 am]

**BILLING CODE 3510–DR–F**

[1] The limit has not been adjusted to account for any imports exported after December 31, 1993.

## Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Macau

August 10, 1995.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** August 17, 1995.

**FOR FURTHER INFORMATION CONTACT:** Helen L. LeGrande, 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) 927–6709. For information on embargoes and quota re-openings, call (202) 482–3715.

**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).

The current limits for certain categories are being adjusted, variously, for swing, carryover and carryforward used.

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). Also see 60 FR 17331, published on April 5, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

**Rita D. Hayes,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

August 10, 1995.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in Macau and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on August 17, 1995, you are directed to amend the directive dated March 30, 1995 to adjust the limits for the following categories, as provided under the terms of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| Levels in Group I | |
| 313 | 2,691,722 square meters. |
| 314 | 1,165,500 square meters. |
| 315 | 2,120,756 square meters. |
| 333/334/335/833/834/835. | 231,826 dozen of which not more than 119,802 dozen shall be in Categories 333/335/833/835. |
| 336/836 | 56,721 dozen. |
| 338 | 298,670 dozen. |
| 339 | 1,243,954 dozen. |
| 340 | 292,321 dozen. |
| 341 | 210,907 dozen. |
| 342 | 95,413 dozen. |
| 345 | 58,343 dozen. |
| 347/348/847 | 702,950 dozen. |
| 350/850 | 63,609 dozen. |
| 351/851 | 65,809 dozen. |
| 359–C/659–C [2] | 365,980 kilograms. |
| 359–V [3] | 109,360 kilograms. |
| 633/634/635 | 515,317 dozen. |
| 638/639/838 | 1,594,619 dozen. |
| 640 | 125,826 dozen. |
| 641/840 | 216,262 dozen. |
| 642/842 | 114,250 dozen. |
| 645/646 | 277,451 dozen. |
| 647/648 | 519,061 dozen. |
| 659–S [4] | 127,219 kilograms. |
| Group II | |
| 400–469, as a group | 1,627,395 square meters equivalent. |
| Sublevel in group | |
| 445/446 | 91,688 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[3] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[4] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to 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. 95–20196 Filed 8–15–95; 8:45 am]

**BILLING CODE 3510–DR–F**

## Adjustment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced of Manufactured in Malaysia

August 11, 1995.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs reducing a limit.

**EFFECTIVE DATE:** August 18, 1995.

**FOR FURTHER INFORMATION CONTACT:** Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

**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).

The current limit for the Fabric Group is being reduced for carryforward used during the previous period.

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). Also see 60 FR 17332, published on April 5, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant

to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

**Rita D. Hayes,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

August 11, 1995.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Malaysia and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on August 18, 1995, you are directed to amend the March 30, 1995 directive to reduce the limit for Categories 218, 219, 220, 225–227, 313–315, 317, 326, 611, 613/614/615/617, 619 and 620 in the Fabric Group to 96,779,476 square meters equivalent [1], as provided under the terms of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to 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.95–20296 Filed 8–15–95; 8:45 am]

**BILLING CODE 3510–DR–F**

## Adjustment of Import Restraint Limits for Certain Wool Textile Products Produced or Manufactured in Poland

August 10, 1995.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** August 17, 1995.

**FOR FURTHER INFORMATION CONTACT:** Naomi Freeman, 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.

**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).

The current limits for certain categories are being adjusted, variously, for swing, carryover and recrediting of unused carryforward.

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). Also see 59 FR 62718, published on December 6, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

**Rita D. Hayes,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

August 10, 1995.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 29, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Poland and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995.

Effective on August 17, 1995, you are directed to adjust the limits for the following categories, pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC):

| Category | Twelve-month restraint limit [1] |
|---|---|
| 410 | 2,483,954 square meters. |
| 433 | 20,241 dozen. |
| 435 | 13,925 dozen. |
| 443 | 219,416 numbers. |

[1] The limit has not been adjusted to account for any imports exported after December 31, 1994.

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. 95–20198 Filed 8–15–95; 8:45 am]

**BILLING CODE 3510–DR–F**

## Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced of Manufactured in Thailand

August 10, 1995.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** August 17, 1995.

**FOR FURTHER INFORMATION CONTACT:** Ross Arnold, 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 of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

**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).

The current limits for certain categories are being adjusted, variously, for special shift, swing, carryforward, carryforward used and unused carryforward.

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). Also see 60 FR 17337, published on April 5, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

**Rita D. Hayes,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

August 10, 1995.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on August 17, 1995, you are directed to adjust the limits for the following categories, as provided under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| Group II | |
| 237, 330–359, 431–459, 630–659 and 831–859, as a group. | 230,948,312 square meters equivalent. |
| Sublevels in Group II | |
| 334/634 | 479,046 dozen. |
| 338/339 | 2,020,963 dozen. |
| 638/639 | 1,694,964 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

**Sincerely,**

**Rita D. Hayes,**

*Chairman, Committee for the Implementatin of Textile Agreements.*

[FR Doc. 95–20199 Filed 8–15–95; 8:45 am]

BILLING CODE 3510–DR–F

## Textile and Apparel Categories With the Harmonized Tariff Schedule of the United States; Changes to the 1995 Correlation

August 10, 1995.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Changes to the 1995 Correlation.

**FOR FURTHER INFORMATION CONTACT:** Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

**SUPPLEMENTARY INFORMATION:**

The Correlation: Textile and Apparel Categories based on the Harmonized Tariff Schedule of the United States (1995) presents the harmonized tariff numbers under each of the cotton, wool, man-made fiber, silk blend and other vegetable fiber categories used by the United States in monitoring imports of these textile products and in the administration of the bilateral agreement program. The Correlation should be amended to include the following changes which were effective on July 1, 1995:

| Changes in the 1995 Correlation |
|---|
| Replace 4202.22.8060 (871) with 4202.22.8080—Definition remains the same. |
| Delete 5311.00.4000 (810). |
| Add 5311.00.4010 (810)—Woven fabrics of true hemp fibers. |
| Add 5311.00.4020 (810)—Woven fabrics of other vegetable textile fibers, other than of true hemp fibers. |
| Replace 6505.90.9090 (859) with 6505.90.9095—Definition remains the same. |

**Rita D. Hayes,**

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 95–20197 Filed 8–15–95; 8:45 am]

BILLING CODE 3510–DR–F

## DEPARTMENT OF ENERGY

## Golden Field Office; Federal Assistance Award to Auburn University

**AGENCY:** Department of Energy.

**ACTION:** Notice of Financial Assistance Award in response to an Unsolicited Financial Assistance Application.

**SUMMARY:** The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.14, is announcing its intention to enter into a cooperative agreement with Auburn University (AU) to develop an energy efficient process to produce strong and easily bleachable Kraft pulp with minimum impact on the environment through advanced process control. The Institute of Paper Science and Technology (IPST) in Atlanta, GA, will conduct research activities as a subcontractor to AU.

**ADDRESSES:** Questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden Field Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: John Motz, Contract Specialist. The telephone number is 303–275–4737.

**SUPPLEMENTARY INFORMATION:** This award is a result of a DOE published Notice of Program Interest for the Pulp and Paper Industry. The DOE has evaluated the unsolicited application according to § 600.14 of the DOE Assistance Regulations, 10 CFR part 600, and the criteria for selection in § 600.14 (e) (1). Based on this evaluation, it is recommended that the unsolicited application for Federal Assistance entitled, ''Energy Efficient Kraft Pulping for Highly Bleachable, Low Lignin Pulp,'' submitted by AU, be accepted for support. This award will not be made for at least 14 days, to allow for public comment.

Under this cooperative agreement, AU will develop an energy efficient process to produce strong easily bleachable Kraft pulp with minimum impact on the environment through advanced process control. The research conducted by AU and IPST will have three principle objectives. The first will be the development of advanced control strategies and algorithms for sophisticated, real-time monitoring and control of the commercial pulping process. The second will identify control objectives, in the form of optimized pulping chemical concentration profiles, reaction products concentration profiles and temperature histories. The third will be the identification of pulping conditions and modifications that will result in the production of pulp that is not only easily bleached to a high brightness, but also of sufficiently light color as to be directly usable for many applications that now require bleaching.

AU and IPST have demonstrated capabilities in the technologies directly related to the proposed project and personnel that should provide a basis for a successful project. Both institutions have strong ties with pulp and paper manufacturing operations, equipment manufacturing and control

companies. Since many or these companies are represented on AU and IPST advisory committees, a sound basis for technology transfer is in place.

The proposal has been found to be meritorious, and it is recommended that the unsolicited application be accepted for support. The proposed project is not eligible for financial assistance under a recent, current, or planned solicitation.

The project cost over 5 years is estimated to be $4,288,090 total, with the DOE share being $2,829,101.

Issued in Golden, Colorado, on August 4, 1995.

**John W. Meeker,**

*Chief, Procurement, GO.*

[FR Doc. 95–20288 Filed 8–15–95; 8:45 am]

BILLING CODE 6450–01–P

## Golden Field Office; Federal Assistance Award to Florida Solar Energy Center

**AGENCY:** Department of Energy.

**ACTION:** Notice of Financial Assistance Award in Response to an Unsolicited Financial Assistance Application.

**SUMMARY:** The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7, is announcing its intention to award a grant to Florida Solar Energy Center (FSEC) to conduct research and development activities on hydrogen production methods. The proposed technology could change the basic concept and engineering design of hydrogen production systems and, as a result, reduce the cost of hydrogen.

**ADDRESSES:** Questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden Field Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: John Motz, Contract Specialist. The telephone number is 303–275–4737.

**SUPPLEMENTARY INFORMATION:** DOE has evaluated, in accordance with § 600.14 of the Federal Assistance Regulations, the unsolicited proposal entitled ''Sustainable Hydrogen Production'' and recommends that the unsolicited proposal be accepted for support without further competition in accordance with § 600.14 of the Federal Assistance Regulations. This award will not be made for at least 14 days to allow for public comment.

Under this grant, FSEC will conduct five separate research projects which will examine sustainable hydrogen production methods. The proposed tasks include research on the following: (1) Electrolysis using a dual bed photosystem which evolves hydrogen and oxygen separately, (2) development of solid electrolytes for water electrolysis at higher temperatures, (3) photovoltaic electrolysis using an inexpensive solar collector such as a parabolic trough, (4) thermocatalytic decomposition of natural gas, and (5) technical analysis and research support for a separate financial assistance recipient in the DOE hydrogen program.

The proposal has been found to be meritorious in the DOE evaluation. The FSEC program represents a unique approach to develop and demonstrate technologies which could result in reduced costs for hydrogen production. The team proposed by FSEC has the technical capabilities and commitment which should provide a basis for a successful project. The proposed project is not eligible for financial assistance under a recent, current, or planned solicitation.

The project cost over three years is estimated to be $1,409,000 total, with the DOE contributing all costs.

Issued in Golden, Colorado, on August 4, 1995.

**John W. Meeker,**

*Chief, Procurement, GO.*

[FR Doc. 95–20290 Filed 8–15–95; 8:45 am]

BILLING CODE 6450–01–P

## Golden Field Office; Notice of Federal Assistance Award to General Electric Company

**AGENCY:** Department of Energy.

**ACTION:** Notice of Financial Assistance Award in Response to an Unsolicited Financial Assistance Application.

**SUMMARY:** The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7, is announcing its intention to award a cooperative agreement to General Electric Company (GE) to conduct research and development activities on the use of renewable feedstocks for monomers to be used in the plastics industry. The use of agricultural products instead of petroleum products for such monomers will save energy, reduce hazardous waste, and provide key materials for a new generation of thermoplastics.

**ADDRESSES:** Questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden Field Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: John Lewis, Contract Specialist. The telephone number is 303–275–4739.

**SUPPLEMENTARY INFORMATION:** DOE has evaluated, in accordance with Section 600.14 of the Federal Assistance Regulations, the unsolicited proposal entitled ''Biosynthesis of Long-Chain Dicarboxylic Acid Monomers from Renewable Feedstocks'' and recommends that the unsolicited proposal be accepted for support without further competition in accordance with Section 600.14 of the Federal Assistance Regulations. This award will not be made for at least 14 days to allow for public comment.

Under this cooperative agreement, GE and its subcontractors will conduct research and development activities regarding a bioprocess to convert fatty acid substrates into low-cost, long-chain dicarboxylic acid monomers for the plastics industry. The research will address biocatalyst development, bioprocess development, and application development.

The proposal has been found to be meritorious in the DOE evaluation. The GE program represents a unique and proprietary process for monomer production. The team proposed by GE has the technical capabilities, proprietary technology, and commercialization commitment which should provide the basis for a successful project. The proposed project is not eligible for financial assistance under a recent, current, or planned solicitation.

The project cost over eighteen months is estimated to be $2,137,129 total, with the DOE share being $1,602,315.

Issued in Golden, Colorado, on August 8, 1995.

**John W. Meeker,**

*Chief, Procurement, GO.*

[FR Doc. 95–20286 Filed 8–15–95; 8:45 am]

BILLING CODE 6450–01–P

## Golden Field Office; Federal Assistance Award to Institute of Paper Science and Technology

**AGENCY:** Department of Energy.

**ACTION:** Notice of Financial Assistance Award in response to an Unsolicited Financial Assistance Application.

**SUMMARY:** The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.14, is announcing its intention to enter into a cooperative agreement with the Institute of Paper Science and Technology (IPST) to develop efficient methods for corrosivity monitoring in Kraft mill boilers.

**ADDRESSES:** Questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden Field Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: John Motz, Contract Specialist. The telephone number is 303–275–4737.

**SUPPLEMENTARY INFORMATION:** This award is a result of a DOE published Notice of Program Interest for the Pulp and Paper Industry. The DOE has evaluated the unsolicited application according to § 600.14 of the DOE Assistance Regulations, 10 CFR part 600, and the criteria for selection in § 600.14(e)(1). Based on this evaluation, it is recommended that the unsolicited application for Federal Assistance entitled, ''Corrosivity Monitoring of Kraft Mill Boilers,'' submitted by IPST, be accepted for support. This award will not be made for at least 14 days, to allow for public comment.

Under this cooperative agreement, IPST, with assistance from various subcontractors, will develop an extensive corrosion kinetics database and a device to measure conditions that control corrosion in an operating recovery boiler. The benefit of such an approach will allow operators to predict or explain the impact of decisions prior to damaging boiler components. The project will be divided into four one-year phases. Phase I will establish the feasibility of the project concept. Phase II will involve detailed studies on the most promising candidates for corrosion measurements. Phase III will consist of small scale experiments conducted in a laboratory furnace to test the efficacy of the measurement system developed in Phase II. In the final phase, Phase IV, the measurement device and corrosion probes will be installed in an operating boiler for comparison.

IPST has demonstrated capabilities in the technologies directly related to the proposed project and personnel that should provide a basis for a successful project. IPST and the supporting subcontractors have strong ties with pulp and paper manufacturing operations, equipment manufacturing, and control companies which should present a sound basis for technology transfer.

The proposal has been found to be meritorious, and it is recommended that the unsolicited application be accepted for support. The proposed project is not eligible for financial assistance under a recent, current, or planned solicitation.

The project cost over 4 years is estimated to be $1,753,362 total, with the DOE share being $1,153,732.

Issued in Golden, Colorado, on August 8, 1995.

**John W. Meeker,**

*Chief, Procurement, GO.*

[FR Doc. 95–20287 Filed 8–15–95; 8:45 am]

**BILLING CODE 6450–01–P**

**[FE Docket PP–106 and EA–106]**

## Application for Presidential Permit and Electricity Export Authorization by Arizona Public Service Co.

**AGENCY:** Office of Fossil Energy, Department of Energy.

**ACTION:** Notice of applications.

**SUMMARY:** Arizona Public Service Company (APS) has applied for a Presidential Permit to construct a new electric transmission facility at the U.S. border with Mexico. In addition APS has applied for authorization to export electric energy to Mexico over those facilities.

**DATES:** Comments, protests or requests to intervene must be submitted on or before September 15, 1995.

**ADDRESSES:** Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Electricity (FE–52), Office of Fuels Programs, Office of Fossil Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** Loren Farrar (Program Office) 301–903–2338 or Michael Skinker (Program Attorney) 202–586–6667.

**SUPPLEMENTARY INFORMATION:** The construction, connection, operation, and maintenance of facilities at the international border of the United States for the transmission of electrical energy is prohibited in the absence of a Presidential permit pursuant to Executive Order No. 12038. Exports of electricity from the United States are also regulated and require authorization under section 202(e) of the Federal Power Act.

On June 22, 1995, APS filed an application with the Office of Fossil Energy (FE) of the Department of Energy (DOE) for a Presidential permit to construct a new 34.5-kilovolt (kV) transmission line across the U.S.-Mexican border near St. Luis, Mexico. The proposed line would tap an existing 34.5–kV line owned and operated by the U.S. Bureau of Reclamation and extend approximately 1000 feet to the U.S. border with Mexico. This application has been docketed as PP–106.

On July 2, 1995, APS filed a companion application for authority to export electric energy over the international transmission facilities proposed in the PP–106 application. APS proposes to export up to 30 megawatts of electrical capacity and associated energy to the Comision Federal de Electricidad, the Mexican national electric utility, under the terms of a proposed Reciprocal Emergency Assistance Agreement and an Economy Energy Agreement. However, to date these agreements have not been signed. This application has been docketed as EA–106.

**Procedural Matters:**

Any person desiring to be heard or to protest these applications should file a petition(s) to intervene or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the rules of practice and procedure (18 CFR 385.211, 385.214).

Any such petitions and protests should be filed with the DOE on or before the date listed above. Additional copies of such petitions to intervene or protests also should be filed directly with: Dennis Beals, Manager, Bulk Power Trading and Customer Services, Arizona Public Service Company, P.O. Box 53999, Station 9860, Phoenix, AZ 85072–3999, Phone: (602) 250–3101; and Bruce A. Gardner, Esq., Senior Attorney, Arizona Public Service Company, P.O. Box 53999, Station 9820, Phoenix, AZ 85072–3999, Phone: (602) 250–3507

Pursuant to 18 CFR 385.211, protests and comments will be considered by the DOE in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding(s). Any person wishing to become a party must file a petition to intervene under 18 CFR 385.214. Section 385.214 requires that a petition to intervene must state, to the extent known, the position taken by the petitioner and the petitioner's interest in sufficient factual detail to demonstrate either that the petitioner has a right to participate because it is a State Commission; that it has or represents an interest which may be directly affected by the outcome of the proceeding(s), including any interest as a consumer, customer, competitor, or security holder of a party to the proceeding; or that the petitioner's participation is in the public interest.

A final decision will be made on the application for Presidential permit contained in docket PP–106 after a determination is made by the DOE that the proposed action is in the public interest and will not adversely impact on the reliability of the U.S. electric power supply system. Before a final decision is made on the export application contained in docket EA–106, the DOE must determine that the proposed export would not impair the sufficiency of electric supply within the U.S. and would not impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the DOE.

Before a Presidential permit or electricity export authorization may be issued or amended, the environmental impacts of the proposed DOE action must be evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA).

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC, on August 9, 1995.

**Anthony J. Como,**

*Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.*

[FR Doc. 95–20291 Filed 8–15–95; 8:45 am]

BILLING CODE 6450–01–P

## Office of Energy Efficiency and Renewable Energy

**[Case No. CW–003]**

## Energy Conservation Program for Consumer Products: Granting of the Application for Interim Waiver and Publishing of the Petition of Miele Appliance Inc. (Miele) for Waiver From the Department of Energy Clothes Washer Test Procedure, (Case No. CW–003).

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**SUMMARY:** Today's notice publishes a letter granting an Interim Waiver to Miele and a Petition for Waiver request from the existing Department of Energy (Department or DOE) clothes washer test procedure for the company's clothes washer models W1903, W1918, and W1930. The design features that differ from those covered by the existing clothes washer test procedure are: an internal electrical heater for heating wash water, a continuously variable wash water temperature control; 208/240 volt electrical power supply; and machine-controlled water fill capability.

Miele seeks to test by internally heating inlet cold water instead of using externally heated water; test by using the coldest and hottest temperature setting available on its machines, along with warm (minimum of 100 °F to maximum of 105 °F) and hot (minimum of 140 °F to 145 °F) temperature settings with new temperature use factors instead of the existing test procedure temperature requirements and temperature use factors; test using a 208/240 volt power supply instead of a 120 volt power supply; and test without selecting a desired level of fill instead of manually selecting minimum and maximum fill settings. DOE is soliciting comments and information regarding the Petition for Waiver.

**DATES:** DOE will accept comments, data, and information not later than September 15, 1995.

**ADDRESSES:** Written comments and statements shall be sent to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Case No. CW–003, Mail Stop EE–431, Room 1J–018, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585 (202) 586–7574.

**FOR FURTHER INFORMATION CONTACT:**

P. Marc LaFrance, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–8423

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9507.

**SUPPLEMENTARY INFORMATION:** The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act, Public Law 94–163, 89 Stat. 917, amended by the National Energy Conservation Policy Act, Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987, Public Law 100–12, the National Appliance Energy Conservation Amendments of 1988, Public Law 100–357, and the Energy Policy Act of 1992, Public Law 102–486, 106 Stat. 2776, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including clothes washers. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

DOE amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process (45 FR 64108). Thereafter, DOE further amended the appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures (51 FR 42823, November 26, 1986).

The waiver process allows the Assistant Secretary to temporarily waive the test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures, or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions, added by the 1986 amendment, allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days, or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

Pursuant to § 430.27(g), the Assistant Secretary shall publish in the **Federal Register** notice of each waiver granted, and any limiting conditions of each waiver.

In accordance with § 430.27 of 10 CFR Part 430, on June 2, 1995, Miele filed a Petition for Waiver and an Application for Interim Waiver regarding its clothes washer models W1903, W1918, and W1930, with the following design features that differ from those covered by the existing clothes washer test procedure: an internal electrical heater for heating wash water; a continuously variable wash water temperature control; 208/240 volt electrical power supply; and machine-controlled water fill capability. Miele's Application seeks an Interim Waiver from the DOE provisions that require an externally heated water supply, three specified temperature settings (i.e., 140° F, 100° F, and 60° F), 120 volt electrical power supply, and manually selected water fill settings. Instead, Miele requests the allowance to test its machines with: a cold water supply that is heated internally for washing; the coldest and hottest temperature setting available on its machines along with warm (minimum of 100° F to maximum of 105° F) and hot (minimum of 140° F to

maximum 145° F) temperature settings with new temperature use factors; manufactured specified voltages of 208/240; and allowing the machine to automatically select the fill settings based on the existing test procedure test load.

Miele states in its application that it is likely the Waiver will be granted, because waivers for clothes washers with such design characteristics were granted to Asko (59 FR 15719, April 4, 1994) and New Harmony (59 FR 15710, April 4, 1994). Miele also stated that its clothes washer is intended to be sold as a pair with one of the Miele clothes dryers, and denial of an interim waiver for the clothes washer would adversely affect sales of the clothes dryer as well. Miele indicated that because revenue from the sales of laundry products is essential to the financial well-being of its company, a denial would severely affect the company. Miele explained how its clothes washers are energy efficient and innovative, and believes that from a public policy standpoint, the Interim Waiver should be granted to promote energy savings.

In those instances, where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting Miele an Interim Waiver for its clothes washer models WI1903, WI1918, and WI1930. Pursuant to paragraph (e) of § 430.27 of the Code of Federal Regulations Part 430, the following letter granting the Application for Interim Waiver to Miele was issued.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the ''Petition for Waiver.'' The Miele Appendix 1 of its Petition is not being published, because it is essentially a duplicate to the modifications to the DOE test procedures provided in the Department's letter granting the Interim Waiver to Miele. However, the original submission is available upon request at the address provided at the beginning of today's notice. The petition contains no confidential information. DOE solicits comments, data and information regarding the Petition discussed above.

Issued in Washington, DC August 10, 1995.

**Christine A. Ervin,**

*Assistant Secretary, Energy Efficiency and Renewable Energy.*

**Department of Energy**

Washington, DC 20585

August 10, 1995

Mr. Nick Ord,

*Vice-President and General Manager, Miele Appliances, Inc., 22D Worlds Fair Drive, Somerset, NJ 08873*

Dear Mr. Ord: This is in response to your Petition for Waiver and Application for Interim Waiver of June 2, 1995, from the Department of Energy (the Department) test procedure pursuant to Title 10 CFR Part 430.27 for clothes washers, regarding Miele Appliances Inc. (Miele) clothes washer models W1903, W1918, and W1930. The Miele clothes washers have the following design features that differ from those covered by the existing clothes washer test procedure: an internal electrical heater for heating wash water; a continuously variable wash water temperature control; 208/240 volt electrical power supply; and machine-controlled water fill capability.

Previous waivers from DOE test procedures for clothes washers with such design features have been granted to DOE to Asko (59 FR 15719, April 4, 1994) and New Harmony (59 FR 15710, April 4, 1994). Thus, it appears likely that the Miele's Petition for Waiver will be granted by DOE.

Miele also stated that its clothes washer is intended to be sold as a pair with one of the Miele clothes dryers, and that denial of an interim waiver for the clothes washer would adversely affect sales of the clothes dryer as well. Miele indicated that revenue from the sales of laundry products is essential to the financial well-being of its company, and that a denial would severely affect the company. Miele explained how its clothes washers are energy efficient and innovative, and believes that from a public policy standpoint, the Interim Waiver should be granted to promote energy savings.

Therefore, based on the likely approval of the Petition for Waiver and potential economic hardship which may result if Miele is unable to sell its products during the time required to process the Petition for Waiver, the Department grants Miele's Application for an Interim Waiver from the DOE test procedures for its clothes washer models W1903, W1918, and W1930.

Miele shall be permitted to test its clothes washers on the basis of the test procedures specified in 10 CFR Part 430, Subpart B, Appendix J, with the following modifications:

(i) Add new sections, 1.19 and 1.20 in Appendix J to read as follows:

1.19 ''Water-heating clothes washer'' means a clothes washer that has an internal electrical heater which provides all the energy needed to heat water for washing.

1.20 ''Non-water-heating clothes washer'' means a clothes washer that does not have an internal electrical heater which provides the energy needed to heat water for washing.

(ii) Sections 2.2 and 2.3 in Appendix J shall be deleted and replaced with the following:

2.2 Electrical energy supply. Maintain the electrical supply to the clothes washer terminal block within 1.7 percent of 120/208Y or 120/240 volts, as applicable to the particular terminal block wiring system as specified by the manufacturer. If the clothes washer has a dual voltage conversion capability, conduct the test at the highest voltage recommended by the manufacturer.

2.3 Water temperature.

2.3.1 Water-heating clothes washers. The temperature of the water supply shall be maintained at a minimum of 55°F (12.8°C) and a maximum of 60°F (15.6°C).

(iii) Sections 3.2.1 through 3.3.5 in Appendix J shall be deleted and replaced with the following:

3.2.1 Per-cycle electrical energy consumption at maximum fill. Set the water level selector to the maximum fill position, if manually controlled.

3.2.1.1 Hottest wash at maximum fill. Activate the machine and insert the appropriate test load as specified in Section 2.8.2.1. Select the normal or its equivalent wash cycle. Where spin speed selection is available, set the control to its maximum setting. Set the water temperature selector to the hottest setting and activate the wash cycle. Measure and record the kilowatt-hours of electrical energy consumed for the complete cycle as $E_{ht,max.}$.

3.2.1.2 Hot wash at maximum fill. Insert a water temperature sensing device inside the inner drum prior to testing. Activate the machine and insert the appropriate test load as specified in Section 2.8.2.1. Select the normal or its equivalent wash cycle. Where spin speed selection is available, set the control to its maximum setting. Set the water temperature selector to the hot setting (a minimum of 140 °F (60 °C) and a maximum of 145 °F (62.8 °C)) and activate the wash cycle. Verify the wash water temperature, which must be a minimum of 140 °F (60 °C) and a maximum of 145 °F (62.8 °C). If the measured water temperature is not within the specified range, stop testing, adjust the temperature selector accordingly, and repeat the procedure. Otherwise, proceed and complete testing. Measure and record the kilowatt-hours of electrical energy consumed for the complete cycle as $E_{h,max}$.

3.2.1.3 Warm wash at maximum fill. Repeat Section 3.2.1.2 for a warm wash setting at a minimum of 100 °F (37.8 °C) and a maximum of 105 °F (40.6 °C). Measure and record the kilowatt-hours of electrical energy consumed for the complete cycle as $E_{w,max}$.

3.2.1.4 Cold wash at maximum fill. Repeat Section 3.2.1.1 for the coldest water setting. Measure and record the kilowatt-hours of electrical energy consumed for the complete cycle as $E_{c,max}$. Ensure that the inlet water temperature is maintained per Section 2.3.1.

3.2.2 Per-cycle electrical energy and consumption at minimum fill. Set the water level selector to the minimum fill position, if manually controlled.

3.2.2.1 Hottest wash at minimum fill. Repeat Section 3.2.1.1 for a test load as specified in Section 2.8.2.1. Measure and record the kilowatt-hours of electrical energy consumed for the complete cycle as $E_{ht,min}$.

3.2.2.2 Hot wash at minimum fill. Repeat Section 3.2.1.2 for a test load as specified in Section 2.8.2.1. The hot wash setting shall be at a minimum of 140 °F (60 °C) and a maximum of 145 °F (62.8 °C). Measure and record the kilowatt-hours of electrical energy consumed for the complete cycle as $E_{h,min}$.

3.2.2.3 Warm wash at minimum fill. Repeat Section 3.2.1.2 for warm wash setting at a minimum of 100 °F (37.8 °C) and a maximum of 105 °F (40.6 °C). Measure and record the kilowatt-hours of electrical energy consumed for the complete cycle as $E_{w,min}$.

3.2.2.4 Cold wash at minimum fill. Repeat Section 3.2.1.1 for the coldest wash setting. Measure and record the kilowatt-hours of electrical energy consumed for the complete cycle as $E_{c,min}$. Ensure that the inlet water temperature is maintained per Section 2.3.1.

(iv) Sections 4.1 through 4.6 in Appendix J shall be deleted and replaced with the following:

4.1 Per-cycle temperature-weighted machine electrical energy consumption for maximum and minimum water fill levels. Calculate the per-cycle temperature-weighted electrical energy consumption for the maximum water fill level, $E_{max}$, and for the minimum water fill level, $E_{min}$, expressed in kilowatt-hours per cycle and defined as:

$E_{max}=(0.05 \times E_{ht,max}) + (0.25 \times E_{w,max}) + (0.55 \times E_{c,max})$

$E_{min}=(0.05 \times E_{ht,min}) + (0.25 \times E_{h,min}) + (0.55 \times E_{c,min})$

where:

$E_{ht,max}$ = as defined in Section 3.2.1.1
$E_{h,max}$ = as defined in Section 3.2.1.2
$E_{w,max}$ = as defined in Section 3.2.1.3
$E_{c,max}$ = as defined in Section 3.2.1.4
$E_{ht,min}$ = as defined in Section 3.2.2.1
$E_{h,min}$ = as defined in Section 3.2.2.2
$E_{w,min}$ = as defined in Section 3.2.2.3
$E_{c,min}$ = as defined in Section 3.2.2.4

4.2 Total per-cycle machine electrical energy consumption. Calculate the total per-cycle energy-consumption, $E_{TE}$, expressed in kilowatt-hours per cycle and defined as:

$E_{TE}=(0.72 \times E_{max}) + (0.28 \times E_{min})$

where:

$E_{max}$, $E_{min}$ = as defined in Section 4.1

(v) In CFR Section 430.22, paragraph (j)(1)(i)(B), change the following:

From: ''. . . according to 4.6 of Appendix (j) . . .''

To: ''. . .according to 4.2 of Appendix (j) . . .''

(vi) Section 430.22 of the CFR, paragraph (j)(2), shall be deleted and replaced with the following:

(J)(2) The energy factor for water-heating clothes washers shall be the quotient of the cubic foot capacity of the clothes container as determined in 3.1 of Appendix J to this subpart divided by the clothes washer energy consumption per cycle expressed as the total per cycle machine electrical energy consumption as determined in 4.2 of Appendix J to this subpart. The resulting shall be rounded off to the nearest 0.01 cubic foot per kilowatt-hour.

This interim Waiver is based upon the presumed validity of statements and all allegations submitted by Miele Appliances Inc. This Interim Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days, or until the Department acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

Best regards,

Christine A. Evin,

*Assistant Secretary, Energy Efficiency and Renewable Energy.*

**Miele**

Appliances, Inc.

22D Worlds Fair Drive • Somerset NJ 08873 • (908) 560–0899 • Toll Free 1–800–843–7281 • FAX (908) ???????

June 2, 1995

Assistant Secretary, U.S. Department of Energy, Office of Energy Efficiency and Renewable Resources, Room 5E–066, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585

Re: Application for Interim Waiver and Petition for Waiver, 10 C.F.R. Subparts B, Appendix J—Uniform Test Method For Measuring Energy Consumption of Automatic and Semi-Automatic Clothes Washers

Dear Assistant Secretary: Miele Appliances, Inc. (''Miele'') hereby submits this application for Interim Waiver and Petition for Waiver pursuant to 10 C.F.R. § 430.27. This Section provides for waiver of test methods on the grounds that a basic model contains design characteristics that either prevent testing according to the prescribed test procedure or produce data so unrepresentative of a covered product's true energy consumption characteristics as to provide materially inaccurate comparative data. Miele clearly qualifies for such relief.

Miele requests an interim waiver and a waiver from DOE's test procedures for its clothes washers Models W1903, W1918, and W1930. These models have the following design features that differ from those covered by DOE's existing clothes washer testing procedures:

- An internal electrical heater for heating clothes wash water;
- Variable wash water temperature controls;
- 208/240 volt electrical power supply; and
- machine-controlled water-fill capability.

Miele requests that an interim waiver and a waiver be granted to allow for testing that takes these features into account.

There is strong precedent for such an interim waiver and waver. See, 59 Fed. Reg. 15719 (April 4, 1994) (waiver; Asko, Inc.); 59 Fed. Reg. 15710 (April 4, 1994) (waiver; New Harmony Systems Corp.); 58 Fed. Reg. 47130 (Sept. 7, 1993) (interim waiver; Asko, Inc.); 58 Fed. Reg. 33089 (June 15, 1993) (interim waiver; New Harmony Systems Corp.).

These four features are discussed below.

- *Internal electrical heater.* Miele's clothes washer models W1903, W1918, and W1030 use an internal heater that heats the water supplied for washing. The DOE test procedure is not based on an internal heater. Since the nature of a water-heating clothes washer is significantly different from a non-water-heating clothes washer, the waiver is warranted. Such a waiver was granted to Asko and New Harmony.

The W1903 has only a cold-water connection. This places it outside the scope of the DOE test procedure, since the incoming water temperature cannot be controlled by thermostatically controlled valves as per Section 2.3, or by opening and closing the valves as called for in Section 3.2.2.6. The W1918 and W1930 have both cold and hot-water connections and thermostatically controlled water valves, but the internal heater nonetheless heats the wash water to whatever temperature is selected and maintains this temperature for the duration of the wash program. Therefore, a waiver is warranted on all three models in the light of the internal water heater.[1]

- *208/240 volt electrical power supply.* Miele's units use a 208/240 volt power supply. Miele therefore requests a waiver from the DOE test provision that requires 120+/−2 volts electrical power supply.
- *Variable wash water temperature controls.* Miele's clothes washers have variable wash water temperature controls. Since the selectable temperatures on the Miele models do not correspond to the temperatures in the DOE test procedures, which are 140°F/60°C for hot, 100°F/38°C for warm, and 60°F/16°C for cold, Miele therefore requests a waiver from the DOE test provision that requires testing at three specific temperatures obtained using two specified intake water temperatures.
- *Machine-controlled water-full capability.* The DOE procedure is based on a manual water-fill control. Miele's washing machines do not have a manual water-fill control. Miele requests a waiver concerning its design feature that automatically controls the water level in the clothes washer based on the clothes load.

Miele therefore proposes an interim waiver and waiver to amend the test procedure for testing its clothes washers, according to the test method attached as Appendix 1 hereto.

* * * * *

Miele requests immediate relief by grant of the proposed interim waiver, justified by the following reasons:

*Likely Approval of Waiver.* The Petition for Waiver is likely to be granted. Waivers concerning clothes washers with such design characteristics were granted to Asko and New Harmony. The design characteristics of water-heating clothes washers are distinctly different from non-heating clothes washers. It seems very likely that a test method on the lines of the proposed method will be approved.

*Economic Hardship.* Clothes washers, together with clothes dryers, are an important part of Miele's business. Since the Miele clothes washer is intended to be sold as a pair with one of the Miele clothes dryers, denial of an interim waiver for the clothes washers would adversely affect sales of the clothes dryers as well. Since the revenue from the sale of laundry products is essential to the financial well-being of the company, a denial would severely affect the company.

[1] Miele believes that the simplest way to test the W1918 and W1930 would be to allow them to be tested using cold water only. The proposed test procedure for Miele's waiver adopts this approach. Another option would be to develop new equations for the testing of a water-heating clothes washer with both cold- and hot-water connections.

Denial of the interim waiver would adversely affect Miele's home office, which employs 58 employees, its 175 independent service agencies, 400 independent retailers, 17 independent sales representatives and 4 regional distributors that carry the Miele product line throughout the country.

*Public Policy Merits.* The public policy benefits of encouraging business success and fostering innovation in clothes washer design are additional reasons for prompt approval of the requested interim waiver.

Miele clothes washers are innovative and beneficial products.

Miele's water-hearing clothes washers use less than one-third of the water for washing, compared to most clothes washers. This means much less energy for heating wash water.

It also means a substantial reduction in washing chemicals introduced into the environment. Miele's water heating clothes washers are designed to efficiently extract more water from wet clothes by a high speed spin cycle, up to 1600 RPM. Such water extraction is many times more energy efficient than drying the same amount of water. This innovation in clothes washer design does not affect the test method for clothes washers, but does result in increased energy savings. These are additional reasons why the requested interim waive should receive prompt approval.

In that regard, the basic purpose of the Energy Policy and Conservation Act, as amended by the National Appliance Energy Conservation Act, is to foster purchase of energy efficient appliances, not to hinder such purchases. The granting of the waiver and interim waiver will promote this policy and will result in increased energy savings.

Furthermore, continued employment creation and ongoing investments in Miele's marketing, sales and service activities will be fostered by approval of the requested interim waiver. Conversely, denial would harm the company and would be anticompetitive. And, it would be unjust to grant interim waivers and waivers to Asko and New Harmony but deny them to Miele.

In the period between interim waiver and waiver, only a relatively small number of water-heating clothes washers will be sold by Miele. Any difference between the test method approved for interim waiver and that finally approved for the Waiver will have only minimal impact on energy consumption or consumer decisions.

* * * * *

Thank you for your timely attention to this request for interim waiver and waiver.

We hereby certify that all clothes washer manufacturers of domestically-marketed units known to Miele Appliances, Inc. have been notified by letter of this application, copies of which are attached as Appendix 2 hereto.

Sincerely,

Nick Ord,

*Vice President and General Manager, Miele Appliances, Inc.*

Attachments

[FR Doc. 95–20282 Filed 8–15–95; 8:45 am]

BILLING CODE 6450–01–M

## Federal Energy Regulatory Commission

**[Project No. 10625–003 Washington]**

## Kittitas Reclamation District; Availability of Final Environmental Assessment

August 10, 1995

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) Regulations, 18 CFR Part 380 (Order No. 386, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the proposed Taneum Chute Hydroelectric Project, to be located on the Bureau of Reclamation's South Branch Canal in Kittitas County, near Ellensburg, Washington, and has prepared a final Environmental Assessment (EA) for the project.

In the EA, the Commission's staff has analyzed the project and has concluded that approval of the proposed project, with appropriate environmental protection and enhancement measures, would not be a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 3104, of the Commission's offices at 941 North Capitol Street, N.E., Washington, D.C. 20426.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 95–20223 Filed 8–15–95; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. EL79–8–007, et al.]**

## Texas Utilities Electric Company, et al.; Electric Rate and Corporate Regulation Filings

August 10, 1995.

Take notice that the following filings have been made with the Commission:

### 1. Texas Utilities Electric Company

[Docket No. EL79–8–007]

Take notice that on August 4, 1995, Texas Utilities Electric Company (TU Electric) tendered for filing a compliance filing in the above-referenced docket. The compliance filing consists of the following: (1) an executed Facilities Charge Agreement among TU Electric, Southwestern Electric Power Company, Central Power and Light Company, and Houston Lighting & Power Company; and (2) cost support for the rates set forth in the agreement.

TU Electric requests an effective date of August 5, 1995, and accordingly, seeks waiver of the Commission's notice requirements. Copies of the filing were served upon all parties of record.

*Comment date:* August 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

### 2. Catex Vitol Electric, L.L.C.

[Docket No. ER94–155–009]

Take notice that on August 3, 1995, Catex Vitol Electric, L.L.C. filed certain information as required by the Commission's January 14, 1994, order in Docket No. ER94–155–009. Copies of Catex Vitol Electric, L.L.C.'s informational filing are on file with the Commission and are available for public inspection.

### 3. Direct Electric Inc.

[Docket No. ER94–1161–005]

Take notice that on August 2, 1995, Direct Electric Inc. filed certain information as required by the Commission's July 18, 1994, order in Docket No. ER94–968–000. Copies of Direct Electric Inc.'s informational filing are on file with the Commission and are available for public inspection.

### 4. Vesta Energy Alternatives Company

[Docket No. ER94–1168–005]

Take notice that on July 25, 1995, Vesta Energy Alternatives Company tendered for filing certain information as required by the Commission's letter order dated July 8, 1994. Copies of the informational filing are on file with the Commission and are available for public inspection.

### 5. Ashton Energy Corporation

[Docket No. ER94–1246–004]

Take notice that on July 21, 1995, Ashton Energy Corporation tendered for filing certain information as required by the Commission's letter order dated August 10, 1994. Copies of the informational filing are on file with the Commission and are available for public inspection.

### 6. KCS Power Marketing, Inc.

[Docket No. ER95–208–002]

Take notice that on August 7, 1995, KCS Power Marketing, Inc. tendered for filing certain information as required by the Commission's letter order dated March 2, 1995. Copies of the informational filing are on file with the Commission and are available for public inspection.

**7. Koch Power Services, Inc.**

[Docket No. ER95–218–002]

Take notice that on July 31, 1995, Koch Power Services, Inc. tendered for filing certain information as required by the Commission's letter order dated January 4, 1995. Copies of the informational filing are on file with the Commission and are available for public inspection.

**8. Portland General Electric Company**

[Docket No. ER95–734–000]

Take notice that on July 26, 1995, Portland General Electric Company tendered for filing an amendment in the above-referenced docket.

Comment date: August 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

**9. IEP Power Marketing, LLC**

[Docket No. ER95–802–001]

Take notice that on August 7, 1995, IEP Power Marketing, LLC tendered for filing certain information as required by the Commission's letter order dated May 11, 1995. Copies of the informational filing are on file with the Commission and are available for public inspection.

**10. Western Regional Transmission Association**

[Docket No. ER95–1211–001]

Take notice that on July 24, 1995, Western Regional Transmission Association tendered for filing additional information in the above-referenced docket.

Comment date: August 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

**11. National Fuel Gas Distribution Corporation**

[Docket No. ER95–1374–000]

Take notice that on August 4, 1995, National Fuel Gas Distribution Corporation tendered for filing an amendment in the above-referenced docket.

Comment date: August 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraph**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 95–20250 Filed 8–15–95; 8:45 am]

BILLING CODE 6717–01–P

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**[Docket No. CP95–661–000, et al.]**

## Texas Eastern Transmission Corporation, et al.; Natural Gas Certificate Filings

August 10, 1995.

Take notice that the following filings have been made with the Commission:

**1. Texas Eastern Transmission Corporation**

[Docket No. CP95–661–000]

Take notice that on August 4, 1995 Texas Eastern Transmission Corporation (''Texas Eastern''), 5400 Westheimer Court, Houston, Texas 77056–5310, filed in Docket No. CP95–661–000 an abbreviated application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon by sale, to Texaco Pipeline Inc. (''Texaco''), approximately 37.48 miles of 20-inch pipeline (''Line 40–E'') and the associated scraper traps for $7,000,000. Texas Eastern also requests to abandon the Point Au Chien compressor station, certain laterals, meter stations and appurtenant facilities associated with such Line 40–E, all in the Lafourche and Terrebonne Parishes, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

*Comment date:* September 1, 1995, in accordance with Standard Paragraph F at the end of this notice.

**2. Texas Gas Transmission Corporation**

[Docket No. CP95–662–000]

Take notice that on August 4, 1995, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP95–662–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to add a new delivery point in Hopkins County, Kentucky, to serve a customer of Western Kentucky Gas Company (Western), a local distribution company. Texas Gas makes such request, under its blanket certificate issued in Docket No. CP82–407–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas indicates that it will provide a tap, riser and associated valves and fittings, within its existing right-of-way at Texas Gas' Slaughters-Nortonville 10-inch Line near Barnsley, in Hopkins County. It has been averred that this proposal will enable Western to provide, up to a maximum daily quantity of 55 MMBtu, of natural gas service to the new school being constructed by the Hopkins Board of Education. It is stated that the school will use the natural gas for heating and cooking. It has been further stated that Western will serve the new delivery tap with natural gas transported pursuant to its current Firm No-Notice Transportation Agreement with Texas Gas dated November 1, 1993, within the existing contract entitlements.

It is estimated that the new delivery point will cost $2,500. It is stated that Western will reimburse Texas Gas for the cost of the proposed delivery facility.

*Comment date:* September 25, 1995, in accordance with Standard Paragraph G at the end of this notice.

**3. El Paso Natural Gas Company**

[Docket No. CP95–663–000]

Take notice that on August 4, 1995, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP95–663–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a production-area gas exchange service with Tenneco Oil Company (Tenneco), all as more fully set forth in the application on file with the Commission and open to public inspection.

El Paso proposes to abandon the service which was authorized by the Commission in Docket No. CP83–246–000. It is stated that El Paso was authorized to exchange gas with Tenneco, later replaced on the exchange agreement by Amoco Production Company (Amoco), under the terms of a gas exchange agreement dated November 24, 1980, on file with the Commission as El Paso's Special Rate Schedule X–59 of El Paso's FERC Gas Tariff, Third Revised Volume No. 2. It is stated that El Paso was authorized to receive for Tenneco's account up to 25,000 Mcf of natural gas per day in San Juan and Rio Arriba Counties, New Mexico. It is stated that El Paso would concurrently cause to be delivered equivalent volumes, less 10 percent for

fuel, shrinkage and other losses, to Tenneco at two delivery points in Terrebonne Parish, Louisiana, and Waller County, Texas. It is explained that the exchange agreement expired under its own terms July 1, 1990, and the parties agree that the service is no longer needed. It is asserted that there are no imbalances. It is further asserted that El Paso can render any requested transportation service under its blanket transportation certificate issued in Docket No. CP88–433–000. El Paso states that it does not intend to abandon any facilities and that the proposed abandonment would not result in any interruption in or termination of firm service to its customers.

*Comment date:* August 31, 1995, in accordance with Standard Paragraph F at the end of this notice.

**4. Pacific Gas Transmission Company**

[Docket No. CP95–666–000]

Take notice that on August 7, 1995, Pacific Gas Transmission Company (PGT), 160 Spear Street, San Francisco, CA 94105, filed in Docket No. CP95–666–000 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 install a new tap and meter near milepost 6 of PGT's Coyote Springs Lateral, in Willamette County, Oregon, for delivery of gas to Cascade Specialties, Inc. PGT requests the authorization under its blanket certificate issued in Docket No. CP82–530–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

PGT states that the quantity of gas to be delivered through the facilities is up to 1,000 MMBtu of gas per day. PGT will provide service to this facility on an interruptible basis under the applicable rate schedule for service on the Coyote Springs Lateral. PGT asserts that the proposed service will have no effect on PGT's peak day or annual deliveries. PGT states that it does not anticipate any significant environmental impact from the proposed activity. Additionally, PGT states that the proposed meter facility will be sited adjacent to PGT's newly constructed Coyote Springs Lateral and the customer has received a county site permit for construction on the premises. Therefore, PGT asserts that it does not believe that any further state authorization is necessary and is in the process of confirming this fact with the appropriate agencies.

*Comment date:* September 25, 1995, in accordance with Standard Paragraph G at the end of this notice.

**Standard Paragraphs**

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 95–20249 Filed 8–15–95; 8:45 am]

BILLING CODE 6717–01–P

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**[Project No. 11435–001 West Virginia]**

## Hildebrand Hydro Associates; Surrender of Preliminary Permit

August 10, 1995.

Take notice that the Hildebrand Hydro Associates, permittee for the Hildebrand Hydroelectric Project No. 11435, located on the Monongahela River, Monogalia County, West Virginia, has requested that its preliminary permit be terminated. The preliminary permit was issued on January 27, 1994, and would have expired on December 31, 1996. The permittee states that the project would be economically infeasible.

The permitee filed the request on July 25, 1995, and the preliminary permit for Project No. 11435 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 95–20224 Filed 8–15–95; 8:45 am]

BILLING CODE 6717–01–M

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**[Project No. 11456–001 Pennsylvania]**

## Point Marion Hydro Associates; Surrender of Preliminary Permit

August 10, 1995.

Take notice that the Point Marion Hydro Associates, permittee for the Point Marion Project No. 11456, located on the Monongahela River in Fayette County, Pennsylvania, has requested that its preliminary permit be terminated. The preliminary permit was issued on June 30, 1994, and would have expired on May 31, 1997. The permittee states that the project would be economically infeasible.

The permittee filed the request on July 25, 1995, and the preliminary permit for Project No. 11456 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or

holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 95–20225 Filed 8–15–95; 8:45 am]

BILLING CODE 6717–01–M

## Southwestern Power Administration

### Integrated System Power Rates; Notice of Order Approving an Extension of Power Rates on an Interim Basis

**AGENCY:** Southwestern Power Administration, DOE.

**ACTION:** Notice of an Extension of Power Rates-Integrated System.

**SUMMARY:** The Deputy Secretary of Energy, acting under Amendment No. 3 to Delegation Order No. 0204–108, dated November 10, 1993, 58 FR 59717, and pursuant to the implementation authorities in 10 CFR 903.22(h) and 903.23(a)(3), has approved Rate Order No. SWPA–32 which extends the existing power rates for the Integrated System. This is an interim rate action effective October 1, 1995, and extending for a period of one year through September 30, 1996.

**FOR FURTHER INFORMATION CONTACT:** George C. Grisaffe, Assistant Administrator, Office of Administration and Rates, Southwestern Power Administration, Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101, (918) 581–7419.

**SUPPLEMENTARY INFORMATION:** The existing rate schedules for the Integrated System were approved on a final basis by the Federal Energy Regulatory Commission on September 18, 1991, for the period ending September 30, 1994.

These rates were extended on an interim basis (through September 30, 1995) by the Deputy Secretary of Energy on August 24, 1994. On June 15, 1995, the Southwestern Power Administration (Southwestern) published notice in the **Federal Register**, 60 FR 31464, of its intention to seek a one-year extension of the existing power rate for the Integrated System and provided for a 15-day comment period. No comments were received. 10 CFR 903.22(h) and 903.23(a)(3) provide implementation authority for such interim extension to the Deputy Secretary.

Following review of Southwestern's proposal within the Department of Energy, I approved, Rate Order No. SWPA–32, on August 8, 1995, which extends the existing Integrated System rates for one year beginning October 1, 1995.

Issued at Washington, D.C., on August 8, 1995.

**Bill. White,**

*Deputy Secretary.*

(Deputy Secretary of Energy)

### Order Approving Extension of Power Rates on an Interim Basis

In the matter of: Southwestern Power Administration—Integrated System Rates.
Rate Order No. SWPA–32.
August 8, 1995.

Pursuant to Sections 302(a) and 301(b) of the Department of Energy Organization Act, Public Law 95–91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, for the Southwestern Power Administration were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204–108, effective December 14, 1983, 48 FR 55664, the Secretary of Energy delegated to the Deputy Secretary of Energy on a non-exclusive basis the authority to confirm, approve and place into effect on an interim basis power and transmission rates, and delegated to the Federal Energy Regulatory Commission (FERC) on an exclusive basis the authority to confirm, approve and place in effect on a final basis, or to disapprove power and transmission rates. Amendment No. 1 to Delegation Order No. 0204–108, effective May 30, 1986, 51 FR 19744, revised the delegation of authority to confirm, approve and place into effect on an interim basis power and transmission rates by delegating such authority to the Under Secretary of Energy rather than the Deputy Secretary of Energy. This delegation was reassigned to the Deputy Secretary of Energy by Department of Energy (DOE) Notice 1110.29, dated October 27, 1988, and clarified by Secretary of Energy Notice SEN–10–89, dated August 3, 1989, and subsequent revisions. By Amendment No. 2 to Delegation Order No. 0204–108, effective August 23, 1991, 56 FR 41835, the Secretary of the Department of Energy revised Delegation Order No. 0204–108 to delegate to the Assistant Secretary, Conservation and Renewable Energy, the authority which was previously delegated to the Deputy Secretary in that Delegation Order. By Amendment No. 3 to Delegation Order No. 0204–108, effective November 10, 1993, the Secretary of Energy redelegated to the Deputy Secretary of Energy, the authority to confirm, approve and place into effect on an interim basis power and transmission rates of the Power Marketing Administrations. This rate order is issued by the Deputy Secretary pursuant to said Amendment to Delegation Order No. 0204–108.

This is an interim rate extension. It is made pursuant to the authorities as implemented in 10 CFR 903.22(h) and 903.23(a)(3).

#### Background

Southwestern Power Administration (Southwestern) currently has marketing responsibility for 2.2 million kilowatts of power from 24 multiple-purpose reservoir projects, with power facilities constructed and operated by the U.S. Army Corps of Engineers, generally in all or portions of the states of Arkansas, Kansas, Louisiana, Missouri, Oklahoma and Texas. The Integrated System, composed of 22 of the projects, is interconnected through a transmission system presently consisting of 138- and 161-kV high-voltage transmission lines, 69-kV transmission lines, and numerous bulk power substations and switching stations. In addition, contractual transmission arrangements provide for integration of other projects into the system.

The remaining two projects, Sam Rayburn Dam and Robert Douglas Willis, are isolated hydraulically and electrically from the Southwestern transmission system, and their power is marketed under separate contracts through which the customer purchases the entire power output of the project at the dam. A separate Power Repayment Study (PRS) is prepared for each isolated project, and each has a special rate which is not a part of this study.

The existing rate schedules for the Integrated System were confirmed and approved on a final basis by the FERC on September 18, 1991 for the period October 1, 1990 through September 30, 1994. These rates were extended on an interim basis (through September 30, 1995) by the Deputy Secretary of Energy on August 24, 1994. The FY 1995 Integrated System PRSs indicate the need for a rate adjustment of $1,008,285 annually, or 1.07 percent.

Pursuant to implementing authority in 10 CFR 903(h) and 903.23(a)(3), the Deputy Secretary of Energy may extend a FERC-approved rate on an interim basis. The Administrator, Southwestern, published notice in the **Federal Register** on June 15, 1995, 60 FR 31464, announcing a 15-day period for public review and comment concerning the proposed interim rate extension. In addition, informal meetings were held with customer representatives in April

and May 1995. Written comments were accepted through June 30, 1995. No comments on the proposed interim extension were received.

**Discussion**

The existing Integrated System rates are based on the FY 1990 PRS. PRSs have been completed on the Integrated System each year since approval of the existing rates. Rate changes identified by the PRSs since that period have indicated the need for minimal rate increases or decreases. Since the revenue changes reflected by the PRSs were within the plus-or-minus two percent Rate Adjustment Threshold established by Southwestern's Administrator on June 23, 1987, these rate adjustments were deferred in the best interest of the government and provided for the next year's PRS to determine the appropriate level of revenues needed for the next rate period.

The FY 1995 PRS indicates the need for a rate increase of 1.07 percent. As has been the case since the existing rates were approved, the FY 1995 rate adjustment needed falls within Southwestern's plus-or-minus two percent Rate Adjustment Threshold and would normally be deferred. However, the existing rates expire on September 30, 1995. Consequently, Southwestern proposes to extend the existing rates for a one-year period ending September 30, 1996, on an interim basis under the implementation authorities noted in 10 CFR 903.22(h) and 903.23(a)(3).

Southwestern continues to make significant progress toward repayment of the Federal investment in the Integrated System. Through FY 1994, status of repayment for the Integrated System was $319,846,125, which represents approximately 33 percent of the $982,356,193 Federal investment for the Integrated System. The status has increased almost 63 percent since the existing rates were placed in effect.

Information regarding this rate extension, including studies and other supporting material, is available for public review and comment in the offices of Southwestern Power Administration, One West Third Street, Tulsa, Oklahoma 74101.

**Order**

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby extend on an interim basis, for the period of one year, effective October 1, 1995, the current FERC-approved Integrated System Rates for the sale of power and energy.

Issued at Washington, DC, on August 8, 1995.

**Bill White,**

*Deputy Secretary.*

[FR Doc. 95–20283 Filed 8–15–95; 8:45 am]

BILLING CODE 6450–01–P

## Western Area Power Administration

### Notice of Amended Rate Schedule

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Notice of Amended Rate Schedule CV–F7.

**SUMMARY:** Notice is given of the confirmation and approval by the Deputy Secretary of the Department of Energy of Amended Rate Schedule CV–F7 from the Central Valley Project (CVP) of the Western Area Power Administration (Western) into effect on an interim basis. The interim Amended Rate Schedule CV–F7, will remain in effect on an interim basis until the Federal Energy Regulatory Commission (FERC) confirms, approves, and places it into effect on a final basis or until it is replaced by another rate schedule.

Rate Schedule CV–F7, Schedule for Rates for Commercial Firm-Power Service under Rate Order No. WAPA–59, was approved by FERC on September 22, 1993, under FERC Docket No. EF93–5011–000. The rates were placed in effect for the period beginning May 1, 1993, through April 30, 1998.

The methodology for the revenue adjustment clause (RAC) was included in Rate Schedule CV–F7 and included provisions for a $20 million maximum allocation of the RAC credit or surcharge. The Amended Rate Schedule CV–F7 modifies the maximum allocation of the RAC credit of $20 million by the amount of the Pacific Gas and Electric Company (PG&E) refund credit applied to the Western power bills for the fiscal year. The $20 million maximum allocation for the RAC surcharge remains unchanged, as do all other provisions of CVP Rate Schedule CV–F7.

**DATES:** Amended Rate Schedule CV–F7 will be placed into effect on an interim basis prior to October 1, 1995, and will be in effect until FERC confirms, approves, and places the rate schedule in effect on a final basis through April 30, 1998, the remaining time period of the current Rate Schedule CV–F7, or until the rate schedule is superseded.

**FOR FURTHER INFORMATION CONTACT:**

Mr. James C. Feider, Area Manager, Sacramento Area Manager, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630, (916) 649–4418

Mr. Robert Fullerton, Acting Director, Division of Power Marketing, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401–0098, (303) 275–1610

Mr. Joel Bladow, Assistant Administrator for Washington Liaison, Power Marketing Liaison Office, Room 8G–027, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0001, (202) 586–5581

**SUPPLEMENTARY INFORMATION:** The RAC compares projected net revenue with actual net revenue for each fiscal year. If the net difference is positive, a RAC credit is applied to the customers' power bills during the next January 1 to September 30 period. If the net difference is negative, a RAC surcharge is applied to customers' power bills in an amount equal to any deficit in repayment of annual expenses plus a minimum investment payment equal to the lesser of 1 percent of unpaid investment or projected investment payment. The maximum allocation of a RAC credit or surcharge on customers' power bills is $20 million annually.

In February 1992, Western and the PG&E entered into a settlement agreement (Settlement) which provided for annual reconciliation of estimated energy and capacity rates based on actual PG&E thermal costs. To date, the Settlement has resulted in refunds to Western which are applied as credits against amounts owed by Western to PG&E. The application of the credits reduces Western's purchase power expense which may increase Western's net revenue. Since the current RAC methodology provides for a $20 million cap, Western's customers may not realize the full benefit of the Settlement amounts.

Discussions on the proposed amendment to the RAC methodology were initiated at a customer meeting held on February 14, 1995. Western received favorable comments following the meeting, and pursued development of the proposed amendment. Representatives from the CVP customer base reviewed and supported the amendment. On April 10, 1995, Western sent a letter to all CVP customers requesting written comments on the proposed amendment and establishing a comment period through May 15, 1995. Western received three written comments during the comment period. All comments supported the interim amendment, with one comment requesting that future savings resulting from changes in Western's purchase

power contracts also be included in the RAC methodology. Western is planning a rate adjustment to accommodate any change in purchase power contracts.

The intent of amending the RAC would allow the net revenue, resulting from the PG&E/Western rate reconciliation, to be passed on to Western's customers as a RAC credit if there is no impact on CVP projected repayment. The extent of the amendment would change the maximum allocation of the RAC credit of $20 million by the amount of the PG&E refund credit applied to the Western power bills for the fiscal year. The current $20 million maximum allocation for the RAC surcharge will not be changed.

The RAC amendment does not change the rates, power repayment study, or any other documentation filed with the original Rate Order No. WAPA–59.

Confirmation, approval, and placement of Amended Rate Schedule CV–F7 into effect on an interim basis, is issued, and the Amended Rate Schedule CV–F7 will be submitted promptly to FERC for confirmation and approval on a final basis.

Issued in Washington, DC, August 8, 1995.

**Bill White,**

*Deputy Secretary.*

## Order Confirming, Approving, and Placing the Central Valley Project Amended Rate Schedule CV–F7 Into Effect on an Interim Basis

In the matter of: Western Area Power Administration Amended Rate Schedule CV–F7, Central Valley Project.

August 8, 1995.

The original Rate Schedule CV–F7, for commercial firm power rates, was established pursuant to section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7101 *et seq.*, through which the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902, 43 U.S.C. 371 et seq., as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c), and other acts specifically applicable to the project system involved were transferred to and vested in the Secretary of Energy (Secretary).

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). Existing DOE procedures for public participation in power rate adjustments are located at 10 CFR Part 903.

### *Acronyms and Definitions*

As used in this rate order, the following acronyms and definitions apply:

CVP: Central Valley Project.
DOE: U. S. Department of Energy.
FERC: Federal Energy Regulatory Commission.
FY: Fiscal year.
Net Revenue: Revenue remaining after paying all annual expenses.
PG&E: Pacific Gas and Electric Company.
RAC: Revenue Adjustment Clause.
Rate Schedule CV–F7: The current rate schedule for commercial firm power service, approved by FERC on September 22, 1993, under FERC Docket No. EF93–5011–000.
Secretary: Secretary of Energy.
Western: Western Area Power Administration.

### *Effective Date*

The Amended Rate Schedule CV–F7 will become effective on an interim basis prior to October 1, 1995, and will be in effect pending FERC's approval on a final basis for a 2½-year period, the remaining effective period for Rate Schedule CV–F7, or until superseded.

### *Public Notice and Comment*

The Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR Part 903, have been followed by Western in the development of this amended rate schedule. The following summarizes the steps Western took to ensure involvement of interested parties in the rate process:

1. On February 14, 1995, Western proposed the amendment to the RAC methodology at a customer meeting.

2. On April 10, 1995, Western sent a letter to all CVP customers requesting written comments on the proposed amendment and established a comment period through May 15, 1995.

### *Discussion*

The RAC, included under Rate Schedule CV–F7, compares projected net revenue with actual net revenue for a FY. If the net difference is positive, a RAC credit is applied to the customers' power bills during the next January 1 to September 30 period. If the difference is negative, a RAC surcharge is applied to the customers' power bills in an amount equal to any deficit in repayment of annual expenses plus a minimum investment payment equal to the lesser of 1 percent of the unpaid investment or projected investment payment. Under Rate Schedule CV–F7, the maximum allocation for RAC credits or surcharges is $20 million.

Basis for Amendment to Current Rate Schedule CV–F7 in February 1992, Western and the PG&E entered into a settlement agreement (Settlement) which provided for annual reconciliation of estimated energy and capacity rates based on actual PG&E thermal costs. To date, the Settlement has resulted in refunds to Western which are applied as credits against amounts owed by Western to PG&E. The application of the credits reduces Western's purchase power expense which may increase Western's net revenue. Since the current RAC methodology provides for a $20 million cap, Western's customers may not realize the full benefit of the Settlement amounts.

The intent of amending the RAC would allow the net revenue, resulting from the PG&E/Western rate reconciliation, to be passed on to Western's customers as a RAC credit if there is no impact on CVP projected repayment. The extent of the amendment would change the maximum allocation of the RAC credit of $20 million by the amount of the PG&E refund credit applied to the Western power bills for the fiscal year. The current $20 million maximum allocation for the RAC surcharge will not be changed.

### *Comments*

During the 30-day comment period, Western received three written comments regarding the proposed change in the RAC. All three commentors agreed with the proposal, with one commentor additionally requesting Western add any savings from changes in Western's purchase power contracts. Western is planning a rate adjustment to accommodate any change in purchase power contracts.

Written comments were received from the following sources:

Bay Area Rapid Transit (California)
Northern California Power Agency (California)
Sacramento Municipal Utility District (California)

*Environmental Evaluation*

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*); Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508); and DOE NEPA Regulations (10 CFR part 1021), Western has determined that this action is categorically excluded from the preparation of an environmental assessment or an environmental impact statement.

*Executive Order 12866*

DOE has determined that this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

*Availability of Information*

All studies, comments, letters, memoranda, or other documents made or kept by Western for the purpose of developing Amended Rate Schedule CV–F7, are and will be made available for inspection and copying at the Sacramento Area Office, located at 1825 Bell Street, Suite 105, Sacramento, California 95825; Western Area Power Administration, Division of Power Marketing, PO Box 3402, Golden, Colorado 80401; and Power Marketing Liaison Office, Office of the Assistant Administrator for Washington Liaison, Room 8G–061, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

*Submission to Federal Energy Regulatory Commission*

Amended Rate Schedule CV–F7 herein confirmed, approved, and placed into effect on an interim basis, together with supporting documents, will be submitted to FERC for confirmation and approval on a final basis.

**Order**

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I confirm and approve on an interim basis, effective prior to October 1, 1995, Amended Rate Schedule CV–F7 for the Central Valley Project. The amended rate schedule shall remain in effect on an interim basis, pending the Federal Energy Regulatory Commission confirmation and approval on a final basis, through April 30, 1998, or until the rate schedule is superseded.

Issued in Washington, DC, August 8, 1995.

**Bill White,**

*Deputy Secretary.*

Amended Rate Schedule CV–F7

(Supersedes Schedule CV–F7)

**Central Valley Project; Schedule of Rates for Commercial Firm-power Service**

*Effective*

October 1, 1995.

*Available*

Within the marketing area served by the Sacramento Area Office.

*Applicable*

To the commercial firm-power customers for general power service supplied through one meter, at one point of delivery, unless otherwise provided by contract.

*Character*

Alternating current, 60 hertz, three-phase, delivered and metered at the voltages and points established by contract.

*Monthly Rates*

| Period | Capacity | Energy |
|---|---|---|
| 10/01/95–09/30/97 | $6.57/kW/month | Base: 17.73 mills/kWh.<br>Tier: 34.70 mills/kWh. |
| 10/01/97–04/30/98 | $7.16/kW/month | Base: 19.33 mills/kWh.<br>Tier: 37.46 mills/kWh. |

*Billing*

Demand: The rates listed above for capacity shall be the charge per kilowatt (kW) of billing demand. The billing demand is the highest 30-minute integrated demand measured or scheduled during the month up to, but not in excess of, the delivery obligation under the power sales contract.

Energy: The rates listed above for energy shall be a charge per kilowatthour (kWh) for all energy use up to, but not in excess of, the maximum kWh obligation of the United States during the month as established under the power sales contract.

The energy base rate shall be applied to all energy sales below a 70-percent monthly load factor. The energy tier rate shall be applied to all energy sales at a 70-percent and higher monthly load factor. The monthly load factor shall be calculated based on the lesser of the customer's (1) maximum demand for the month or, if a scheduled customer, the maximum scheduled demand for the month; or (2) the contract rate of delivery. Only power offered under this Amended Rate Schedule CV-F7 will be used in the calculation of the load factor.

*Adjustments*

Billing for Unauthorized Overruns

For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual obligation for capacity and/or energy, such overrun shall be billed at 10 times the applicable rates above. The energy base rate will be used as the overrun rate for energy.

For Revenue Adjustment

The following methodology shall be used for the revenue adjustment clause (RAC) calculation:

1. If the actual net revenue is greater than the projected net revenue for the RAC calculation period, a revenue credit will be allocated during the RAC adjustment period. The credit will equal the difference between the actual net revenue and projected net revenue, represented by the following formula:

ANR > PNR; C = ANR − PNR

Where:

ANR = Actual Net Revenue
PNR = Projected Net Revenue
C = Credit

2. If actual net revenue is less than the projected net revenue for the RAC calculation period, a revenue surcharge will be allocated during the RAC adjustment period.

2.1 If the actual net revenue is negative, the surcharge will be equal to the minimum investment payment plus the annual deficit, represented by the following formula:

ANR < PNR and < O; S = MIP + AD

Where:

ANR = Actual Net Revenue
PNR = Projected Net Revenue
MIP = Minimum Investment Payment
AD = Annual Deficit
S = Surcharge

2.2 If the actual net revenue is positive, the surcharge will equal the

minimum investment payment less the actual net revenue, represented by the following formula:

ANR < PNR and > 0; S = MIP − ANR
(if ANR > MIP, S = 0)

Where:

ANR = Actual Net Revenue
PNR = Projected Net Revenue
MIP = Minimum Investment Payment
S = Surcharge

Provided, that if the actual net revenue is greater than the minimum investment payment, the surcharge will be equal to zero.

3. The maximum RAC credit allocation will equal $20 million plus the amount of the Pacific Gas and Electric Company refund credit applied to Western power bills for the fiscal year. The maximum allocation for a RAC surcharge shall not exceed $20 million.

4. The RAC credit or surcharge shall be allocated to each Central Valley Project (CVP) commercial firm-power customer based on the proportion of the customer's billed obligation to Western for CVP commercial firm capacity and energy to the total billed obligation for all CVP commercial firm-power customers for CVP commercial firm capacity and energy for the RAC calculation period.

5. For purposes of the RAC calculation, the following terms are defined:

5.1 Actual Net Revenue—The Recorded Net Revenue.

5.2 Annual Deficit—The amount the recorded annual expenses, including interest, exceed recorded annual revenues.

5.3 Minimum Investment Payment—The lesser of 1 percent of the recorded unpaid investment balance at the end of the prior FY that the RAC is being calculated, or the projected net revenue.

5.4 Projected Net Revenue—The annual net revenue available for investment repayment projected in the PRS for the rate case during the FY that the RAC is being calculated (see Table 1).

5.5 RAC Adjustment Period—The period January 1 through September 30, following the RAC calculation period when credits or surcharges will be applied to the power bills.

5.6 RAC Calculation Period—The last recorded FY (October 1 through September 30).

5.7 Recorded Net Revenue—The annual net revenue available for repayment recorded in the PRS for the FY that the RAC is being calculated.

6. Subject to modification by a superseding rate schedule, the final RAC will be allocated to the customers during the period January 1, 1999, to September 30, 1999.

TABLE 1.— PROJECTED NET REVENUE AVAILABLE FOR INVESTMENT REPAYMENT FOR REVENUE ADJUSTMENT CLAUSE

| Period | Projected net revenue |
|---|---|
| October 1, 1995–September 30, 1996 | $14,430,107 |
| October 1, 1996–September 30, 1997 | 1,051,664 |
| October 1, 1997–September 30, 1998 | 9,595,452 |

*For Transformer Losses*

If delivery is made at transmission voltage but metered on the low-voltage side of the substation, the meter readings will be increased to compensate for transformer losses as provided for in the contract.

*For Power Factor*

The customer will be required to maintain a power factor at all points of measurement between 95-percent lagging and 95-percent leading. The low power factor charge (LPFC) will be calculated by multiplying the customer's maximum monthly demand by the kilovar (kVar)/kW rate for the customer's mean power factor as provided in the following Table 2:

TABLE 2.—KVAR/KW RATE TABLE

| Power factor | Rate |
|---|---|
| 0.94 | 0.09 |
| 0.93 | 0.17 |
| 0.92 | 0.24 |
| 0.91 | 0.32 |
| 0.90 | 0.39 |
| 0.89 | 0.46 |
| 0.88 | 0.53 |
| 0.87 | 0.60 |
| 0.86 | 0.66 |
| 0.85 | 0.73 |
| 0.84 | 0.79 |
| 0.83 | 0.86 |
| 0.82 | 0.92 |
| 0.81 | 0.99 |
| 0.80 | 1.05 |
| 0.79 | 1.12 |
| 0.78 | 1.18 |
| 0.77 | 1.25 |
| 0.76 | 1.32 |
| 0.75 and below | 1.38 |

A LPFC will be assessed when a customer's power factor is less than 95 percent.

(a) A charge of $2.50 per kVar will be assessed for every kVar required to raise a customer's power factor to 95 percent. The calculated power factor used to determine if a charge will be assessed is the arithmetic mean of a customer's measured monthly average power factor and their measured onpeak power factor, rounded to the nearest whole percent with 0.5 percent or greater rounded to the next higher percent.

(b) The mean power factor will be calculated at each customer's point of delivery. If a customer has multiple points of delivery, the power factor will be determined from totalized information from the points of delivery.

(c) No credit will be given for customers operating between 95 percent and 100 percent.

(d) Customers that have a monthly peak demand less than or equal to 50 kW will not be subject to the LPFC.

(e) The Contracting Officer may waive the LPFC for good cause in whole or in part.

[FR Doc. 95–20284 Filed 8–15–95; 8:45 am]
BILLING CODE 6450–01–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–5278–1]**

## Border Environment Cooperation Commission, CD. Juarez, Chihuahua; Notice of Public Meetings

The Border Environment Cooperation Commission (BECC) cordially invites you to attend the next two Public Meetings of the Board of Directors: Public Meeting (Special) of the Board of Directors Thursday, August 31, 1995, 9:00 am–4:00 pm, Camino Real Hotel, El Paso, Texas.

*Proposed Agenda*

1. Approval of Minutes from July 28, 1995 Public Meeting of the Board of Directors
2. Consideration of and Vote on the Guidelines for Project Submission and Criteria for Certification
3. Briefing on Projects to be Considered for Certification at the September 28, 1995 Public Meeting of the Board of Directors
4. Comments by Public on Projects Proposed for Certification
5. Comments by Board of Directors and Advisory Council
6. Adjournment

Public Meeting (Quarterly) of the Board of Directors, Thursday, September 28, 1995, 9:00 am–4:00 pm, Sheraton Hotel, Brownsville, Texas.

*Proposed Agenda*

1. Approval of Minutes from August 31, 1995 Public Meeting of the Board of Directors
2. Briefing on Projects Proposed for Certification
3. Comments by Public
4. Consideration of Project Certification by Board of Directors
5. Review and Consideration of Technical Assistance Program

6. Comments by Board of Directors and Advisory Council
7. Adjournment

The Board of Directors may consider several projects for certification including: El Paso, Texas Wastewater Reuse Project; Cd. Juárez, Chihuahua Wastewater Treatment Plants; City of Brawley, California Water Treatment Plant; Piedras Negras, Coahuila, Municipal Solid Waste Landfill; Piedras Negras, Coahuila Municipal Wastewater Treatment Plant; and Ensenada, Baja California Wastewater Treatment Plant.

Any member of the public interested in submitting written comments to the Board of Directors on the projects proposed for certification should send written material to the BECC staff 15 days prior to the scheduled public meetings. Anyone interested in making a brief statement to the Board may do so during the public meetings.

Should you have any questions or need additional information, please contact the BECC Office: Blvd. Tomás Fernandez No., 7940 Ed. Torres Campestre, sexto piso; Cd. Juárez, Chih. C.P. 23470 or P.O. Box 221648 El Paso, TX 79913; Tel: (011–52–16) 29–23–95; Fax: (011–52–16) 29–23–97.

Both meetings are free and open to the public.

**Tracy J. Williams,**

*Public Outreach Coordinator.*

[FR Doc. 95–20231 Filed 8–15–95; 8:45 am]

**BILLING CODE 6560–50–P**

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**[OPP–50809; FRL–4966–7]**

## Issuance of Experimental Use Permits

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR part l72, which defines EPA procedures with respect to the use of pesticides for experimental use purposes.

**FOR FURTHER INFORMATION CONTACT:** By mail: Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person or by telephone: Contact the product manager at the following address at the office location, telephone number, or e-mail address cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

**SUPPLEMENTARY INFORMATION:** EPA has issued the following experimental use permits:

*45639–EUP–56*. Issuance. AgrEvo USA Company, Little Falls Centre One, 2711 Centerville Rd., Wilmington, DE 19808. This experimental use permit allows the use of 449 pounds of the herbicide ammonium-DL-homoalanin-4-yl-(methyl) phosphinate on 562 acres of corn and soybeans to evaluate the control of annual and perennial grasses and broadleaf weeds. The program is authorized in the States of Arkansas, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Missouri, Mississippi, Nebraska, New Jersey, New York, North Carolina, North Dakota, Ohio, Pennsylvania, South Dakota, Tennessee, Texas, Virginia, and Wisconsin. The experimental use permit is effective from March 7, 1995 to March 7, 1996. This permit is issued with the limitation that all treated crops will be destroyed or used for research purposes only. (Joanne Miller, PM 23, Rm. 237, CM #2, 703–305–7830, e-mail: miller.joanne@epamail.epa.gov)

*352–EUP–160*. Issuance. E.I. duPont de Nemours & Company, Agricultural Products, Walkers Mill, Barley Mill Plaza, P.O. Box 80038, Wilmington, DE 19880–0038. This experimental use permit allows the use of 225 pounds of the herbicide methyl 2-[[[[[4-(dimethylamino)-6-(2,2,2-trifluoroethoxy)-1,3,5-triazin-2-yl]amino]carbonyl]amino]sulfonyl]-3-methylbenzoate on 6,000 acres of sugar beets to evaluate the control of various weeds. The program is authorized only in the States of California, Colorado, Idaho, Michigan, Minnesota, Montana, Nebraska, North Dakota, Ohio, Oregon, Texas, and Wyoming. The experimental use permit is effective from March 24, 1995 to September 30, 1997. Temporary tolerances for residues of the active ingredient in or on sugar beet tops and sugar beet roots have been established. (Robert Taylor, PM 25, Rm. 241, CM #2, 703–305–6800, e-mail: taylor.robert@epamail.epa.gov)

*279–EUP–135*. Issuance. FMC Corporation, Agricultural Chemical Group, 1735 Market St., Philadelphia, PA 19103. This experimental use permit allows the use of 555 pounds of the herbicide 2-(2-chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone on 555 acres of soybeans to evaluate the control of broadleaf weeds and grasses. The program is authorized only in the States of Illinois, Indiana, Iowa, Maryland, Minnesota, Ohio, and Wisconsin. The experimental use permit is effective from May 18, 1995 to May 18, 1996. A temporary tolerance for residues of the active ingredient in or on soybeans has been established. (Robert Taylor, PM 25, Rm. 241, CM #2, 703–305–6800, e-mail: taylor.robert@epamail.epa.gov)

*618–EUP–14*. Amended. Merck & Company, Inc., P.O. Box 450, Three Bridges, NJ 08887–0450. This experimental use permit allows the use of 13.32 pounds of the insecticide 4″-epi-methylamino-4″-deoxyavermectin $B^1$ benzoate on 147 acres of cole crops, celery, and head lettuce to evaluate the control of lepidopteran insects. The program is authorized only in the States of Arizona, California, Colorado, Florida, Hawaii, Michigan, New Jersey, New York, North Carolina, Pennsylvania, and Texas. The experimental use permit is effective from May 11, 1995 to May 11, 1996. Temporary tolerances for residues of the active ingredient in or on cole crops, celery, and head lettuce have been established. (George LaRocca, PM 13, Rm. 204, CM #2, 703–305–6100, e-mail: larocca.george@epamail.epa.gov)

*707–EUP–133*. Issuance. Rohm and Haas Company, Independence Mall West, Philadelphia, PA 19105. This experimental use permit allows the use of 320 pounds of the insecticide benzoic acid-, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide on 320 acres of spinach to evaluate the control of lepidopterous pests. The program is authorized only in the States of Arkansas, California, Maryland, New Jersey, New York, Oklahoma, Texas, and Virginia. The experimental use permit is effective from May 18, 1995 to May 18, 1996. A temporary tolerance for residues of the active ingredient in or on spinach has been established. (Richard Keigwin, PM 10, Rm. 713, CM #2, 703–305–7618, e-mail: keigwin.richard@epamail.epa.gov)

*707–EUP–135*. Issuance. Rohm and Haas Company, Independence Mall West, Philadelphia, PA 19105. This experimental use permit allows the use of 4,480 pounds of the insecticide benzoic acid-, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide on 4,480 acres of cole crops and leafy vegetables (excluding spinach) to evaluate the control of lepidopterous pests. The program is authorized only in the States of Arizona, California, Florida, Georgia, Hawaii, Michigan, Mississippi, Ohio, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Virginia, Tennessee, Texas, and Wisconsin. The experimental use permit is effective from May 18, 1995 to May 18, 1996. Temporary tolerances for residues of the active ingredient in or on cole crops and leafy vegetables have been established. (Richard Keigwin, PM 10, Rm. 713, CM #2, 703–305–7618, e-mail: keigwin.richard@epamail.epa.gov)

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquires concerning these permits should be directed to the person cited above. It is suggested that interested

persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**Authority**: 7 U.S.C. 136.

**List of Subjects**

Environmental protection, Experimental use permits.

Dated: August 2, 1995.

**Stephen L. Johnson,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 95–20306 Filed 8–15–95; 8:45 am]

BILLING CODE 6560–50–F

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**[OPP–30391; FRL–4969–3]**

## American Cyanamid Co.; Applications to Register Pesticide Products

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces receipt of applications to register pesticide products containing active ingredients not included in any previously registered products, pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

**DATES:** Written comments must be submitted by September 15, 1995.

**ADDRESSES:** By mail submit comments identified by the document control number [OPP–30391] and the registration/file number to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–30391]. No ''Confidential Business Information'' (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submission can be found below in this document.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Robert Taylor, Product Manager (PM) 25, Registration Division (7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location/telephone number: Rm. 251, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA 22202. (703)–305–6800; e-mail: taylor.robert@epamail.epa.gov

**SUPPLEMENTARY INFORMATION:** EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

### Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 241–GAU. Applicant: American Cyanamid Company, Agricultural Research Division, Princeton NJ 08543–0400. Product name: Cadre Herbicide. Herbicide. Active ingredient: Ammonium salt of (±)-2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-methyl-3-pyridinecarboxylic acid at 23.6 percent. Proposed classification/Use: General. To control broadleaf and grass weeds in peanuts. Type registration: Conditional. (PM 25)

2. File Symbol: 241–GAG. Applicant: American Cyanamid Co. Product name: Cadre Herbicide Technical. Herbicide. Active ingredient: Ammonium salt of (±)-2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-methyl-3-pyridinecarboxylic acid at 96.4 percent. Proposed classification/Use: General. For formulating purposes only. Type registration: Conditional. (PM 25)

3. File Symbol: 241–GAL. Applicant: American Cyanamid Co. Product name: AC 263,222 Herbicide. Herbicide. Active ingredient: Ammonium salt of (±)-2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-methyl-3-pyridinecarboxylic acid at 23.6 percent. Proposed classification/Use: General. For weed control and turf growth suppression on roadsides and other noncrop areas. Type registration: Conditional. (PM 25)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

A record has been established for this notice under docket number [OPP–30391] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operations Division at the address provided from 8 a.m. to 4:30

p.m., Monday through Friday, excluding legal holidays. It is suggested that persons interested in reviewing the application file, telephone this office at (703–305–5805), to ensure that the file is available on the date of intended visit.

**Authority:** 7 U.S.C. 136.

**List of Subjects**

Environmental protection, Pesticides and pests, Product registration.

Dated: August 2, 1995.

**Stephen L. Johnson,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 95–20167 Filed 8–15–95; 8:45 am]

BILLING CODE 6560–50–F

**[OPP–30362B; FRL–4967–3]**

## Rohm and Haas Co.; Approval of Pesticide Product Registrations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces Agency approval of applications to register the pesticide products RH-5992 Technical and Confirm 2F, containing an active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

**FOR FURTHER INFORMATION CONTACT:** By mail: Richard Keigwin, Product Manager (PM) 10, Registration Division (7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 210, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703) 305–6788; e-mail: keigwin.richard@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** EPA issued a notice, published in the **Federal Register** of April 29, 1994 (59 FR 22160), which announced that Rohm and Haas, Independence Mall West, Philadelphia, PA 19105, had submitted applications to register the pesticide products RH-5992 Technical and Confirm 2F (EPA File Symbols 707–EGT, 707–EGI), containing the active ingredient tebufenozide benzoic acid 3,5-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide at 97.1 and 23.0 percent respectively, an active ingredient not included in any previously registered products.

On May 15, 1995, EPA approved one technical and one end-use product listed below:

1. RH-5992 Technical (EPA Registration Number 707–237) for repackaging, relabeling, formulation, or processing use only.

2. Confirm 2F (EPA Registration Number 707–238) for use to control the lepidepterous pest on walnuts.

The Agency has considered all required data on risks associated with the proposed use of tebufenozide benzoic acid 3,5-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health safety determinations which show that use of tebufenozide benzoic acid 3,5-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

More detailed information on these registrations is contained in a Chemical Fact Sheet on tebufenozide benzoic acid 3,5-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

**Authority:** 7 U.S.C. 136.

**List of Subjects**

Environmental protection, Pesticides and pests, Product registration.

Dated: July 25, 1995.

**Stephen L. Johnson,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 95–20168 Filed 8–15–95; 8:45 am]

BILLING CODE 6560–50–F

**[FRL–5278–3]**

## Department of Energy Draft Compliance Certification Application for the Waste Isolation Pilot Plant

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of Availability.

**SUMMARY:** The EPA is announcing the availability of a draft compliance certification application for the Waste Isolation Pilot Plant (WIPP) submitted in two parts to the Agency by the Department of Energy (DOE) on March 31, 1995 and July 31, 1995, respectively. The EPA invites the public to provide comments to the EPA on the draft DOE compliance certification application. The EPA will consider these comments in conducting a staff-level technical review of the draft document.

**DATES:** Comments in response to today's notice must be received by October 16, 1995.

**ADDRESSES:** Copies of the draft DOE compliance certification application are available to the public at EPA Docket No. A–93–02 maintained at the following addresses: (1) room 1500 (first floor in the Waterside Mall near the Washington Information Center), U.S. Environmental Protection Agency, Air Docket, 401 M Street, S.W., Washington, D.C. 20460 (open from 8:00 a.m. to 4:00 p.m. on weekdays); (2) EPA's docket in the Government Publications Department of the Zimmerman Library of the University of New Mexico located in Albuquerque, New Mexico (open from 8:00 a.m. to 9:00 p.m. on Monday through Thursday, 8:00 a.m. to 5:00 p.m. on Friday, 9:00 a.m. to 5:00 p.m. on Saturday, and 1:00 p.m. to 9:00 p.m. on Sunday); (3) EPA's docket in the Fogelson Library of the College of Santa Fe, located at 1600 St. Michaels Drive, Santa Fe, New Mexico (open from 8:00 a.m. to 12:00 midnight on Monday through Thursday, 8:00 a.m. to 5:00 p.m. on Friday, 9:00 a.m. to 5:00 p.m. on Saturday and 1:00 p.m. to 9:00 p.m. on Sunday); and (4) EPA's docket in the Municipal Library of Carlsbad, New Mexico, located at 101 South Halegueno (open from 10:00 a.m. to 9:00 p.m. on

Monday through Thursday, 10:00 a.m. to 6:00 p.m. on Friday and Saturday, and 1:00 p.m. to 5:00 p.m. on Sunday). As provided in 40 CFR Part 2, a reasonable fee may be charged for photocopying docket materials.

Comments on the draft DOE application should be submitted, in duplicate, to: Docket No. A–93–02, U.S. Environmental Protection Agency, Air Docket, Room M–1500 (LE–131), 401 M Street, S.W., Washington, D.C. 20460.

**FOR FURTHER INFORMATION CONTACT:** Agnes Ortiz or Lynne Weinrib, U.S. Environmental Protection Agency, Office of Radiation and Indoor Air (6602J), 401 M Street, S.W., Washington, D.C. 20460; (202) 233–9310.

**SUPPLEMENTARY INFORMATION:** The Department of Energy is proposing to use the Waste Isolation Pilot Plant (WIPP), located in Eddy County, New Mexico, as a deep geologic repository for the disposal of transuranic radioactive waste generated by nuclear defense activities. The 1992 Waste Isolation Pilot Plant Land Withdrawal Act, (Pub. L. No. 102–579), calls for the EPA to perform several regulatory activities for the WIPP including: (1) issuing radioactive waste disposal standards; (2) establishing criteria for the EPA to determine whether the WIPP complies with the radioactive waste disposal standards; and (3) certifying whether the DOE's WIPP facility complies with the disposal standards, based on a DOE submitted compliance certification application. *See* section 8 of the WIPP Land Withdrawal Act. The WIPP Land Withdrawal Act prohibits the DOE from commencing with the emplacement of transuranic waste for underground disposal at the WIPP until the EPA certifies that the facility will comply with EPA's radioactive waste disposal standards. *See* section 7(b) of the WIPP Land Withdrawal Act.

The EPA has issued final radioactive waste disposal standards, which are codified at 40 CFR part 191. *See* 58 FR 66398 (Dec. 20, 1993). The EPA has also proposed criteria for certifying whether the WIPP facility will comply with EPA's radioactive waste disposal standards. *See* 60 FR 5766 (Jan. 30, 1995). After considering a request to extend the initial public comment period and in order to provide an opportunity for the public to comment on the proposed compliance criteria in light of the DOE's draft compliance certification application, the EPA recently announced that it was reopening the public comment period on the proposed compliance criteria. *See* 60 FR 39131 (August 1, 1995). The public is referred to the December 20, 1993 and January 30, 1995 **Federal Register** notices for more detailed information about the EPA's regulatory activities at the WIPP.

The DOE submitted a draft compliance certification application to the EPA in two parts on March 31, 1995 and July 31, 1995, respectively. The DOE intends for this draft application to provide preliminary information on data gathered for the WIPP and to solicit feedback regarding the technical adequacy of the data in an effort to prepare for its final compliance certification application. The EPA staff will conduct a technical review of the draft application and provide comments to DOE on its technical adequacy. By this notice, the EPA is inviting the public to participate in the review of the draft application, available at the public dockets identified above, by submitting written comments for the EPA's consideration in its staff-level technical review of the draft application. The EPA's technical review of the draft application is not subject to the notice-and-comment rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553, and the EPA does not plan to provide written response to the public comments submitted. However, public comments on the DOE's draft application which are submitted to the EPA will be available at EPA Docket No. A–93–02 along with the EPA's review comments.

The EPA's review of the DOE draft application is not a final EPA action and has no binding legal effect. The Agency cannot, by law, approve or certify any part of the draft application. Further, the EPA has not issued the final criteria for determining whether the WIPP facility is in compliance with the radioactive waste disposal standards. The Administrator of the EPA will determine whether the WIPP facility is in compliance with the EPA's radioactive waste disposal standards only after the Agency issues final compliance criteria, receives a final DOE compliance certification application based on the final compliance criteria, and conducts a WIPP certification rulemaking proceeding in accordance with the Administrative Procedure Act rulemaking requirements at 5 U.S.C. 553. In addition, before the Administrator of the EPA makes any final WIPP certification determination, the EPA will issue a proposed determination in the **Federal Register** and provide an opportunity for public comment on the proposal. The subsequent final certification determination by the Administrator will consider the comments received in response to the proposal and be accompanied with a reply to significant public comments.

Dated: August 10, 1995.

**Mary Nichols,**

*Assistant Administrator, Office of Air and Radiation.*

[FR Doc. 95–20228 Filed 8–15–95; 8:45 am]

BILLING CODE 6560–50–P

## EXECUTIVE OFFICE OF THE PRESIDENT

### Open Meeting of Policy Dialog Advisory Committee to Assist in the Development of Measures to Significantly Reduce Greenhouse Gas Emissions From Personal Motor Vehicles

**AGENCY:** Executive Office of the President.

**ACTION:** Meeting of Policy Dialog Advisory Committee.

**SUMMARY:** The Executive Office of the President has established a Policy Dialog Advisory Committee to assist in the development of measures to significantly reduce greenhouse gas emissions from personal motor vehicles. The eleventh meeting of this committee will be held on September 19 and 20, 1995. The committee's meetings are open to the public without need for advance registration.

**DATES:** The committee will meet on September 19, 1995 from 9:30 a.m. to 5:30 p.m., and on September 20, 1995 from 8:30 a.m. to 4:00 p.m.

**ADDRESSES:** Both sessions of the meeting will be held in Room 2230 at the United States Department of Transportation, 400 7th Street, S.W., Washington, D.C.

**FOR FURTHER INFORMATION CONTACT:** For information pertaining to the substantive issues to be dealt with by the advisory committee, contact: Ellen Seidman, Special Assistant to the President for Economic Policy, Washington, D.C. 20500, phone (202) 456–2802, fax (202) 456–2223; Henry Kelly, Assistant Director for Technology, Office of Science and Technology Policy, phone (202) 456–6034, fax (202) 456–6023; Wesley Warren, Associate Director, Council on Environmental Quality, phone (202) 456–6224, fax (202) 456–2710; or Michael Toman, Senior Economist, Council of Economic Advisors, phone (202) 395–5012, fax (202) 395–6853. For information pertaining to administrative matters contact: Deborah Dalton, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, phone (202) 260–5495.

Information about the Committee is also available on the Technology Transfer Network of the Office of Air Quality Planning & Standards of the Environmental Protection Agency, which can be accessed electronically by calling (919) 541–5742. Help in accessing the system can be obtained by calling (919) 541–5384 between 1:00 and 5:00 Eastern Standard Time. Neither of these numbers is a toll-free number. The Committee's toll-free information line—1–800–884–9190—provides recorded information about the Committee, including meeting dates and locations. (In the local Washington, DC area, call (202) 366–2372.)

*Agenda for the Meeting:* At the meeting, the Committee will discuss:

- Potential policies in the areas of vehicle miles traveled, alternative fuels and alternative fuel vehicles, and vehicle and stock fuel economy;
- Analysis of the cost of potential policy options;
- Potential combinations of policies; and
- A draft of the committee's final report.

Dated: August 10, 1995.

**W. Bowman Cutter,**

*Deputy Assistant to the President for Economic Policy.*

**John H. Gibbons,**

*Director, Office of Science and Technology Policy.*

**Kathleen A. McGinty,**

*Chair, Council on Environmental Quality.*

[FR Doc. 95–20256 Filed 8–15–95; 8:45 am]

BILLING CODE 3195–01–M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Open Meeting, Board of Visitors for the National Fire Academy

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice of open meeting.

**SUMMARY:** In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, FEMA announces the following committee meeting:

*Name:* Board of Visitors for the National Fire Academy.

*Dates of Meeting:* October 12–15, 1995.

*Place:* Building G Conference Room, National Emergency Training Center, Emmitsburg, Maryland.

*Time:* October 12, 1995, 8:30 a.m.–5:00 p.m., October 13, 1995, 8:30 a.m.–9:00 p.m., October 14, 1995, 8:30 a.m.–5:00 p.m., October 15, 1995, 9:00 a.m.–2:00 p.m.

*Proposed Agenda:* October 12—Election of officers. October 12—Annual Report preparation. October 14—Agenda completion. October 15—Attend National Fallen Firefighters Memorial Services.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public with seating available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, National Fire Academy, U.S. Fire Administration, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1117, on or before October 2, 1995.

Minutes of the meeting will be prepared and will be available for public viewing in the Office of the Administrator, U.S. Fire Administration, Federal Emergency Management Agency, Emmitsburg, MD 21727. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: August 1, 1995.

**Carrye B. Brown,**

*U.S. Fire Administrator.*

[FR Doc. 95–20270 Filed 8–15–95; 8:45 am]

BILLING CODE 6718–01–M

## FEDERAL MARITIME COMMISSION

### Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Abroad Cargo Service, Inc., 7968–7970 N.W. 66 Street, Miami, FL 33166, Officers: Claudio Rozentzvaig, Celia J. Garcio, Vice President

King Senderax, Incorporated d/b/a King Senderax Cargo, 9618 Belford Avenue, #3, Los Angeles, CA 90045, Officers: Anupam Biswas, C.E.O., Norbert Giessman, Vice President

A A International, 100 Clark Street, Keyport, NJ 07735, Zuowen Bei, Sole Proprietor

Quartet International, 7508 Potrero Avenue, El Cerrito, CA 94530, Officers: William E. Reinka, C.E.O/Dir./Pres., Thomas H. Rogers, Director.

By the Federal Maritime Commission.

Dated: August 10, 1995.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 95–20200 Filed 8–15–95; 8:45 am]

BILLING CODE 6730–01–M

## FEDERAL RESERVE SYSTEM

### First Union Corporation; NationsBank Corporation; Southern National Corporation; and Wachovia Corporation; Notice to Engage in Certain Nonbanking Activities

First Union Corporation, Charlotte, North Carolina; NationsBank Corporation, Charlotte, North Carolina; Southern National Corporation, Winston-Salem, North Carolina; and Wachovia Corporation, Winston-Salem, North Carolina (collectively, Notificants), have given notice pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and § 225.23 of the Board's Regulation Y (12 CFR 225.23), of their intention to acquire 15.252 percent, 18.293 percent, 12.889 percent, and 17.242 percent, respectively, of Education Financing Services, LLC, Winston-Salem, North Carolina (EFS). Through EFS, Notificants will provide development, management, software, marketing, and training services to the North Carolina State Education Assistance Authority, the North Carolina State Treasurer's office, and the College Foundation, Inc. in connection with the administration of the College Vision Fund, a program designed to assist North Carolina families in financing the higher education of their children. This activity will be conducted in North Carolina.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity ''which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto.'' 12 U.S.C. 1843(c)(8). In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the notice, and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the

Federal Reserve System, Washington, D.C. 20551, not later than September 8, 1995. Any request for a hearing on this proposal must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. The notice may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Richmond.

Board of Governors of the Federal Reserve System, August 10, 1995.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 95–20232 Filed 8–15–95; 8:45 am]

BILLING CODE 6210–01–F

## National Westminster Bank PLC, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

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 on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than August 30, 1995.

**A. Federal Reserve Bank of New York** (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

*1. National Westminster Bank PLC*, London, England; Natwest Holdings Inc., New York, New York; and National Westminster Bancorp Inc., Jersey City, New Jersey; to acquire Natwest Leasing Corporation, New York, New York (Company), and thereby engage in making, acquiring, or servicing loans or other extensions of credit for Company's own accounts or for the account of others, such as would be made, acquired or serviced by a commercial finance company, pursuant to § 225.25 (b)(1) of the Board's Regulation Y; in leasing personal and real property having a maximum estimated residual value of 25 percent of the acquisition cost of the property, and to act as an agent, broker or adviser in leasing such property, pursuant to § 225.25(b)(5)(i) of the Board's Regulation Y; and in high residual value leasing of tangible personal property, and to act as agent, broker or adviser in leasing such property, in transactions in which the lessor would be allowed to rely upon an estimated residual value in excess of 25 of the acquisition cost of the property, pursuant to § 225.25(b)(5)(ii) of the Board's Regulation Y. These activities will be conducted worldwide.

**B. Federal Reserve Bank of Philadelphia** (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

*1. Keystone Financial, Inc.*, Harrisburg, Pennsylvania; to acquire Martindale Andres & Company, Inc., West Conshohocken, Pennsylvania, and thereby engage in investment advisory services, pursuant to § 225.25(b)(4) of the Board's Regulation Y.

**C. Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

*1. First Financial Bancorp*, Hamilton, Ohio; to acquire Independent Bankers Life Insurance Company of Indiana, Roachdale, Indiana, and thereby engage in underwriting credit life, accident, and health insurance, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y. These activities will be conducted within the State of Indiana.

**D. Federal Reserve Bank of Chicago** (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. Carroll County Bancshares, Inc.*, Carroll, Iowa; to establish a wholly owned industrial loan company, Carroll Credit, Inc., Carroll, Iowa, which will acquire a substantial portion of the assets of Personal Lenders, Inc., Carroll, Iowa, and thereby engage in operating an industrial loan company, pursuant to § 225.25(b)(2) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 10, 1995.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 95–20234 Filed 8–15–95; 8:45 am]

BILLING CODE 6210–01–F

## FEDERAL TRADE COMMISSION

## Policy Statement Regarding Duration of Competition and Consumer Protection Orders

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice of policy statement.

**SUMMARY:** This notice describes the Federal Trade Commission's Policy Statement regarding the duration of future and existing administrative cease and desist orders as well as federal district court orders in competition and consumer protection matters. Under this Policy Statement, the Commission will ordinarily terminate (''sunset'') future competition and consumer protection administrative orders automatically after twenty years, unless the Commission or the Department of Justice has filed a complaint (with or without an accompanying consent decree) in federal court to enforce such order pursuant to Section 5(1) of the Federal Trade Commission Act (''FTCA)''. This policy will not extend to federal court orders. The Commission also intends to terminate each existing administrative order twenty years after it was issued, unless the Commission or the Department of Justice has filed a complaint (with or without an accompanying consent decree) in federal court to enforce such order pursuant to Section 5(1) of the FTCA during the twenty years preceding the adoption of the Policy Statement, or unless such a complaint is filed after the adoption of the Policy Statement and within twenty years after the order's issuance. The Commission intends to implement its new policy with respect to existing administrative orders through rulemaking.

In adopting this Policy Statement, the Commission considered comments filed in response to the Commission's ''Policy Statement With Request for Public Comment Regarding Duration of Competition Orders and Request for Public Comment Regarding Duration of Consumer Protection Orders,'' published in the Federal Register on September 1, 1994. 59 Fed. Reg. 45286. This new Policy Statement will supersede the Policy Statement Regarding Duration of Competition Orders adopted on July 22, 1994. In addition, the Commission is publishing and seeking comment on a Notice of Proposed Rulemaking to implement its policy with respect to existing administrative orders. The Commission is also soliciting comment regarding this Policy Statement.

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

**ADDRESSES:** Written comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. & Pa. Ave. N.W., Washington, D.C. 20580.

**FOR FURTHER INFORMATION CONTACT:** Donald S. Clark, Secretary, Federal Trade Commission, (202) 326–2514; Roberta Baruch, Deputy Assistant Director for Compliance, Bureau of Competition, (202) 326–2861; or Justin Dingfelder, Assistant Director for Enforcement, Bureau of Consumer Protection, (202) 326–3017.

**SUPPLEMENTARY INFORMATION:** The Commission adopted its existing policy regarding the duration of competition orders on July 22, 1994. Under that policy, the Commission presumes that core provisions in future competition administrative orders and federal court orders should ordinarily terminate automatically after twenty years.[1] The Commission also presumes that all supplemental provisions in future competition orders should sunset after no more than ten years.[2] In addition, in the context of petitions to reopen and vacate existing competition administrative orders, the Commission applies a rebuttable presumption that the public interest warrants terminating orders that have been in force for more than twenty years. The notice announcing this policy also requested public comment on whether consumer protection orders also should be sunsetted.

The Commission received 23 comments in response to its invitation. The commenters expressed nearly unanimous support for the Commission's current policy of terminating competition orders. However, most of the commenters recommended that the Commission amend the policy statement by shortening the sunset period for new competition orders and by terminating existing orders automatically rather than applying a presumption in favor of termination in response to petitions to reopen.

Of the 23 commenters, 19 supported adopting a sunset policy for both future and existing consumer protection orders, three opposed it, and one did not address the issue. The three commenters opposing sunsetting consumer protection orders were the FTC-Working Group of the National Association of Attorneys General (''NAAG''), the American Association of Retired Persons (''AARP''), and the Center for Science in the Public Interest (''CSPI'').

The three commenters who opposed sunsetting consumer protection orders argued that such action is unnecessary because consumer protection orders merely require respondents to refrain from unfair or deceptive behavior that is unlawful under any circumstances, without respect to changes in market, organizational, or other conditions. AARP asserted that the absence of Commission action in a particular area does not necessarily indicate that the practices proscribed by earlier orders in that area have ceased to be illegal. CSPI asserted that the reopening process serves as an effective procedure for relief for companies and individuals that find themselves subject to outdated orders. The FTC–NAAG Working Group suggested that the requirements of complying with Commission orders might have the potential to reduce company costs by heightening the sensitivity of company personnel to consumer protection law issues, thus reducing the likelihood of having to defend against allegations regarding future violations.

The commenters who favored sunsetting consumer protection orders advanced considerations that are essentially the same as those that the Commission considered in deciding to sunset competition orders. In their view, changes in legal and market circumstances over time reduce the need to maintain orders to deter recidivism, and make continued existence of these orders burdensome and anti-competitive. Several commenters asserted that the enforcement options available to the Commission for deterring violations of law have expanded significantly over the years, making it unnecessary to rely on perpetual order restrictions. Finally, some commenters recommended automatically terminating consumer protection orders after ten years, while others recommended automatically terminating them after twenty years and applying a presumption for terminating these orders after ten years in response to a petition to reopen.

On the basis of the comments received and other considerations, the Commission has concluded that the existing policy regarding the duration of competition orders should be revised in three key respects. First, the new Policy Statement explicitly sets forth a circumstance in which future competition orders would endure more than twenty years. Whereas the existing policy states that core provisions in future orders ''ordinarily'' will sunset in twenty years, the new Policy Statement provides that core provision in future competition administrative orders will ordinarily sunset in twenty years, unless either the Commission or the Department of Justice has filed a complaint (with or without an accompanying consent decree) in federal court to enforce such order pursuant to Section 5(1) of the FTCA.[3]

Second, the new Policy Statement sets forth the Commission's intention to dispense with the petitioning process to sunset existing competition orders and instead sunset such orders through rulemaking. The rule, proposed elsewhere in the **Federal Register,** would automatically sunset each existing administrative order twenty years after it was issued, unless the Commission or the Department of Justice has filed a compliant (with or without an accompanying consent decree) in federal court to enforce such order pursuant to Section 5(1) of the FTCA during the twenty years preceding the adoption of the Policy Statement, or unless such a compliant is filed after the adoption of the Policy Statement and within twenty years after the order's issuance. Third, the new Policy Statement will not apply to Federal court orders.

The Commission's present policy regarding the duration of consumer

[1] Core provisions prohibit practices that would be unlawful whether used by parties subject to the order at issue or by other similarly situated persons or entities.

[2] Supplemental provisions are intended to prevent a respondent or defendant from repeating a law violation or to mitigate the effects of prior illegal conduct. Such provisions either prohibit or restrict conduct that would be lawful if engaged in by parties not subject to the order at issue or impose an affirmative obligation not otherwise required by law.

[3] The filing of such a complaint will not affect the duration of the order if the complaint is dismissed or the court rules that the respondent did not violate any provision of the order and the dismissal or ruling is either upheld on appeal or not appealed.

protection administrative orders and federal court orders is that core provisions and some type of supplemental provisions continue in effect indefinitely and that certain other types of supplemental provisions terminate after a specified period of time, usually five or ten years. On the basis of comments received and other considerations, the Commission has concluded that consumer protection administration orders, like competition administration orders, ordinarily fulfill their remedial purposes within twenty years. Accordingly, the Commission will presume that core provisions and supplemental provisions that would otherwise be perpetual in future consumer protection administrative orders should terminate (or ''sunset'') automatically within twenty years after the order's issuance, unless either the Commission or the Department of Justice has filed a compliant (with or without an accompanying consent decree) in federal court to enforce such order pursuant to Section 5(1) of the FTCA. This will not affect the current practice of terminating certain supplemental provisions earlier than twenty years (*e.g.*, provisions requiring distribution of the order). The Commission intends to implement its new policy with respect to existing orders through rulemaking. The Commission's new policy with respect to future administrative orders will be effective immediately.

However, the Commission has determined that it will not extend the policy of sunsetting consumer protection orders to federal court orders at this time. As discussed in the Policy Statement, many consumer protection federal court orders (*e.g.*, fraud orders entered under section 13(B) of the FTCA) pose significantly different considerations than either competition or consumer protection administrative orders. In addition, the Commission has significantly less experience on which to conclude that such orders serve their purpose after twenty years. For example, most section 13(b) fraud orders first originated in the 1980s.

## Statement of Policy with Respect to Duration of Competition and Consumer Protection Orders

This statement describes the policies that the Commission has adopted with respect to the duration of competition and consumer protection administrative orders and federal court orders. This new Policy Statement supersedes the Policy Statement Regarding Duration of Competition Orders adopted on July 22, 1994.

### Competition Administrative Orders

The injunctive provisions in competition administrative orders may proscribe future violations of statutory prohibitions—and secure adherence to statutory requirements—including the prohibition of unfair methods of competition embodied in section 5 of the FTCA, 15 U.S.C. 45, and the prohibitions and requirements embodied in sections 2, 3, 7, 7A, and 8 of the Clayton Act, 15 U.S.C. 13, 14, 18, 18a, and 19.[4]

As a matter of law, the remedial provisions of Commission orders must bear a reasonable relationship to the unlawful practices found to exist, and must be sufficiently clear and precise to be easily understood by the respondents or defendants.[5] Particular order provisions may prohibit both the specific illegal practices alleged in the associated complaint and ''like and related'' practices.[6]

Where such a provision has been included in an order, the Commission may prevail in a subsequent enforcement proceeding simply by establishing that the respondent or defendant did not comply with the terms of the provision, without having to also establish that the conduct prohibited by the provision is illegal, or that the conduct required is reasonably related to the prevention of illegal practices.

#### *Future Orders*

The Commission announced its current policy of sunsetting competition orders on September 1, 1994. 59 Fed. Reg. 45,286 (1994). Under that policy, core provisions of future competition orders are ordinarly sunsetted at twenty years, and supplemental provisions are sunsetted at up to 10 years.

After reviewing the comments and considering other available information, the Commission continues to believe that core provisions of competition administrative orders should ordinarily sunset after twenty years and that supplemental provisions should sunset after up to ten years.[7] None of the comments supplied information that the Commission had not already considered in choosing ordinarily to sunset core provisions in competition orders after twenty years and supplemental provisions after up to ten years. Therefore, the Commission is not changing the sunset periods for core or supplemental provisions in future competition orders.

However, the Commission has determined that the duration of future orders should be extended in instances where a complaint has been filed in federal court pursuant to section 5(1) of the FTCA, 15 U.S.C. 45(1), while the order remains in force, alleging a violation of such order. The twenty year sunset period will start anew on the date of the complaint is filed in federal court. However, the filing of such a complaint will not affect the duration of any supplemental order provision that terminates before twenty years. In addition, the filing of such a complaint will not affect the duration of the order's application to any respondent that is not named as a defendant in such complaint.[8] Furthermore, the filing of

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[4] Competition administrative orders may include types of relief that are not addressed in this statement because they have no further effect once the actions they require have been taken. For example, some orders require divestitures, revisions to bylaws, or publication of the administrative compliant and order.

[5] See, *e.g.*, *FTC* v. *Colgate-Palmolive Co.*, 380 U.S. 374, 392–95 (1965); *FTC* v. *National Lead Co.*, 352 U.S. 419, 428–30 (1957); *FTC* v. *Ruberoid Co.*, 343 U.S. 470, 473 (1952); *FTC* v. *Cement Inst.*, 333 U.S. 683, 726 (1948); *Jacob Siegel Co.* v. *FTC*, 327 U.S. 608, 611–13 (1946).

[6] See *FTC* v. *Mandel Bros., Inc.*, 359 U.S. 385, 393 (1959); *Consumers Products of America, Inc.* v. *FTC*, 400 F.2d 930 (3d Cir. 1968), *cert. denied*, 393 U.S. 1088 (1969); *Nirsk Indus.* v. *FTC.*, 278 F.2d 337, 343 (7th Cir.), *cert denied*, 364 U.S. 883 (1960). For example, in *FTC* v. *Colgate-Palmolive Co.*, 380 U.S. 374, 395 (1965), the Supreme Court reviewed a Commission order that prohibited a particular advertising practice not only for the product at issue in the case, but also for any other product. The Court sustained the scope of the order provision, stating that

> [t]he Commission is not limited to prohibiting the illegal practice in the precise form in which it is found to have existed in the past. Having been caught violating the Act, respondents 'must expect some fencing in.'

*Id.* at 395, quoting *FTC* v. *National Lead Co.*, 352 U.S. at 431, and *FTC* v. *Ruberoid Co.*, 343 U.S. at 473.

[7] Only in an exceptional case will the Commission adopt a sunset period longer or shorter than twenty years for core provisions. The Commission does not intend to change, in general, the expirtation periods of particular types of supplemental provisions that, as a matter of policy, have been set to expire by their own terms after periods of up to ten years.

[8] To implement this policy, new Commission administrative orders will include a provision similar to the following:

> This order will terminate twenty years from the date of its issuance, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompaning consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however,* that the filing of such a complaint will not affect the duration of:
>
> A. Any paragraph in this order that terminates in less than twenty years;
>
> B. This order's application to any respondent that is not named as a defendant in such complaint; and
>
> C. This order if such complaint is filed after the order has terminated pursuant to this paragraph.
>
> *Provided further,* that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not

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such complaint will not affect the duration of the order if the complaint is dismissed or if a court rules that the defendant did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal.

The filing of a complaint (with or without an accompanying consent decree) under section 5(1) of the FTCA indicates that the Commission had reason to believe the order was violated. This finding undermines the ordinary presumption that there is no need for further order coverage with respect to that respondent beyond twenty years.[9]

*Existing Orders*

Under existing policy, respondents under competition administrative orders twenty years old may have their orders sunsetted through the order modification process, absent recidivist conduct or extraordinary circumstances.[10] Many commenters recommended that the Commission modify its policy with respect to the duration of existing administrative orders that have remained in force for twenty or more years. They recommended that the Commission terminate such orders automatically without engaging in a case-by-case review of each order through the petitioning process.

The Commission has concluded that these recommendations have merit. The new Policy defines in bright-line fashion the principal circumstances in which extended order coverage is required (the filing of an order enforcement action). The cost of the Commission retraining added discretion as to whether it should retain older orders, thereby requiring a case-by-case analysis with respect to each petition, likely exceeds the benefits of retaining older orders in extraordinary circumstances. By adopting a policy that does not require the Commission to exercise discretion with respect to individual orders, the Commission will conserve scarce resources and ensure equitable treatment of similarly situated respondents now subject to administrative orders.

The new Policy Statement sets forth the Commission's intention to dispense with the petitioning process to sunset existing competition orders and instead sunset such orders through rulemaking. The proposed rule, published elsewhere in the **Federal Register**, would automatically sunset each existing administrative order twenty years after it was issued, unless the Commission or the Department of Justice has filed a complaint (with or without an accompanying consent decree) in federal court to enforce such order pursuant to Section 5(1) of the FTCA during the twenty years preceding the adoption of the Policy Statement, or unless such a complaint is filed after the adoption of the Policy Statement and within twenty years after the order's issuance. Under the proposed rule, existing orders that do not terminate twenty years after they are issued due to the filing of a section 5(1) complaint would terminate twenty years after the filing of the most recent complaint to enforce the order. However, the filing of such a complaint would not affect the order's duration unless the order is in force on the date the complaint is filed.[11] In addition, the filing of such a complaint will not affect the duration of the order's application to any respondent that is not named as a defendant in the complaint. The filing of such a complaint will only extent the duration of those order provisions not set to expire by their own terms. For example, a reporting requirement in an existing order that terminates ten years after the order's issuance will not be extended by the filing of such a complaint, even if the section 5(1) complaint is filed within that first ten years after the order's issuance. In addition, the filing of such a complaint will not affect the duration of the order if the complaint is dismissed or the court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal.

The Commission intends to implement this policy with respect to existing administrative orders through rulemaking rather than through adjudication.[12] The proposed rulemaking contemplates that respondents will receive notice through the rulemaking process and will not receive individual notice that their orders have been terminated. Until this rulemaking is completed, the Commission will leave in place its current policy regarding the duration of existing competition administrative orders.

**Consumer protection administrative orders**

Like competition orders, consumer protection orders perform several functions. First, they may proscribe future violations of statutory prohibitions—and secure adherence to statutory requirements—including the prohibition of unfair and deceptive acts or practices embodied in Section 5 of the FTCA, and the prohibitions and requirements embodied in other statutes intended to protect consumers, such as the Fair Credit Reporting Act, 15 U.S.C. 1681, the Truth-in-Lending Act, 15

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appealed or upheld on appeal, then the order will terminate according to this paragraph as though the complaint was never filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

A five year statute of limitations applies to civil penalty actions filed in federal court pursuant to section 5(1) of the FTCA. *See* 28 U.S.C. 2462. Therefore, it is conceivable that the government could file a complaint up to five years after an order has terminated challenging violations that occurred while the order was in force. Under the Policy Statement, the filing of a complaint after the order has terminated will not affect the duration of the order.

[9] The Commission retains the discretion to change the duration of an order pursuant to 16 CFR 2.51 or 3.72. Unless an order modification expressly changes the duration of an order, such modification will not affect the duration of the order as determined by this Policy Statement. Nothing in this Policy Statement will affect the Commission's standards for reopening and modifying or vacating orders pursuant to 15 U.S.C. 45(b) or 16 CFR 2.51.

[10] The Commission states as follows in its 1994 Policy Statement regarding the duration of competition orders:

If, however, public comments, the Commission's experience enforcing the order, an ongoing antitrust investigation of the petitioner or the industry in which the petitioner competes at the Commission or the Department of Justice, or other readily available information raised substantial concerns about whether the public interest warrants retaining the order, *such further review will be conducted as necessary* to determine whether the public interest is best served by setting aside the order, modifying it, or retaining it as written. The Commission anticipates that, *absent extraordinary circumstances*, the basis for rebutting the presumption will be information that the petitioner has engaged in recidivist conduct.

*Id.* at 45,286–87 (emphasis added).

[11] As discussed in fn. 8, *supra*, a five year statute of limitations applies to civil penalty actions filed under section 5(1) of the FTCA.

[12] The Commission has the discretion to regulate parties through issuance of a rule of general applicability as opposed to adjudication of individual cases. *SEC* v. *Chenery Corp.*, 332 U.S. 194 (1947); *Heckler* v. *Ringer*, 446 U.S. 602, 617, (1984); *Nat'l Small Shipments Traffic Conf., Inc.* v. *ICC*, 725 F. 2d 1442, 1447 (D.C. Cir. 1984). This is so even if the rule may effectively limit or terminate rights or obligations in a specific case. *United States* v. *Storer Broadcasting Co.*, 351 U.S. 192, 205 (1956). An agency may properly rely upon rulemaking to resolve certain classes of issues that the agency might otherwise adjudicate on an individual basis. *Heckler* v. *Campbell*, 461 U.S. 458, 467 (1982). As the court explained:

[E]ven where an agency's enabling statute expressly requires it to hold a hearing, the agency may rely on its rulemaking authority to determine issues that do not require case-by-case consideration. * * * A contrary holding would require the agency continually to relitigate in a single rulemaking proceeding.

*Id.* Under the Policy Statement, the Commission does not propose to exercise any discretion regarding the termination of existing orders. To apply the proposed criteria for terminating existing orders to any particular order, one need only ascertain a few facts, all of which are easily ascertained and present no issues of fact requiring case-by-case examination.

U.S.C. 1601–1667, and the Wool Products Labeling Act, 15 U.S.C. 68. Second, orders may require those subject to them to keep records, distribute the order, or file reports with the Commission to facilitate Commission efforts to monitor or enforce compliance with the order.

Under the Commission's existing practice, Commission order provisions that prohibit or require particular types of conduct to prevent ''unfair or deceptive acts or practices'' have different durations depending on their type. Core provisions prohibit practices that would be unlawful whether engaged in by parties subject to the order at issue or by other similarly situated persons or entities. Under current policy, core provisions in consumer protection orders typically continue in force indefinitely, and a respondent bears the burden of establishing (in the context of a petition to reopen) that such a provision should be modified or set aside.

All other provisions in consumer protection orders may be categorized as supplemental provisions,[13] which are intended to prevent a respondent or defendant from repeating a law violation or to mitigate the effects of prior illegal conduct. Under existing policy, some supplemental provisions in consumer protection orders terminate automatically after different prescribed periods. For example, some advertising disclosure, order distribution, and reporting requirements expire in five or ten years.

*Future Orders*

The Commission has concluded that there also is reason to sunset consumer protection orders. As commenters noted, many older orders contain supplemental relief that could become over-regulatory over time or impose requirements that the Commission would not adopt under current practice. There also are costs to perpetual core provisions in consumer protection orders. Basic prohibitions against misrepresenting or failing to have substantiation still require interpretation and may induce some companies to be more cautious than their competitions within the range of permissible advertising practices. Over time, changes in management or corporate culture may no longer warrant this extra caution and result in competitive imbalances.[14]

At the same time, it can be argued that consumer protection orders should remain in effect for a longer period than competition orders. A principal rationale for sunsetting competition orders was that even the core relief in such orders may become outdated or inhibit pro-competitive conduct if, due to changes in market conditions, the prohibited conduct no longer unreasonably restrains competition.[15] A number of commenters noted that consumer protection orders, by contrast, contain core prohibitions that remain valid regardless of marketing conditions (*e.g.*, ''cease misrepresenting'').[16] Although supplemental relief in consumer protection orders may share some attributes of supplemental relief in competition order,[17] it often does not share the added problem of the related core relief becoming invalid due to changed market conditions.

Thus, the Commission reasonably also could have decided that the core and supplemental relief in consumer protection orders should remain in effect longer than that in competition orders (*e.g.*, thirty years for core and twenty years for supplemental). However, the distinctions between supplemental and core provisions in consumer protection orders are not always clearly delineated, suggesting the need for a uniform sunset period. For example, a provision may bar a deceptive claim as deceptive, unless the claim is followed by a disclosure. It could be argued that such ''triggering'' provisions have both a core relief component to them (barring a claim as deceptive) and a supplemental relief aspect to them (requiring a disclosure if the claim is made). There may be disagreements over whether to characterize such disclosures as supplemental or core relief if the policy were to distinguish between the two, leading to anomalous results.

This resulting ambiguity regarding the characterization of particular provisions in consumer protection orders could undermine the clarity of Commission orders, raising respondents' cost of compliance and negotiating settlements and Commission costs in ensuring the enforceability of its orders. By contrast, as a general matter, competition orders differentiate between core and fencing-in and supplemental relief. Consequently, the Commission has determined that it is appropriate to differentiate between consumer protection and competition orders in this respect by ordinarily sunsetting both core and supplemental relief in consumer protection administrative orders after twenty years.[18]

*Existing Orders*

The Commission has determined that the new policy for terminating existing competition administrative orders described above will also apply to consumer protection administrative orders.[19]

*Competition and Consumer Protection Federal Court Orders*

This new policy shall not apply to either competition or consumer protection federal court orders. The Commission has determined not to do so for several reasons. Many consumer protection federal court orders obtained since the early 1980s pursuant to Section 13(b) of the FTCA address particularly egregious conduct such as hard core fraud. Given that none of these orders have been in force for twenty years, the Commission lacks sufficient information to determine whether their remedial purposes will be served within twenty years.[20] Therefore, the Commission has determined, at least of now, not to sunset the core provisions

[13] The Commission may also impose or seek types of relief in administrative orders that are not addressed in this statement because they have no further effect once the actions they require have been taken. For example, some orders require the payment of redress to consumers, the payment of disgorgement to the United States Treasury, or the dissemination of corrective advertising for a limited time.

[14] Although it is true, as some comments point out, that respondents subject to orders containing over-regulatory provisions can petition the Commission to reopen and vacate such orders, the filing of petitions entails costs for both respondents and the Commission.

[15] This is not true of those competition orders based on *per se* violations, such as price-fixing. However, a much larger proportion of consumer protection orders are based on core concepts that remain valid despite changes in market conditions.

[16] *See comments of NAAG, AARP, and CSPI.*

[17] Supplemental relief in consumer protection orders tends to be more detailed in its prohibitions than core relief, and thus more potentially burdensome. However, that is equally true of supplemental relief in competition orders.

[18] Only in an exceptional case will the Commission adopt a sunset period longer or shorter than twenty years for core provisions The Commission does not intend to change, in general, the expiration periods of particular types of supplemental provisions that, as a matter of policy, have been set to expire by their own terms after periods of up to ten years such as: (1) Administrative boilerplate (*e.g.*, recordkeeping, order distribution, and reporting requirements); and (2) some types of disclosure requirements (*e.g.*, informercial disclosures that sunset after ten years; *See TV Inc.*, Docket No. C–3296 (1990)).

[19] The termination under the policy Statement of an order issued in connection with a determination by the Commission that the respondent had engaged in an unfair or deceptive practice would not affect the ability of the Commission to recover a civil penalty based on that determination pursuant to Section 5(m)(1)(B) of the FTCA, 15 U.S.C. 45(n)(1)(B).

[20] The Commission notes that it does not have the power to unilaterally sunset federal court orders. Every federal court order must be entered by federal court to become effective. In order to sunset an existing federal court order, one or more parties thereto would have to file a motion with the court seeking termination of the order.

and some supplemental provisions in these orders.

In addition, many consumer protection federal court orders simply prohibit violations of Commission trade regulation rules (*e.g.*, Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures, 16 CFR 436) or statutes otehr than the FTCA enforced by the Commission (*e.g.*, Equal Credit Opportunity Act, 15 U.S.C. 1691). The core provisions in such orders are presumptively valid beyond twenty years in that they require adherence to regulations and statutes that are already binding on the defendants as well as their competitors. Moreover, many of these order do not contain supplemental provisions other than those that, as a matter of Commission policy, normally terminate after up to ten years. Therefore, there is no compelling reason to sunset such orders.

Finally, most competition and some consumer protection federal court orders simply prohibit violations of Commission administrative orders. These federal court orders will cease to have any effect once the underlying administrative orders are terminated pursuant to this Policy Statement. Therefore, there is no compelling reason to sunset these federal court orders.

By direction of the Commission.

Issued: August 7, 1995

**Donald S. Clark,**

*Secretary.*

**Concurring Statement of Commissioner Mary L. Azcuenaga Concerning Revised Statement of Policy On Duration of Commission Orders**

August 1995.

The Commission today has approved a revised statement issued in July, 1994, that applied only perspectively and did not apply to consumer protection orders. In 1994, when the Commission issued its statement, I wrote separately to say that the Commission should apply a sunset policy to all its administrative orders, both consumer protection and competition orders and existing and future orders. I also expressed the view that the Commission need not issue individual orders modifying or vacating existing orders but easily could accomplish the same goal through publication of an appropriate notice in the **Federla Register.** I am gratified that today's statement is fully consistent with myv laws of a year ago and now, I am pleased to join the Commission in its current decision.

[FR Doc. 95–20144 Filed 8–15–95; 8:45 am]

BILLING CODE 6750–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Aid to Families With Dependent Children Program: Demonstration Projects Under Section 1115(a) of the Social Security Act

**AGENCIES:** Office of the Secretary; Administration for Children and Families (ACF), HHS.

**ACTION:** Public Notice.

**SUMMARY:** This public notice invites States to submit demonstration project applications under section 1115(a) of the Social Security Act to test welfare reform strategies in various areas. It further advises that the Department would commit to approving applications that comply with the demonstration components within 30 days of receipt.

**FOR FURTHER INFORMATION CONTACT:** Howard Rolston, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade, 7th Floor, West Wing, Washington, DC 20447, (202) 401–9220.

**SUPPLEMENTARY INFORMATION:**

## I. General

Under Section 1115, the Department of Health and Human Services (HHS) is given latitude, subject to the requirements of the Social Security Act, to consider and approve demonstration proposals that are likely to assist in promoting the objectives of titles IV–A and B and XIX of the Act. The Department believes that State experimentation provides valuable knowledge that will help lead to improvements in achieving the purposes of the Act. Since January 1993, HHS has approved 33 welfare reform demonstration projects testing a broad range of strategies designed to promote the objectives of title IV.

The Department has reviewed the provisions of these projects, as well as those of prior projects, data from completed and continuing projects, other literature evaluating the welfare system, and the welfare reform proposals being considered by Congress. Based on this review, and our commitment to transform the Aid to Families With Dependent Children system into one that provides maximum opportunities and incentives for families to achieve financial independence, we have identified five strategies for improving the efficacy of the welfare system in helping recipients become self-sufficient for which we believe additional experimentation would be especially useful. We have concluded that demonstrations testing these strategies are likely to provide important new information on ways to accomplish the objectives of the Social Security Act more effectively and efficiently. This information can guide the development of both national and state policy.

These strategies are: (1) Work requirements, including limited exemptions from such requirements; (2) time-limited assistance for those who can work; (3) improving payment of child support by requiring work for those owing support; (4) requirements for minor mothers to live at home and stay in school; and (5) public-private partnerships under which AFDC grants are diverted to private employers to develop jobs and training programs. These areas, and approvable demonstration project provisions, are discussed in detail in section II below.

To date, the Department has approved a number of demonstration projects including components using one or more of these strategies. We have reviewed comments submitted regarding each of these strategies. Our overall judgment is that testing additional demonstrations in each of these areas would likely promote financial security for dependent children within a stable family and, thus, further the objectives of the Social Security Act. (Specific rationales justifying demonstrations in each policy area are set out in section II.) Moreover, in view of every state's unique circumstances, the Department believes that it is critically important that each state be given the opportunity to test combination(s) of these strategies that are designed to address the needs of the recipients in that state.

Accordingly, we plan to approve within 30 days of receipt demonstration project applications that States submit which would implement, on a statewide or substate basis, any (or any combination) of the provisions discussed in section II. Further, because such projects may incorporate only the provisions already announced in this notice, which have been found by the Secretary to further the objectives of the Social Security Act, the Department will not apply its ''Federal Notice'' procedures generally applicable to demonstration projects. 59 Fed. Reg. 49250 (1994). Other policies and procedures stated in that notice remain applicable, including state public notice requirements, rigorous evaluation, and cost neutrality, except that the application and review process with

respect to the latter two requirements will be modified to facilitate the faster process.

## II. Demonstration Project Areas and Techniques

### *A. Requiring People on Welfare to Work and Providing Adequate Child Care to Permit Them To Do It*

Since Congress enacted the JOBS program in 1988, a central goal of the AFDC program has been to move recipients into the labor force, while ensuring that their children receive necessary child care while their parents are in activities that promote self-sufficiency. There is a mounting body of evidence that mandatory activities involving a connection with the work force can lead to substantial increases in employment and earnings among welfare recipients. Studies of various welfare-to-work approaches, conducted over the past decade in different parts of the country subject to different labor market conditions, have consistently shown significant gains in earnings. In the most recent results, from three sites in the Department's JOBS Evaluation, an approach emphasizing job search, work activity, and short-term employment-focused training yielded a 23-percent increase in overall employment and a 22-percent reduction in AFDC expenditures at the two-year point, and a 39-percent increase in employment with earnings equivalent to at least $10,000 per year.

Although much is known in general about the effectiveness of such programs, more study is needed concerning what works and which approaches are most effective for which individuals. Therefore, we are inviting demonstrations that test the effects of requiring recipients to work in subsidized or unsubsidized jobs, to perform community service, or to engage in rigorous job search and job preparation. States can narrow the categories of recipients that are exempt from work requirements. They also can test the effects of progressively increasing the sanctions for non-compliance, so that work requirements have more teeth. To protect children, states must ensure that child care is available for those who are being required to work.

### *B. Setting Time Limits for Welfare Receipt, to be Followed by Work*

Most of the people who enter the welfare system do not stay on AFDC for many consecutive years. Two out of three persons who enter the welfare system leave within two years and fewer than one in ten spends five consecutive years on AFDC. Most recipients use the AFDC program not as a permanent alternative to work, but as temporary assistance during times of economic difficulty.

While persons who remain on AFDC for long periods represent only a modest percentage of all people who ever enter the system, they do represent a high proportion of those on welfare at any given time. Finding ways of helping these persons become self-sufficient is extremely important in promoting their well-being and that of their children. Although many face serious barriers to employment, others are able to work but are not moving in the direction of self-sufficiency.

Many analysts believe that time-limited benefits would help to move employable welfare recipients toward work and away from reliance on welfare. There is not a large body of research in this area. Several states have begun demonstrations of various forms of time limits. More study is needed in order to know the effects of time limits.

For this reason, we are inviting demonstrations that test the effects of systems of individualized time limits, systems of time limits followed by work, preferably in the private sector, in subsidized work or community service if necessary, and systems of straight time limits, with exemptions from the time limit for those who, despite good faith efforts, are unable to work or find a job. Consistent with the objectives of the Act, demonstrations must protect families where the adult, through no fault of her or his own, is unable to find employment.

### *C. Requiring Fathers to Pay Child Support or go to Work to Pay Off What They Owe*

There is substantial evidence that many custodial parents now receiving AFDC would not need this support if they received child support from the non-custodial parent. One of the primary reasons for non-support by some non-custodial parents, especially never-married fathers, is unemployment and underemployment. Many of these fathers need both assistance and incentives to obtain employment and pay support. Without work requirements, job readiness assistance, job training, and community service, it will be difficult for many of these fathers to contribute very much to the financial support of their children.

The available program evaluation research focusing on non-custodial parents indicates that a number of programs show promise in assisting these fathers to support their children. The Parents' Fair Share (PFS) demonstration programs have developed effective procedures to identify eligible non-custodial parents and have established court-based processes to require fathers to participate in work-based program activities and to enforce regular participation. Preliminary data from PFS shows that the work and training requirements provide states a promising mechanism to discover previously unreported income of non-paying, non-custodial parents. Also, in the PFS sites, as well as in other non-custodial parent demonstration programs, title IV–D agencies have developed flexible and responsive child support enforcement systems to complement non-custodial parent work and training requirements.

Further testing of these requirements will assist us in determining whether this approach will result in increased child support payments and will enhance non-custodial parents' overall support of their children. To build on the knowledge base being developed through PFS and similar demonstrations, we are inviting demonstrations that require unemployed or underemployed non-custodial parents who owe child support to work or participate in work experience, community service, or job preparation activities.

### *D. Requiring Minor Mothers to Live at Home and Stay in School*

It has become increasingly important to obtain at least a high school diploma in order to obtain employment and become self-sufficient. Moreover, a high school diploma may be essential to achieve a decent standard of living.

A study of teenage childbearing in the 1980's found that in 1986 only 56 percent of women in their twenties who had given birth at age 17 or younger had completed high school, compared with over 90 percent of those who delayed childbearing until after their teenage years. Little has changed since then. While we are beginning to obtain more knowledge of the types of programs that are successful in encouraging and helping minor mothers finish high school, we need to know considerably more about what works. Therefore, demonstrations testing ways of helping minor parents complete schooling are extremely important.

Congress already has recognized that one means of helping minor parents complete school and meet the needs of their children is to have these young parents live with their own families. States now have the option of requiring minor parents to live at home, provided that this is a safe environment for them. To facilitate these arrangements, and to

ensure that AFDC benefits are spent in a manner that achieves the goals of the Social Security Act, a number of states are experimenting with programs that direct the AFDC payment to the responsible adult, rather than to the minor mother. This strategy recognizes the importance of promoting general family responsibility.

Another strategy that has had success in Ohio and several other demonstration sites is setting up incentives and penalties for teen parents designed to have them stay in school. The recently completed study of Ohio LEAP found the program to be successful in increasing the rate at which teens who were already enrolled in school remained enrolled and in increasing the rate at which those who had already dropped out of school returned to high school or an equivalent program. Further testing of this type of strategy should enable us to determine whether these results can be replicated, and improved upon, in other settings and through variations in program design.

For these reasons, we are inviting demonstrations that require minor mothers to live with parents or relatives or in a supervised living situation, as long as the home is not dangerous to the physical or emotional health or safety of the minor; that direct the AFDC payment to the responsible adult, rather than to the minor mother; and that require minor mothers to stay in school and utilize reasonable sanctions and incentives tied to school attendance.

*E. Paying the Cash Value of Welfare and Food Stamps to Private Employers as Wage Subsidies When They Hire People Who Leave Welfare and Go To Work*

The effectiveness of subsidized employment in increasing employment, earnings, and self-sufficiency has been studied over the last 20 years. A number of rigorously evaluated programs have shown positive effects on increasing the earnings of welfare recipients who participated in them. This was also found to be true in the more recent national evaluation of the Job Training Partnership Act program.

By combining AFDC and Food Stamp benefits, a state could create a very substantial subsidy that encourages employers to hire AFDC recipients. This form of wage subsidy has the potential of increasing the number of recipients who are able to obtain unsubsidized employment.

Subsidized employment has generally been a very small scale activity within the JOBS program. Demonstrations using AFDC and Food Stamp benefits would provide important information on the ability of this approach, when applied on a larger scale, to increase the employment, earnings, and self-sufficiency of AFDC recipients. They also will provide important information regarding the degree to which employers respond to wage subsidies.

Therefore, we are inviting demonstrations of systems where AFDC and Food Stamps benefits become wages, paid by employers when recipients work, as long as the jobs meet minimum standards, and families receive at least as much total income as they would have from AFDC and Food Stamps. States can choose to ask employers to pay into an account to help the recipient make the transition into unsubsidized employment.

**Information on Application**

The Administration for Children and Families, will be mailing state welfare departments a ''Welfare Reform Demonstration: Special Application Form''. This form should facilitate requests for waivers in the five specified areas. Requests for further information and/or forms should be addressed to Howard Rolston at the address listed above. Additionally, by August 21, 1995, states can obtain information on the waiver process and on electronic filing of waiver applications on the internet. On the world wide web, the URL (universal resource locator) is http://www.acf.dhhs.gov. Gopher users can use gopher.acf.dhhs.gov.

(Catalog of Federal Domestic Assistance Program, No. 93562; Assistance Payments—Research)

Dated: August 11, 1995.

**Mary Jo Bane,**

*Assistant Secretary for Children and Families.*

[FR Doc. 95–20294 Filed 8–15–95; 8:45 am]

BILLING CODE 4184–01–P

## Pending Demonstration Project Proposal Submitted by Florida Pursuant to Section 1115(a) of the Social Security Act

**AGENCY:** Administration for Children and Families, HHS.

**ACTION:** Notice.

**SUMMARY:** This notice describes a new proposal for a combined welfare reform/Medicaid demonstration project submitted to the Department of Health and Human Services. Federal approval for the proposal has been requested pursuant to section 1115 of the Social Security Act.

**COMMENTS:** We will accept written comments on this proposal. We will, if feasible, acknowledge receipt of all comments, but we will not provide written responses to comments. We will, neither approve nor disapprove any component of the proposal for at least 30 days following the date of receipt of the proposal to allow time to consider comments, in addition, we will neither approve or disapprove the school attendance component for at least 30 days following the date of this notice. Direct comments as indicated below.

**ADDRESSES:** For specific information or questions on the content of this project contact the State contact listed in II.

Comments on a proposal or requests for copies of a proposal should be addressed to: Howard Rolston, Administration for Children and Families, 370 L'Enfant Promenade, S.W., Aerospace Building, 7th Floor West, Washington DC 20447. Fax: (202) 205–3598 Phone: (202) 401–9220.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Under Section 1115 of the Social Security Act (the Act), the Secretary of Health and Human Services (HHS) may approve research and demonstration project proposals with a broad range of policy objectives.

In exercising her discretionary authority, the Secretary has developed a number of policies and procedures for reviewing proposals. On September 27, 1994, we published a notice in the **Federal Register** (59 FR 49249) that specified (1) the principles that we ordinarily will consider when approving or disapproving demonstration projects under the authority in section 1115(a) of the Act; (2) the procedures we expect States to use in involving the public in the development of proposed demonstration projects under section 1115; and (3) the procedures we ordinarily will follow in reviewing demonstration proposals. We are committed to a thorough and expeditious review of State requests to conduct such demonstrations.

**II. Pending Proposal Received From Florida**

*Project Title:* Florida—Family Transition Program (Amendments).

*Description:* Would expand the Family Transition Program demonstration, currently operating in two counties, to six additional counties. The demonstration limits, with some exceptions, AFDC benefits to 24 months in any 60-month period followed by participation in transitional employment. For families subject to the time limit, it replaces current $90 and $30 and one-third disregards with a single, non-time-limited disregard of $200 plus one-half of the remainder;

disregards income of a stepparent whose needs are not included in the assistance unit for the first 6-months of receipt of public assistance; excludes summer earnings of teens and interest income; lowers age of child for JOBS exemption to 6-months; raises asset limit to $5,000 plus a vehicle of reasonable worth used primarily for self-sufficiency purposes; extends transitional Medicaid and child care benefits; eliminates 100-hour and required quarters of work rules, and (on a case-by-case basis) the 6-month time limit requirements in the AFDC-UP program; requires school conferences and regular school attendance; offers incentive payments to private employers who hire hard-to-place AFDC recipients; and allows non-custodial parents of AFDC children to participate in JOBS. Statewide, the demonstration requires immunizations of pre-school-age children.

*Dated Received:* 8/2/95.

*Type:* Combined AFDC/Medicaid.

*Current Status:* New.

*Contact Person:* Don Winstead, (904) 921–5567.

### III. Requests for Copies of a Proposal

Requests for copies of this proposal should be directed to the Administration for Children and Families (ACF) at the address listed above. Questions concerning the content of the proposal should be directed to the State contact listed for the proposal.

(Catalog of Federal Domestic Assistance Program, No. 93562; Assistance Payments—Research).

Dated: August 11, 1995.

**Howard Rolston,**

*Director, Office of Policy and Evaluation.*

[FR Doc. 95–20293 Filed 8–15–95; 8:45 am]

BILLING CODE 4184–01–P

## Food and Drug Administration

**[Docket No. 95M–0119]**

### Chartex International plc; Premarket Approval of Femidom® Female Condom; Correction

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; correction.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of June 8, 1995 (60 FR 30310). The document announced the approval of the premarket approval application for the Femidom® Female Condom. The document was published with some errors. This document corrects those errors.

**FOR FURTHER INFORMATION CONTACT:** Marquita B. Steadman, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–4765.

In FR Doc. 95–14059, appearing on page 30310 in the **Federal Register** of Thursday, June 8, 1995, the following corrections are made: On page 30310, in the second column, under the **SUMMARY** caption, in the fourth line, and under the **SUPPLEMENTARY INFORMATION** caption, in the second line, insert ''Rhys, Bryant, U.S. representative for'' before ''Chartex International plc, London, U. K.,''.

Dated: August 8, 1995.

**Joseph A. Levitt,**

*Deputy Director for Regulations Policy, Center for Devices and Radiological Health.*

[FR Doc. 95–20313 Filed 8–15–95; 8:45 am]

BILLING CODE 4160–01–F

### Medical Devices; Mammography Facilities Education and Training; Notice of Public Workshops

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of public workshops.

**SUMMARY:** The Food and Drug Administration (FDA) (Office of Regulatory Affairs, Office of External Affairs, and Center for Devices and Radiological Health) is sponsoring five grassroots workshops on FDA requirements for compliance with the Mammography Quality Standards Act of 1992 (the MQSA). These workshops are designed to assist mammography facilities in complying with the regulations that went into effect on October 1, 1994.

**DATES:** The public workshops are scheduled as follows:

1. Thursday, August 17, 1995, 8 a.m. to 4:30 p.m., Dallas, TX.

2. Thursday, August 24, 1995, 8 a.m. to 4:30 p.m, Charlotte, NC.

3. Wednesday, September 6, 1995, 8 a.m. to 4:30 p.m., Fort Mitchell, KY.

4. Thursday, September 21, 1995, 8 a.m. to 4:30 p.m., San Juan, PR.

5. Thursday, September 28, 1995, 8 a.m. to 4:30 p.m., Los Angeles, CA.

**ADDRESSES:** The public workshops will be held at the following locations:

1. Dallas—Harvey Hotel, 400 North Olive, Dallas, TX.

2. Charlotte—New Charlotte Convention Center, 501 South College St., Charlotte, NC.

3. Fort Mitchell—Drawbridge Estates, 2477 Royal Dr., Fort Mitchell, KY.

4. Puerto Rico—Radisson Normandie Hotel, Avenida Munoz Rivera, Esquina Rosales, San Juan, PR.

5. Los Angeles—Continental Plaza, Los Angeles Airport, 9750 Airport Blvd., Los Angeles, CA. (PLEASE NOTE: Location changed since July 19, 1995, ''Dear Colleague letter.'')

**FOR FURTHER INFORMATION CONTACT:**

Regarding registration for the Dallas public workshop: Belinda Collins, Food and Drug Administration, Southwest Region, 7920 Elmbrook Rd., Dallas, TX 75247–4982, 214–655–8100, ext. 148 or FAX 214–655–8103.

Regarding registration for the Charlotte public workshop: Barbara Ward-Groves, Food and Drug Administration, Southeast Region, 60 Eighth St. SE., Atlanta, GA 30309, 404–347–4001, ext. 5256 or FAX 404–347–4349.

Regarding registration for the Fort Mitchell public workshop: Pat Wolfzorn, Food and Drug Administration, Mid-Atlantic Region, 1141 Central Pkwy., Cincinnati, OH 45202–1097, 513–684–3501, ext. 102 or FAX 513–684–2905.

Regarding registration for the San Juan public workshop: Nilda E. Villegas, Food and Drug Administration, Southeast Region, P. O. Box 5719, Puerta de Tierra Station, 809–729–6852 or FAX 809–729–6847.

Regarding registration for the Los Angeles public workshop: Mark Roh, Food and Drug Administration, Pacific Region, Oakland Federal Bldg., 1301 Clay St., suite 1180–N, Oakland, CA 94612–5217, 510–637–3980 or FAX 510–637–3977.

Those persons interested in attending a workshop should register by FAXing their name, firm name, address, and telephone number to the information contact person listed above for their region. There is no registration fee for these workshops, but advance registration is required. Interested parties are encouraged to register early because space is limited.

**SUPPLEMENTARY INFORMATION:** FDA will conduct training for mammography facilities designed to assist those facilities in complying with the requirements of the MQSA. Those requirements went into effect October 1, 1994. Emphasis will be placed on educational requirements, training, and providing assistance to small business in meeting the MQSA requirements. These meetings are being held, in part, as a response to the National

Performance Review initiative implementing the President's Grassroots Regulatory Partnership Meetings. These workshops are made possible by funding from the Office of Women's Health.

Dated: August 14, 1995.

**William K. Hubbard,**

*Acting Deputy Commissioner for Policy.*

[FR Doc. 95–20374 Filed 8–14–95; 12:11 pm]

**BILLING CODE 4160–01–F**

**[Docket No. 95N–0259]**

## Over-the-Counter Drug Labeling; Public Hearing

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of public hearing; request for comments.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing a public hearing to discuss over-the-counter (OTC) drug labeling issues. The purpose of the hearing is to solicit information and views concerning various aspects of OTC drug labeling design that would improve the communication of information to consumers. The agency is particularly interested in hearing from individuals, industry, consumer groups, health professionals, and researchers with expertise in communicating information to consumers, skills in design, and insight into consumer needs and desires with respect to OTC drug labeling. In addition, the agency is soliciting written comments and/or data on the costs and benefits of an improved labeling format.

**DATES:** The public hearing will be held on September 29, 1995, from 8 a.m. to 3 p.m. Mail or FAX notices of participation to be received by FDA by September 15, 1995. The Nonprescription Drugs Advisory Committee will meet from 3 p.m. to 4 p.m., following the public hearing. This meeting will be open to the public. Written comments will be accepted until December 29, 1995.

**ADDRESSES:** The public hearing will be held at the Parklawn Bldg., conference rooms D and E, 5600 Fishers Lane, Rockville, MD 20857. Submit written notices of participation and comments to the Dockets Management Branch (HFA–305), ATTN: OTC Drug Labeling Hearing, Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, or FAX written notices of participation and comments to the Dockets Management Branch, ATTN: OTC Drug Labeling Hearing, 301–594–3215. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with Docket No. 95N–0259. Transcripts of the hearing will be available for review at the Dockets Management Branch (address above). Information specified in this notice can be received by calling 301–594–5000 or sending a self-addressed stamped envelope with your request to the contact person listed below.

**FOR FURTHER INFORMATION CONTACT:** Michael D. Kennedy, Center for Drug Evaluation and Research (HFD–820), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20857, 301–594–1006.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Under the Federal Food, Drug, and Cosmetic Act (the act), FDA has the responsibility to help ensure the safety and effectiveness of OTC drug products and to regulate their labels and labeling. The agency is engaged in an ongoing comprehensive review of the thousands of OTC drug products available to consumers without a prescription. As a result of that review, the agency has required, through notice-and-comment rulemaking, specific language to be included in the labeling of many OTC drug products, which describes the uses, directions, warnings, drug interactions, precautions, active ingredients, and other information that a consumer would need to know to use the product safely and effectively.

With escalating health care costs and the OTC availability of more products once obtainable only by prescription, self-medication is on the rise. Consequently, it is increasingly important that consumers read, understand, and behave in accordance with the information on OTC drug labels and labeling.

FDA regulations require that the OTC drug product labeling present and display information in such a manner as to render it ''likely to be read and understood by the ordinary individual, including individuals of low comprehension, under customary conditions of purchase and use.''[1] (21 CFR 330.10(a)(4)(v)). Despite this regulation, many consumers have complained that OTC drug labels are difficult to understand and that the print size is too small. For example, in 1991, FDA received a citizen's petition requesting regulatory standards for the print size and style of OTC drug product labeling. In the **Federal Register** of March 6, 1991 (56 FR 9363), the agency sought comments on this petition and other issues related to label legibility and readability. FDA received many comments criticizing the print size and complexity of current OTC drug labels and labeling.

The Nonprescription Drug Manufacturers Association (NDMA) has developed ''Label Readability Guidelines'' (NDMA Guidelines) for its members to use for guidance in designing OTC drug labels. These guidelines have served to provide advice on improving the legibility of OTC drug labeling. Copies of the NDMA guidelines are available from FDA by calling or writing the contact person listed above. FDA commends the drug industry for recognizing the need to improve OTC drug labeling features and for initiating voluntary readability guidelines. FDA, however, is firmly committed to further improving OTC drug labels and labeling and making them easier to read and understand. To date, the agency primarily has worked with manufacturers and consumers in this effort. In January 1995, FDA staff served as chairpersons and participated in a workshop with the Drug Information Association to discuss OTC drug labeling. The workshop was attended by consumers, industry, government officials, and academicians. The purpose was to explore perspectives on how to communicate OTC drug information more effectively to consumers through product labeling.

As part of this ongoing effort to improve OTC drug labeling, FDA is examining different formats that could be used to communicate drug information to consumers in a more effective manner. FDA is now also examining the question of whether a standardized format would aid in achieving the goals of improved communication. The Part 15 hearing announced in this notice is intended to seek public comment on various issues specifically related to the format of OTC drug labeling. In order to further understand consumer needs for OTC label design, FDA is also seeking public comments regarding consumer use and behavior related to OTC drug labeling.

The agency also recognizes that the terms and text required on OTC drug labeling could be improved to make the information easier to understand. The agency intends to hold one or more public meetings in the near future to discuss these issues.

[1] Consistent with the act, ''labeling'' refers to ''all labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article.'' (21 U.S.C. 321(m)).

**II. Scope of the Hearing**

In light of the many complex scientific and public health issues involved in communicating OTC drug information to consumers, FDA is soliciting broad public participation and comment on OTC drug labeling format issues and information regarding consumer use and behavior related to OTC drug labeling. The agency encourages individuals, industry, consumer groups, health professionals, and researchers with particular expertise in this area, as well as other interested persons, to respond to this notice. The agency strongly encourages persons who cannot attend the hearing to send information relevant to the topics and questions listed below to the Dockets Management Branch (address above). Comments should be identified with Docket No. 95N–0259.

Topics and questions to be considered during the hearing include:

A. Consumer Use of OTC Drug Labeling

(1) What information is available that characterizes consumer use of OTC drug labeling? For example, surveys and studies that require consumers to maintain diaries about their choice and use of OTC drugs have been performed to measure consumer use of OTC drugs. To what extent do these and other studies indicate the sources of information consumers use, such as OTC drug labeling, when deciding whether to use an OTC drug product (rather than consulting a physician or trying a nondrug remedy)?

(2) What studies exist describing whether consumers understand product labeling that may be applicable to OTC drug products (e.g., information provided on or with consumer products other than OTC drug products)? To what extent do consumers rely on OTC drug labeling information when choosing among competing products and when actually using an OTC drug product (e.g., consulting directions for use)?

(3) How would one expect label usage to vary with the type of product and consumer characteristics that affect the communication of information, such as literacy level, vision ability, etc.?

B. Legibility of OTC Drug Labeling

(1) What features of OTC drug labeling design should be considered to assure that labeling is legible to consumers? Should a performance standard be used to assure legibility (for example, should labeling be considered acceptably legible only if a certain percentage of consumers with defined vision ability, under defined lighting levels, correctly perceive a predetermined level of labeling information)?

(2) Currently, there are no required minimum standards for type size or other label design features for OTC drug labeling. Section 502(c) of the act (21 U.S.C. 352(c)) states that the information must appear with such ''conspicuousness * * * as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase * * *.'' As stated earlier in this notice, many consumers have written the agency complaining that the type size on many OTC drug products is so small that they cannot read the information. Since then, the industry has taken strides to make OTC labeling more legible. The NDMA Guidelines set forth a voluntary minimum type size of 6 point for most OTC drug packages and 4.5 point for small packages. By comparison, newspaper type size is usually 9 to 10 point. Should OTC drug labeling on currently marketed products be more legible? Should FDA set minimum standards for type size for OTC drug labeling? If so, what should the standards be? Should the standards vary depending on the size of the label? What about particularly small packages?

(3) Currently, there are no required minimum standards for other factors that affect the communication of information on OTC drug labeling, such as color, contrast, type style, spacing, and white space. Should FDA set minimum standards for these features? If so, what should the standards be? In addition, there are no standards for factors that affect readability, such as use of uppercase and lowercase letters, instead of all uppercase, and use of boldface and other highlighting techniques. Should FDA set minimum standards for these features? If so, what should they be? What other drug labeling design features are needed to improve legibility (e.g., would reducing the amount of information on the label improve information communication by allowing for increased white space between lines of text, layout, or design of information)?

(4) How do label features, such as type size, type style, contrast, spacing, etc., influence consumers' attention to and ''willingness to read'' the OTC drug labeling? How critical is this aspect for information processing (i.e., how do OTC drug labeling design features influence consumer motivation to read the label)?

C. OTC Drug Labeling Design Features

(1) The agency recently imposed a standardized format for labels on food products, pursuant to the Nutrition Labeling and Education Act of 1990. The purpose of the standardized format is to enable the public to readily observe and comprehend nutrition information and to understand its relative significance in products. FDA recognizes that the type of information listed on food labels is different in some respects from the type of information on OTC drug labeling. The agency also recognizes that standardization may inhibit flexibility in designing labeling. Nonetheless, FDA believes that standardization of format would help consumers know what information to look for and where to find it. What benefits to the communication of information would a uniform, standardized OTC drug labeling format provide to the consumer? What other benefits would a uniform, standardized format provide to the consumer?

(2) FDA recently approved switches from prescription to OTC status for two similar drugs intended to treat heartburn and acid indigestion. Each product's labeling was designed by the manufacturer with the intention of providing maximum communication of information, yet the labeling formats used for the two products are very different. Also, a major OTC drug pharmaceutical company recently has redesigned its labels, using a different format. (Examples of these labels are available from FDA by calling or writing the contact person listed above.) Is it desirable to have a uniform format for OTC drug labeling to convey drug information or should manufacturers have the flexibility to utilize a few different formats or should any format be acceptable to convey this information?

(3) If the OTC drug labeling format were standardized, what features should be made consistent on all labeling (e.g., order of information, major headings or subheadings for information, use of lines or boxes around information, certain labeling statements)?

(4) Headings are often used to signal where particular information can be found. If OTC drug labeling were standardized, what headings are suitable for the information placed on the OTC drug label? Current headings use ''key words,'' such as ''active ingredients,'' ''uses,'' ''directions,'' ''warnings,'' ''inactive ingredients.'' Are key word headings suitable for OTC drug labeling? Would different headings be desirable, such as those in ''Question and Answer'' style, (e.g., ''What is in [name of drug]?,'' ''What is [name of drug] used for?'' ''How do I use [name of drug]?'' ''What should I be aware of about [name of drug]?'' ''When should I not use [name of drug]?'') Considering size constraints of OTC drug labels, should the information required in OTC

drug labeling have a title such as ''DRUG FACTS'' to distinguish it from other information in the labeling that is not required, yet is useful for the consumer, e.g., claims of pleasant taste, 1–800 telephone number for information, money back guarantee information?

(5) Is the order of information placed on the label important? If so, if OTC drug labeling format were standardized, what order of information is most appropriate? (e.g., active ingredient, indications for use, directions for use, warnings, precautions, drug interactions, inactive ingredients, storage information, description of tamper resistant feature(s), 1–800 telephone number, UPC bar code)

(6) Symbols, pictograms, and icons that describe the text are sometimes used on OTC drug products to call attention to, or represent, certain information about the product. For example, to call attention to the standard warning ''As with any drug, if you are pregnant or nursing a baby, seek the advice of a health professional before using this product,'' some manufacturers place next to the text a pictogram, which is a circle enclosing a silhouette of a pregnant woman with a line crossing the circle. This pictogram, however, could be interpreted to mean that the product prevents pregnancy. Thus, pictograms and icons may or may not be clear in their representation and may confuse the consumer. If the OTC drug labeling format were standardized, are there any particular pictograms and icons that should be used on OTC drug labeling? If used, how can consumer confusion as to their meaning be reduced?

(7) If OTC drug labeling format were standardized, should different types of information be separated in the labeling, using techniques such as boxing and bold lines? If so, where and when should boxes/lines be used? How would distinguishing between different types of information in this way benefit consumers?

(8) Should any other features be considered for standardization?

(9) In 1994, FDA staff from the Office of OTC Drug Evaluation presented an early prototype format for OTC drug labeling to FDA's Nonprescription Drugs Advisory Committee for comment. Copies of some mock-ups using the prototype format are available by calling or writing the contact person listed above. What features of the format are desirable? What features of the format could be improved?

D. Consumer Comprehension

(1) Even if consumers can perceive and are willing to read OTC drug labeling, they may not comprehend the content of this labeling. What design features need to be considered to make labeling information understandable?

(2) A number of guidances for designing labeling text are available, including test methods for evaluating readability, computer programs for improving grammar, and manuals for labeling format design are available. How should these guidances be used to design comprehensible text for OTC drug labeling? To what extent can one rely on these guidances to assure consumer comprehension?

(3) For certain drug products that have been switched from prescription to OTC status, the agency has asked the applicant to conduct studies of consumer comprehension of the proposed OTC drug labeling prior to approval of the switch. What testing methods are most useful for these types of comprehension studies?

E. Behavioral Issues

(1) As more prescription drug products are considered for OTC switches, consumers are being asked to make more complicated judgments about the appropriateness of these products for their personal use. For example, certain products are approved for OTC use only for recurrence of a condition that was initially diagnosed by a physician. To what extent can OTC drug labeling influence consumer judgments and behaviors that are necessary for the safe and effective use of these products? Does OTC drug labeling need to contain persuasive messages to encourage behavioral compliance with the directions for use?

(2) How can FDA be assured that the labeling is sufficient to ensure safe and effective use of the OTC drug product? What types of testing methods need to be used, and under what conditions, to measure the ability of OTC drug labeling to communicate important information to consumers and influence behavior?

(3) Since consumers vary considerably in their literacy level and in their ability to read and understand OTC drug labeling, how can FDA be assured that the effects of any labeling studies are generalizable to the population of potential users of the product? What additional consumer characteristics need to be considered to assure label comprehension and usage measures are applicable to the universe of consumers?

## III. Notice of Hearing Under 21 CFR Part 15

The Commissioner of Food and Drugs is announcing that the public hearing will be held in accordance with 21 CFR part 15. The presiding officer will be the Commissioner of Food and Drugs or his designee. The presiding officer will be accompanied by a panel of Public Health Service employees with relevant expertise.

Persons who wish to participate in the part 15 hearing must file a written or facsimile notice of participation with the Dockets Management Branch (address or FAX number above) by September 11, 1995. To ensure timely handling, the outer envelope should be clearly marked with Docket No. 95N–0259 and the statement ''OTC Drug Labeling Hearing.'' Groups should submit two copies. The notice of participation should contain the speaker's name, address, telephone number, FAX number, business affiliation, if any, a brief summary of the presentation, and approximate amount of time requested for the presentation.

The agency requests that persons or groups having similar interests consolidate their presentations and present them through a single representative. FDA will allocate the time available for the hearing among the persons who properly file notices of participation. If time permits, FDA may allow participation at the conclusion of the hearing from interested persons attending the hearing who did not submit a written notice of participation.

After reviewing the notices of participation and accompanying information, FDA will schedule each appearance and notify each participant by mail, telephone, or FAX, of the time allotted to the person and the approximate time the person's presentation is scheduled to begin. The hearing schedule will be available at the hearing. After the hearing, the schedule will be placed on file in the Dockets Management Branch (address above) under Docket Number 95N–0259.

Under § 15.30(f), the hearing is informal and the rules of evidence do not apply. The presiding officer and any panel members may question any person during or at the conclusion of their presentation. No other person attending the hearing may question a person making a presentation or interrupt the presentation of a participant.

Public hearings under part 15 are subject to FDA's guideline (21 CFR part 10, subpart C) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings. Under § 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants. The

hearing will be transcribed as required in § 15.30(b). Orders for copies of the transcript can be placed at the meeting or through the Dockets Management Branch (address above).

Any disabled persons requiring special accommodations in order to attend the hearing should direct those needs to the contact person listed above.

To the extent that the conditions for the hearing, as described in this notice, conflict with any provisions set out in part 15, this notice acts as a waiver of those provisions as specified in § 15.30(h).

To permit time for all interested persons to submit data, information, or views on this subject, the administrative record of the hearing will remain open following the hearing until December 29, 1995.

## IV. Additional Request for Information

In order to assess the costs and benefits of enhanced OTC drug product labeling, written submissions to FDA on the following topics would be helpful:

(1) How frequently do companies reprint OTC drug product labels and labeling? How frequently are labels redesigned?

(2) What are the itemized costs involved in changing OTC drug labels and labeling (e.g., design, plate, reprinting, additional colors)?

(3) If FDA were to propose a new OTC drug labeling format, what strategies could be used to lessen the cost to industry? For example, what lead time would allow manufacturers to use up existing labeling inventories?

(4) What are the benefits to consumers from improvements in OTC drug labeling?

Written comments addressing cost components should address, where applicable, one-time versus annual costs, differences in brand versus private-label costs, and implications for small businesses. The agency is most interested in cost data expressed in dollars, staff hours, and personnel (professional, technical, or support). Quantitative measures of benefits are considered most desirable, but discussions of anecdotal and/or qualitative benefits are also welcomed. Submit comments to the Dockets Management Branch (address above) identified with Docket No. 95N–0259.

Dated: August 10, 1995.

**William B. Schultz,**

*Deputy Commissioner for Policy.*

[FR Doc. 95–20245 Filed 8–15–95; 8:45 am]

BILLING CODE 4160–01–F

**[Docket No. 95N–0227]**

## Direct-to-Consumer Promotion; Public Hearing

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of public hearing; request for comments.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing a public hearing regarding direct-to-consumer promotion of prescription drugs. The purpose of the hearing is to solicit information from, and the views of, interested persons, including health care professionals, scientists, professional groups, and consumers, on the issues and concerns relating to the promotion of prescription drug products directly to consumers through print, broadcast, and other types of media. FDA is particularly interested in hearing the views of the groups most affected by direct-to-consumer promotion, including patients, caretakers, physicians, physicians' assistants, nurses, pharmacists, managed care organizations, and insurers.

**DATES:** The public hearing will be held on October 18, 1995, from 8:30 a.m. to 5:30 p.m., and October 19, 1995, from 8:30 to 12:30 p.m. Submit written notices of participation by September 15, 1995. Written comments will be accepted until December 29, 1995.

**ADDRESSES:** The public hearing will be held at the Quality Hotel—Silver Spring, 8727 Colesville Rd., Silver Spring, MD. Submit written notices of participation and comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with docket number 95N–0227. Transcripts of the hearing will be available for review at the Dockets Management Branch (address above).

**FOR FURTHER INFORMATION CONTACT:** Lee L. Zwanziger, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Under the Federal Food, Drug, and Cosmetic Act (the act), FDA has responsibility for regulating the labeling and advertising (promotional activities) for prescription drugs. Under section 201(m) of the act (21 U.S.C. 321(m), labeling is defined to include all ''written, printed, or graphic'' materials ''accompanying'' a regulated product. The Supreme Court has agreed with the agency that this definition is not limited to materials that physically accompany a product. The Court has deemed the textual relationship between the materials and the products to be fundamental (*Kordel* v. *United States*, 335 U.S. 345, 349–350 (1948)). In its regulations, FDA has given examples of things that it regards as labeling, including brochures, mailing pieces, calendars, price lists, letters, motion picture films, sound recordings, and literature (§ 202.1(l)(2) (21 CFR 202.1(l)(2)). Although the act does not define what constitutes a prescription drug ''advertisement,'' FDA generally interprets the term to include information (other than labeling) that is sponsored by a manufacturer and is intended to supplement or explain a product. This includes, for example, ''advertisements in published journals, magazines, other periodicals, and newspapers, and advertisements broadcast through media such as radio, television, and telephone communication systems'' (§ 202.1(l)(1)).

If an activity or material is considered to be either advertising or labeling, it must meet certain requirements. Labeling must contain adequate directions/information for use that is the ''same in language and emphasis'' as the product's approved or permitted labeling (21 U.S.C. 352(f)) and 21 CFR 201.100(d)). This requirement is generally fulfilled by including the full approved labeling for the product (the ''package insert'') with the promotional materials. The act specifies that, in addition to the identity of the product and its quantitative composition, advertisements must contain ''other information in brief summary relating to side effects, contraindications, and effectiveness * * *''(21 U.S.C. 352(n)). FDA further defines this latter requirement in § 202.1(e). This requirement is generally fulfilled by including the sections of the approved labeling that discuss the product's adverse event profile, contraindications, warnings, and precautions. In addition, the act and regulations specify that drugs are deemed to be misbranded if their labeling or advertising is false or misleading in any particular or fails to reveal material facts (21 U.S.C. 352(a) and 321(n) and § 202.1(e)).

### *A. History of Direct-to-Consumer Promotion*

The practice of promoting prescription drug products directly to consumers began to gain popularity in the early 1980's. Until that time, drug

manufacturers had typically limited their promotion to health care professionals. With the onset of direct-to-consumer promotion, the effectiveness of the regulatory scheme, was called into question.

To explore the ramifications of direct-to-consumer prescription drug promotion, FDA requested a voluntary moratorium on this practice in a September 2, 1983 policy statement. During the moratorium, FDA sponsored a series of public meetings and conducted research. In 1984, a symposium, jointly sponsored by the University of Illinois and Stanford Research Institute (SRI), was held to discuss consumer-directed prescription drug advertising from a broad research and policy perspective. In the **Federal Register** of September 9, 1985 (56 FR 36677), the moratorium was withdrawn in a notice, which stated that the current regulations governing prescription drug advertising provide ''sufficient safeguards to protect consumers.''

Since 1985, FDA has applied the act and the prescription drug advertising regulations to both professional and consumer-directed promotion on a case-by-case basis. There are no regulations that pertain specifically to consumer-directed promotional materials. FDA recognizes and accounts for the differences between health care professionals and consumers as recipients of drug promotion, such as differences in medical and pharmaceutical expertise, perception of pharmaceutical claims, and information processing. For this reason, FDA has monitored direct-to-consumer promotion to help ensure that adequate contextual and risk information, presented in understandable language, is included both to fulfill the requirement for fair balance and to help the consumer accurately assess promotional claims and presentations. Additionally, in a July 1993 letter to the pharmaceutical industry, as well as in numerous prior and subsequent public presentations given by FDA staff, the agency has requested that drug manufacturers voluntarily submit proposed direct-to-consumer promotional material prior to use, allowing FDA the opportunity to review and comment upon proposed materials before they reach consumers.

*B. Current Issues in Direct-to-Consumer Promotion*

1. General

The repercussions of direct-to-consumer promotion have been widely discussed. Proponents argue that direct-to-consumer promotion is of educational value and will improve the physician-patient relationship, increase patient compliance with drug therapy and physician visits, and lower drug prices. Opponents contend that consumers do not have the expertise to accurately evaluate and comprehend prescription drug advertising. Opponents also argue that such promotion is misleading by failing to adequately communicate risk information, and that such promotion will damage the physician-patient relationship, increase drug prices, increase liability actions, and lead to over-medication and drug abuse. Rigorous studies are needed to assess the actual effects of direct-to-consumer promotion and to help guide future policy.

In the last few years, FDA has received a number of citizen petitions that address direct-to-consumer promotion. The positions advocated by these petitions vary considerably. One petition requests that FDA ban direct-to-consumer advertising of prescription drugs. A second petition requests that FDA not adopt or institute any significant new restrictions to existing regulations nor mandate prior approval of consumer-directed advertising. A third petition, recently updated and reissued by the petitioner, contends that consumer-directed prescription drug advertising should not be regulated under § 202.1, and it also contends that FDA should promulgate new regulations to address prescription drug advertisements directed to consumers. The petitioner further contends that, until such time as new regulations are established, FDA should issue a policy statement that prescription drug advertisements directed to the general public are exempt from the advertising regulations. Another petition, recently received by FDA, reiterates these concerns and also raises First Amendment issues. The range of actions requested in these petitions is indicative of the diversity of views regarding direct-to-consumer promotion. FDA recognizes the importance of the issues raised by these petitions, and FDA intends that one of the purposes of the public hearing will be to assist the agency in responding to these petitions.

2. Types of Direct-to-Consumer Promotion

There are three broad categories of direct-to-consumer promotion of prescription drugs: (1) ''Product-claim,'' containing safety and efficacy claims about a particular drug(s); (2) ''help-seeking,'' containing information about a disease or condition and a recommendation for the consumer to consult a health care provider, when appropriate, while excluding discussions of specific treatments or drugs; and (3) ''reminder,'' containing the name of the drug and other limited information, but excluding all representations or suggestions about the drug(s).

3. Product-Claim

Product-claim promotional materials contain safety and efficacy claims about a specific prescription drug product. The regulations require that these materials present a balanced view of the drug (§ 202.1(e)(5)(ii)). Claims of drug benefits, such as safety and efficacy, must be balanced with relevant disclosures of risks and limitations of efficacy. This balanced presentation of drug therapy is commonly referred to as ''fair balance.''

Currently, most consumer-directed product-claim materials are limited to one drug product and do not compare drugs, or classes of drugs, with each other. Proponents of this noncomparative format argue that consumers do not have the contextual knowledge required to critically evaluate comparative claims. Opponents contend that consumers could evaluate comparative claims that are properly framed and fairly balanced.

4. Help-Seeking

Help-seeking promotional materials encourage consumers with particular symptoms, conditions, or diseases to consult their doctor to discuss general treatment options, but do not mention specific prescription drug products.

If the only available treatment for a condition is a specific prescription drug product, help-seeking materials may not be employed. In such a case, materials focusing on the condition would, by implication, promote the product. In addition, help-seeking materials may not include ''linkages,'' i.e., logos, tag lines, graphics, etc., to product-specific materials. Linkages create a clear association between a disease and a prescription drug, resulting in the interpretation of the help-seeking material as product-claim material. Help-seeking materials that include linkages are regulated as product-claim materials.

As direct-to-consumer promotion has become more sophisticated, some opponents have questioned FDA's decision not to regulate help-seeking materials. They argue that even in the absence of direct linkages, many consumers are able to connect the sponsoring manufacturer with a specific prescription drug.

5. Reminder

Reminder promotional materials are a means of reinforcing name recognition and brand loyalty. When targeted toward prescribers, manufacturers anticipate that this marketing technique will increase the frequency with which a prescriber recalls the name of a drug and its clinical role. This process is expected to result in an increased number of prescriptions for the manufacturer's product. The utility of reminder materials for consumers has not been resolved. Consumers are less likely to associate the brand name of a prescription drug with its clinical function(s). Moreover, consumers generally do not make prescribing decisions. Therefore, many question the value of this marketing technique for consumers, which, by definition, fails to provide clinical information.

6. Disclosure Requirements for Print Labeling and Advertising

As described previously, the act requires that non-reminder labeling bear ''adequate directions for use'' of the product (21 U.S.C. 352(f)) and that non-reminder advertising include a ''true statement of * * * other information in brief summary relating to side effects, contraindications, and effectiveness'' (21 U.S.C. 352(n)). This statement has become known as the ''brief summary.'' These disclosure requirements are generally satisfied by reprinting the full package insert with labeling or the brief summary with advertising. However, the package insert is written in technical language intended for health care professionals and is relatively inaccessible to consumers. Consequently, the value of this information for consumers is questionable. At issue is whether the same information could be presented in a format and language more easily understood by consumers.

7. Disclosure Requirements for Broadcast Advertising

Broadcast advertisements (radio, television, or telephone communications systems) must contain a brief summary, unless ''adequate provision is made for dissemination'' of the approved labeling in connection with the presentation (§ 202.1(e)(1)). Advertisements targeted to health care professionals may meet this requirement by providing the page number for the advertised product in the *Physicians' Desk Reference* (PDR), along with a toll-free telephone number by which the professional may request a copy of the package insert. Most consumers do not have ready access to the PDR. Therefore, such a page reference would be inadequate.

Because of the difficulty of satisfying the disclosure requirement, consumer-directed broadcast advertisements have been largely limited to reminder and help-seeking advertisements. Reminder and help-seeking advertisements are exempt from the disclosure requirements. New methods of satisfying the ''adequate provision'' requirement, such as scrolling the approved product labeling following television broadcasts, continue to be explored.

Broadcast advertisements also are required to present information relating to the major risks (i.e., side effects, warnings, precautions, and contraindications) of the drug (§ 202.1(e)(1)). This disclosure is commonly referred to as the ''major statement.'' The major statement must be presented as an integral part of the broadcast advertisement and be communicated in language understood by consumers. Nevertheless, the major statement is a relatively fleeting disclosure and many have questioned the ability of the consumer to comprehend and process the information.

8. Fair Balance

As discussed earlier, the regulations require that advertisements present a fair balance of benefit and risk information. Claims of drug benefits, such as safety and efficacy, must be balanced with relevant disclosures of risks and limitations of efficacy. The regulations also require that the risk information be presented with a prominence and readability reasonably comparable to claims about drug benefits (§ 202.1(e)(7)(viii)). In consumer-directed promotion, FDA has interpreted these requirements to mean that balancing information should appear in the body copy of the promotional material in language understood by consumers. Balancing information is intended to provide a framework for the consumer to understand and evaluate drug benefit claims, allowing them to form accurate opinions about prescription drugs. These disclosures, often referred to as ''critical messages,'' also serve to facilitate and focus the physician-patient interaction.

Opponents of direct-to-consumer promotion argue that critical messages cannot provide consumers with the contextual knowledge required to assess the risks associated with the use of a prescription drug. Accordingly, they would like to see direct-to-consumer promotion halted.

9. Consumer Services

Manufacturer-sponsored patient-support programs are becoming increasingly common. These programs are highly visible to consumers and may be perceived as adding value to their therapy. Such programs offer services such as patient counseling, care giver counseling, therapy compliance tracking, and disease monitoring. These programs may allow the drug manufacturer to influence the course of drug therapy beyond the initial prescribing decision. Disclosure of the manufacturer's sponsorship is not always clear. For example, some of these services may appear to be sponsored by the patient's physician or other health care provider.

Other manufacturer-sponsored consumer services appear to be sponsored by unbiased third parties, such as disease-specific foundations. This relationship may be utilized in many ways. For instance, the foundation may disseminate manufacturer-prepared drug information to consumers on behalf of the manufacturer. Consumers may not be aware of the true source of the information, and consequently, they may not evaluate this information as critically as they would manufacturer-disseminated information. At issue is whether or not these services mislead consumers.

## II. Scope of the Hearing

In light of the many complex public health issues raised by direct-to-consumer prescription drug promotion, FDA is soliciting broad public participation and comment concerning this area. FDA is particularly interested in exploring whether, and, if so, how, the agency's current regulatory approach should be modified. As direct-to-consumer promotion evolves, FDA will continue to help ensure that consumers receive timely, understandable, and accurate information about prescription drugs.

Examples of issues that are of interest to the agency include the following:

1. What is known about the effects of direct-to-consumer promotion? What effects, if any, does direct-to-consumer promotion have on the public health?

2. Does direct-to-consumer promotion oversimplify the safety and effectiveness of prescription drugs? If so, what impact does such oversimplification have on the public health?

3. Can consumers understand and accurately assess claims regarding the efficacy and safety of prescription drugs? What kind of additional information, if any, should be required

in the presentation of comparative drug claims to ensure that consumers understand and may critically evaluate them?

4. Reminder advertisements, by definition, lack contextual and risk information. What role do such advertisements play in consumer promotion? Are such advertisements useful for consumers?

5. (a) Current regulations require inclusion of a ''brief summary'' of prescribing information in print advertisements. Is this form of disclosure effective for consumers? Is it informative? Should there be alternate requirements for risk disclosure, and, if so, what should they be? (b) Current regulations require that broadcast advertisements present a ''brief summary'' of prescribing information unless adequate provision is made for the dissemination of the approved product labeling. Also required is a statement of the major risks of the product. Are these disclosure requirements effective and informative for consumers? Are there alternate types of risk disclosures that are more effective or informative? If so, what are they?

6. New technologies have spurred the growth of computer-based promotional vehicles, such as electronic bulletin boards, kiosks in pharmacies, the Internet, etc. These promotions are neither purely print nor broadcast. What disclosure requirements, in general, should be used for such consumer-directed prescription drug promotion?

7. ''Infomercials'' are program-length television or radio programs that promote prescription drugs to consumers. What restrictions and/or disclosures should be required of infomercials promoting prescription drugs to consumers?

8. To help ensure that advertisements will be in ''fair balance,'' FDA currently requests disclosure of key risk and/or limitations of efficacy information, i.e., critical messages, in consumer-directed prescription drug promotion. In general, are such disclosures effective and informative for this audience? What kinds of information should be disclosed?

9. Some manufacturer-supported direct-to-consumer promotion appears to be sponsored by independent, third-party services, such as mailings from disease-specific foundations or disease management support services. What disclosures should be required to inform consumers of the source of the communication?

## III. Notice of Hearing Under 21 CFR Part 15

The Commissioner of Food and Drugs is announcing that the public hearing will be held in accordance with part 15 (21 CFR part 15). The presiding officer will be the Commissioner of Food and Drugs or his designee. The presiding officer will be accompanied by a panel of Public Health Service employees with relevant expertise.

Persons who wish to participate in the part 15 hearing must file a written notice of participation with the Dockets Management Branch (address above) by September 15, 1995. To ensure timely handling, the outer envelope should be clearly marked with docket number 95N–0227 and the statement ''Direct-to-Consumer Hearing.'' Groups should submit two copies. The notice of participation should contain the person's name; address; telephone number; affiliation, if any; brief summary of the presentation; and approximate amount of time requested for the presentation. The agency requests that interested persons and groups having similar interests consolidate their comments and present them through a single representative. FDA will allocate the time available for the hearing among the persons who file notices of participation as described above. If time permits, FDA may allow interested persons attending the hearing who did not submit a written notice of participation in advance to make an oral presentation at the conclusion of the hearing.

After reviewing the notices of participation and accompanying information, FDA will schedule each appearance and notify each participant by telephone of the time allotted to the person and the approximate time the person's presentation is scheduled to begin. The hearing schedule will be available at the hearing. After the hearing, the schedule will be placed on file in the Dockets Management Branch under docket number 95N–0227.

Under § 15.30(f), the hearing is informal and the rules of evidence do not apply. The presiding officer and any panel members may question any person during or at the conclusion of their presentation. No other person attending the hearing may question a person making a presentation or interrupt the presentation of a participant.

Public hearings under part 15 are subject to FDA's guideline (21 CFR part 10, subpart C) on the policy and procedures for electronic media coverage of public administrative proceedings. Under § 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants. The hearing will be transcribed as required by § 15.30(b). Orders for copies of the transcript can be placed at the meeting or through the Dockets Management Branch (address above).

Any handicapped person requiring special accommodations in order to attend the hearing should direct those needs to the contact person listed above.

To the extent that the conditions for the hearing, as described in this notice, conflict with any provisions set out in part 15, this notice acts as a waiver of those provisions as specified in § 15.30(h).

To permit time for all interested persons to submit data, information, or views on this subject, the administrative record of the hearing will remain open following the hearing until December 29, 1995.

Dated: August 7, 1995.

**William K. Hubbard,**

*Acting Deputy Commissioner for Policy.*

[FR Doc. 95–20314 Filed 8–15–95; 8:45 am]

BILLING CODE 4160–01–F

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## Substance Abuse and Mental Health Services Administration

### Center for Substance Abuse Treatment; Meeting

Pursuant of Pub.L. 92–463, notice is hereby given of the meeting of the Center for Substance Abuse Treatment (CSAT) National Advisory Council in September 1995.

The meeting of the CSAT National Advisory Council will include a discussion of the mission and programs of the Center, policy issues and administrative, legislative, and program developments. The Council will also be performing a review of grant applications, contract proposals and procurement plans for Federal assistance; therefore a portion of this meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with 5 U.S.C. 552b(c)(3)(4) and (6) and 5 U.S.C. app. 2 10(d). Attendance by the public at the open portion of the meeting will be limited to space available. Public comments are welcome during the open session. Please communicate with the Contact person listed below for guidance.

A summary of the meeting and roster of council members may be obtained from: Ms. D. Winstead, Committee

Management Specialist, CSAT, Rockwall II Building, Suite 840, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–8448.

Substantive program information may be obtained from the contact whose name and telephone number is listed below.

*Committee Name:* The Center for Substance Abuse Treatment National Advisory Council.

*Meeting Dates:* September 14 and 15, 1995.

*Place:* Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chase Room, Chevy Chase, Maryland 20815.

*Type:* Closed: September 14, 8:30 a.m.–10:30 a.m. Open: September 14, 10:30 a.m.–3:30 p.m. Open: September 15, 8:45 a.m.–2:15 p.m.

*Contact:* Marjorie Cashion, Rockwall II Building, Suite 840, Telephone: (301) 443–3821.

Dated: August 10, 1995.

**Jeri Lipov,**

*Committee Management Officer, Substance Abuse and Mental Health Services Administration.*

[FR Doc. 95–20244 Filed 8–15–95; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of Administration

**[Docket No. FR–3917–N–17]**

### Notice of Submission of Proposed Information Collection to OMB

**AGENCY:** Office of Administration, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMN) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours heeded to prepare the information submission including number of respondents, frequency of response, and hours of response; (7) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

**Authority:** Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 10, 1995.

**David S. Cristy,**

*Director, Information Resources Management Policy and Management Division.*

### Notice of Submission of Proposed Information Collection to OMB

*Proposal:* (1) Schedule of Subscribers and GNMA II Contractual Agreement and (2) Schedule of Subscribers Addendum for Construction Loan Certification.

*Office:* Government National Mortgage Association.

*Description of the Need for the Information and Its Proposed Use:* The forms are used to provide GNMA with a listing of subscribers and other information needed to prepare mortgage-backed securities. They are also used to provide the contractual agreement between the issuer and GNMA under the GNMA II program.

*Form Number:* HUD–11705 and 1735.

*Respondents:* Business or Other For-Profit and the Federal Government.

*Reporting Burden:*

| | Number of respondents | × | Frequency of response | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| HUD–11705 | 900 | | 34 | | .17 | | 5,202 |
| HUD–1735 | 80 | | 2 | | .17 | | 27 |

*Total Estimated Burden Hours:* 5,229.

*Status:* Extension with changes.

*Contact:* Brenda Countee, HUD, (202) 708–2234; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: August 10, 1995.

[FR Doc. 95–20292 Filed 8–15–95; 8:45 am]

**BILLING CODE 4120–01–M**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

*Applicant:* William R. Hawkins, El Cajon, CA, PRT–805154.

The applicant requests a permit to import one sport-hunted bontebok (*Damaliscus pygargus dorcas*) culled from the captive herd maintained by Mr. D.B. Pohl, ''Tea Fountain'', Republic of South Africa, for enhancement of the species.

*Applicant:* Thompson & Morgan, Inc., Jackson, NJ, PRT–805326. The applicant requests a permit to import and sell in interstate and foreign commerce artificially propagated seeds of Antioch dunes evening-primrose *(Oenothera deltoides howellii)* from Thompson & Morgan Ltd., United Kingdom, to enhance the propagation and survival of the species. This notification covers activities conducted by the applicant for a five year period.

*Applicant:* Russel Underahl, North Oaks, MN, PRT–805548

The applicant requests a permit to import one sport-hunted male bontebok (*Damaliscus pygargus dorcas*) culled from the captive herd maintained by M.G. Wienand, Longwood, Bedford, Republic of South Africa for the purpose of enhancement of the species.

*Applicant:* Buffalo Zoological Gardens, Buffalo, NY, PRT–805551.

The applicant requests a permit to export the skins shed from three captive-born Virgin Islands tree boas (*Epicrates monensis granti*) to Queen's University, Kingston, Ontario, Canada, for enhancement of the survival of the species through scientific research.

*Applicant:* California Department of Fish and Game, Sacramento, CA, PRT–782423.

Notice is hereby given that the applicant has requested and has been granted an extension of the permit, PRT–782423, through August 2, 1996. The permit authorizes the take and release of up to 30 southern sea otters (*Enhydra lutris nereis*) from the area between Point Joe, Monterey County and Lighthouse Point, Santa Cruz County for scientific research purposes under the Marine Mammal Protection Act and the U.S. Endangered Species Act.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: August 11, 1995.

**Caroline Anderson,**

*Acting Chief, Branch of Permits, Office of Management Authority.*

[FR Doc. 95–20279 Filed 8–15–95; 8:45 am]

BILLING CODE 4310–55–P

## Bureau of Land Management

**[UT–068–05–1020–00]**

### Proposed Plan Amendment; Grand Resource Management Plan

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Availability.

**SUMMARY:** This notice is to advise the public that the proposed plan amendment and associated revised environmental assessment for the Grand Resource Management Plan has been completed. The proposed amendment involves the reallocation of forage on the Diamond and Cottonwood grazing allotments.

**DATES:** The protest period for this proposed plan amendment will commence with the date of publication of this notice. Protests must be received on or before September 15, 1995.

**ADDRESSES:** Protests must be addressed to the Director, Bureau of Land Management (WO 480)), Resource Planning Team, P.O. Box 65775, Washington, DC 20036 within 30 days after the date of publication of this Notice of Availability.

**FOR FURTHER INFORMATION CONTACT:** Brad Palmer, Area Manager, Grand Resource Area of the Moab District at 82 East Dogwood, Suite G, Moab, Utah 84532, telephone (801) 259–6111. Copies of the proposed amendment/environmental assessment are available for review at the Grand Resource Area Office.

**SUPPLEMENTARY INFORMATION:** This action is announced pursuant to section 202 (a) of the Federal Land Management and Policy Act (1976) and 43 CFR part 1610. As a result of a previous protest received on two of the proposed decisions of this proposed amendment, the subject environmental assessment has been revised regarding requested information on the Diamond and Cottonwood Allotments. All other non protested decisions in the Plan Amendment have been implemented. Therefore, only those decisions relative to the Cottonwood and Diamond Allotments may be protested. This proposed amendment is subject to protest by any party who has participated in the planning process. Protest must be made in accordance with the provisions of 43 CFR 1610.5–2. Protests must be specific and contain the following information:

—The name, mailing address, phone number, and interest of the person filing the protest.

—A statement of the issue or issues being protested.

—A statement of the part of parts being protested and citing of pages, paragraphs, maps etc., of the plan amendment.

—A copy of all documents addressing the issue (s) submitted by the protestor during the planning process or a reference to the date when the protester discussed the issues (s) for the record.

—A concise statement to why the protester believes the BLM State Director decision is incorrect.

Dated: August 8, 1995.

**Ernest J. Eberhard,**

*Acting State Director.*

[FR Doc. 95–20038 Filed 8–15–95; 8:45 am]

BILLING CODE 4310–DQ–P

## Office of Surface Mining Reclamation and Enforcement

### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related form may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029–0049), Washington, DC 20503, telephone 202–395–7340.

*Title:* Special Permanent Program Performance Standards—Operations in Alluvial Valley Floors

*OMB approval number:* 1029–0049

*Abstract*: This section requires the permittee to install, maintain and operate a monitoring system in order to provide specific protection for alluvial valley floors. This information is needed to ensure that the agricultural utility and production of the alluvial valley floor is maintained

*Bureau Form Number:* None

*Frequency:* Annually

*Description of Respondents:* Coal Mining Operators

*Estimated Completion Time:* 100 hours

*Annual Responses:* 10

*Annual Burden Hours:* 1,000

*Bureau Clearance Officer:* John A. Trelease (202) 342–1475

Dated: August 2, 1995.

**Andrew F. DeVito,**

*Acting Chief, Rules and Legislation Staff.*

[FR Doc. 95–20216 Filed 8–15–95; 8:45 am]

BILLING CODE 4310–05–M

## National Park Service

### California National Historic Trail/Pony Express National Historic Trail General Management Plan/Environmental Impact Statement, California and Pony Express National Historic Trails, Iowa, Nebraska, Missouri, Kansas, Colorado, Wyoming, Utah, Nevada, California, Oregon

**AGENCY:** National Park Service, Department of the Interior.

**ACTION:** Notice of intent to prepare an environmental impact statement for the California and Pony Express National Historic Trails General Management Plan/Environmental Impact Statements, California and Pony Express National Historic Trails.

**SUMMARY:** Under the provisions of the National Environmental Policy Act, the National Park Service is preparing an environmental impact statement for the California and Pony Express National Historic Trails General Management Plan/ Environmental Impact Statement for California and Pony Express National Historic Trails.

The effort will result in a comprehensive general management plan that encompasses preservation of natural and cultural resources, visitor use and interpretation, roads, and facilities. In cooperation with the U.S. Fish and Wildlife Service, U.S.D.A. Forest Service, Bureau of Land Management, and the sovereign Native American Tribes with lands adjacent to the trails, attention will also be given to resources adjacent to the trails that affect the integrity of the California and Pony Express National Historic Trails. Alternatives to be considered include no-action and a range of alternatives from which the preferred alternative will be selected.

Major issues include cooperative agreements with land management agencies and private land owners for visitor use and trail preservation; identification of historic sites and trail segments; development of a consistent management strategy for the trails, which can be easily implemented by land owners and land management agencies.

A scoping brochure has been prepared that details the issues identified to date. Copies of that information can be obtained from the Denver Service Center (TCE), Attn: Patrick O'Brien, P.O. Box 25287, Denver, Colorado 80225–0287; (303) 969–2458.

**FOR FURTHER INFORMATION CONTACT:** Jere Krakow, Trail Program Manager, Long Distance Trails Program Office at (801) 539–4094.

Dated: June 22, 1995.

**Ronald E. Everhart,**

*Acting Field Director, Intermountain Field Area*

[FR Doc. 95–20194 Filed 8–15–95; 8:45 am]

BILLING CODE 4310–70–P

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–375]**

### Certain Clog Style Articles of Footwear; Notice of Commission Determination Not To Review an Initial Determination Granting a Joint Motion To Terminate the Investigation on the Basis of a Consent Order

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has decided not to review an initial determination (ID) issued by the presiding administrative law judge (ALJ) in the above-captioned investigation granting a motion to terminate the investigation as to respondents Mervyn's, Inc. and S. Goldberg & Co., Inc., on the basis of a consent order and consent order agreement. As Mervyn's and Goldberg are the only respondents in the investigation, their termination terminates the investigation.

**ADDRESSES:** Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

**FOR FURTHER INFORMATION CONTACT:** Greta Lichtenbaum, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3092. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

**SUPPLEMENTARY INFORMATION:** On July 12, 1995, the ALJ issued an ID (Order No. 6) granting a joint motion of complainant R.G. Barry Corporation and respondents Mervyn's, Inc. and S. Goldberg & Co., Inc., to terminate the investigation on the basis of a consent order agreement and a proposed consent order. No petitions for review of the ID or agency comments were received.

This action is taken under authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and section 210.42 of the Commission's Final Rules of Practice and Procedure (19 C.F.R. 210.42).

By order of the Commission.

Issued: August 9, 1995.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 95–20304 Filed 8–15–95; 8:45 am]

BILLING CODE 7020–02–P

## INTERSTATE COMMERCE COMMISSION

**[Docket No. AB–55 (Sub-No. 511X)]**

### CSX Transportation, Inc.—Abandonment Exemption—in Hamilton County, IL

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon 2.64 miles of rail line between milepost HS–377.77 at Thackeray and milepost HS–380.41 at Wheeler Creek Mine, in Hamilton County, IL.

CSXT has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial

assistance (OFA) has been received, this exemption will be effective on September 15, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by August 28, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 5, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, 500 Water Street J150, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio.*

CSXT filed an environmental report which addresses the effects of the abandonment, if any, on the environment and historic resources. The Commission's Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by August 21, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: August 9, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 95–20273 Filed 8–15–95; 8:45 am]

**BILLING CODE 7035–01–P**

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request prior to the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

## DEPARTMENT OF LABOR

### Office of the Secretary

### President's Committee on the International Labor Organization; Closed Meeting

In accordance with Section 10(a) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is hereby given of a meeting of the President's Committee on the ILO:

*Name:* President's Committee on the International Labor Organization.

*Date:* Friday, September 8, 1995.

*Time:* 10 am.

*Place:* U.S. Department of Labor, Third and Constitution Ave., NW., Room S–2508, Washington, DC 20210.

*Purpose:* The meeting will include a review and discussion of current issues relating to United States' negotiating positions with member nations of the International Labor Organization. The meeting will concern matters the disclosure of which would seriously compromise the Government's negotiating objectives and bargaining positions. Accordingly, the meeting will be closed to the public, pursuant to Section 9(b) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(9)(B).

*For Further Information Contract:* Mr. Joaquin F. Otero, President's Committee on the International Labor Organization, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–2235, Washington, DC 20210 Telephone (202) 219–6043.

Signed at Washington, DC this 10th day of August, 1995.

**Robert B. Reich,**

*Secretary of Labor.*

[FR Doc. 95–20260 Filed 8–15–95; 8:45 am]

**BILLING CODE 4510–28–M**

## Employment and Training Administration

**[TA–W–29,639]**

### Gould Shawmut, Marble Falls, Texas; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on May 26, 1994, applicable to workers of the subject firm. The notice was published in the **Federal Register** on June 14, 1994 (59 FR 30618).

The Department has been notified by the company that Gould, Inc. has changed its corporate name to Gould Electronics, Inc. Gould Shawmut is a division name which includes plants in other locations.

The intent of the Department's certification is to include all workers of Gould Shawmut in Marble Falls, Texas who were affected by increased imports of fuseholders.

The amended notice applicable to TA–W–29,639 is hereby issued as follows:

All workers of the fuseholder production line of Gould Shawmut, a/k/a Gould Electronics, Inc., Marble Falls, Texas who became totally or partially separated from employment on or after October 1, 1993, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 4th day of August 1995.

**Arlene O'Connor,**

*Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 95–20262 Filed 8–15–95; 8:45 am]

**BILLING CODE 4510–30–M**

**[TA–W–30,913 and TA–W–30,913A]**

### Heublein, Incorporated, Hartford, Connecticut and Farmington, Connecticut; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on May 1, 1995, applicable to workers of Heublein, Incorporated, located in Hartford, Connecticut. The notice was published in the **Federal Register** on May 17, 1995 (60 FR 26459).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information received from the company shows that Heublein has employees at various locations within Hartford, and in Farmington, Connecticut.

Further information shows that some of the workers at these Heublein facilities are providing administrative and support services associated with the manufacture, sale, distribution and marketing of vodka and other distilled spirits.

The intent of the Department's certification is to include all workers of Heublein, Incorporated who are adversely affected by imports.

The amended notice applicable to TA–W–30,913 is hereby issued as follows:

All workers of Heublein, Incorporated, located in Hartford (TA–W–30,913) and Farmington (TA–W–30,913A), Connecticut who became totally or partially separated from employment on or after March 25, 1994, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 4th day of August 1995.

**Arlene O'Connor,**

*Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 95–20261 Filed 8–15–95; 8:45 am]

BILLING CODE 4510–30–M

## Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of July and August, 1995.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

### Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–31,102; Rockwell Graphics Systems of Rockwell, Reading, PA

TA–W–31,099; Traulsen & Co., Inc., College Point, NY

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–31,077; Sunstrand Corp., Electric Power System Div., Lima, OH

U.S. imports of parts for military aircraft declined absolutely in the period April 1994 through March 1995 as compared to the year earlier.

TA–W–31,228; E–Systems, Inc., Greenville Div., Greenville, TX

TA–W–31,259; KGS Systems, Inc., Harlingen, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–31,091; Flexel, Inc., Tecumseh, KS

The investigation revealed that criterion (1) has not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification.

TA–W–31,178 & A; Leader Sportswear Manufacturing 950 Wapakoneta Ave., Sidney, OH and 208 South Brooklyn Ave., Sidney, OH

The predominate reason for layoffs at the Wapakoneta Avenue and South Brooklyn Avenue of Leader Sportswear Manufacturing was due to a decision by the parent company, Neff Company to consolidate production in the Georgia facility in April, 1995.

### Affirmative Determinations for Worker Adjustment Assistance

TA–W–31,144; Fruit of the Loom, Jamestown, KY

A certification was issued covering all workers separated on or after May 30, 1994.

TA–W–31,199; Lee Manufacturing, Pittston, PA

A certification was issued covering all workers separated on or after June 20, 1994.

TA–W–31,220; Stride-rite Corp., Fulton, MO

A certification was issued covering all workers separated on or after June 29, 1994.

TA–W–31,257; Husky Enterprises, Jermyn, PA

A certification was issued covering all workers separated on or after July 3, 1994.

TA–W–31,147; Summit Station Mfg., Inc., Pine Grove, PA

A certification was issued covering all workers separated on or after June 6, 1994.

TA–W–31,089 & TA–W–31,090; Flexel, Inc., Covington, IN and Atlanta, GA

A certification was issued covering all workers separated on or after May 12, 1994.

TA–W–31,131; Karen Fashions, Inc., Secaucus, NJ

A certification was issued covering all workers separated on or after May 31, 1994.

TA–W–31,069; Rainbow Fashion, Inc., Pittston, PA

A certification was issued covering all workers separated on or after May 16, 1994.

TA–W–31,136; DTH Enterprises, Inc., Roswell, NM

A certification was issued covering all workers separated on or after May 25, 1994.

TA–W–31,213; NQ II Ltd, Mifflinburg, PA

A certification was issued covering all workers separated on or after June 22, 1994.

TA–W–31,223; T & W Forge, Inc., Alliance, OH

A certification was issued covering all workers separated on or after June 23, 1995.

TA–W–31,192; Salmon Intermountain, Inc., Salmon, ID

A certification was issued covering all workers separated on or after June 22, 1994.

TA–W–31,253; Crown Pacific Limited Partnership, Colburn Unit, Sandpoint, ID

A certification was issued covering all workers separated on or after July 10, 1994.

TA–W–31,153; Crown Pacific Limited Partnership, Bonners Ferry, ID

A certification was issued covering all workers separated on or after June 12, 1994.

TA–W–31,190; ITT Marlow Pumps, Midland Park, NJ

A certification was issued covering all workers separated on or after June 1, 1994.

TA–W–31,188; Robertshaw Controls Co., El Paso, TX

A certification was issued covering all workers separated on or after June 12, 1994.

TA–W–31,230; Hayward Pool Products, Inc., Elizabeth, NJ

A certification was issued covering all workers separated on or after July 6, 1994.

TA–W–31,265; Power Cords & Cable Corp., College Point, NY

A certification was issued covering all workers separated on or after July 12, 1994.

TA–W–31,096; American Lantern Co., Newport, AR

A certification was issued covering all workers separated on or after May 12, 1994.

TA–W–31,115; Louis Dreyfus Natural Gas Corp., Oklahoma City, OK

A certification was issued covering all workers separated on or after May 18, 1994.

TA–W–31,255; Donnkenny Apparel, Inc., Christiansburg Garment Co., Christiansburg, VA

A certification was issued covering all workers separated on or after July 13, 1994.

TA–W–31,104; Mitchell Energy Corp., The Woodlands, TX & Operating in the Following States: A; CO, B; LA, C; NM, D; PA, E; TX

A certification was issued covering all workers separated on or after May 26, 1994.

TA–W–31,105; TA–W–31,106, TA–W–31,107, TA–W–31,108, TA–W–31,109; Mitchell Gas Services, Inc., Liquid Energy Corp., Southwestern Gas Pipeline, Inc., The Woodlands, TX & Operating in the Following States: LA, NM, PA, TX

A certification was issued covering all workers separated on or after May 26, 1994.

TA–W–31,110; TA–W–31,110A, Mitchell Energy and Development Corp, The Woodlands, TX & MND Service, Inc., The Woodlands, TX

A certification was issued covering all workers separated on or after May 26, 1994.

TA–W–31,111 & A,B; Brazos Gas Compressing Co., The Woodlands, TX, Bridgeport, TX and Meadville, TX

A certification was issued covering all workers separated on or after May 26, 1994.

TA–W–31,112; Mitchell Marketing Co., The Woodlands, TX

A certification was issued covering all workers separated on or after May 26, 1994.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of July and August, 1995.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) that sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) that imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) that there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

**Negative Determination NAFTA–TAA**

NAFTA–TAA–00492 & A; Trico Industries, Inc., Bradford, PA & Huntington Park, CA

The investigation revealed that criteria (3) and (4) were not met. There was no shift in production of subsurface oilwell pump parts & components to Canada or Mexico during the period under investigation.

NAFTA–TAA–00488; Rielly Co., Inc., Valatie, NY

The investigation revealed that criteria (3) and (4) were not met. A survey revealed that although customers have declined their purchases from the subject firm they do not import apparel from Canada or Mexico.

NAFTA–TAA–00497; General Dynamics, Convair Div., San Diego, CA

The investigation revealed that criteria (3) and (4) were not met. There was no shift in production of the MD–11 fuselage shipset from the workers' firm to Canada or Mexico during the relevant period.

NAFTA–TAA–00496; Commercial Carriers, Inc., Transport Support, Inc of The Ryder Automobile Carrier Div., Newark, DE

The investigation revealed that the workers of the subject firm do not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

**Affirmative Determinations NAFTA–TAA**

NAFTA–TAA–00535; Belden Wire & Cable Co., Cord Products Div., Bensenville, IL

A certification was issued covering all workers separated on or after June 14, 1994.

NAFTA–TAA–00505; Salmon Intermountain, Inc., Salmon, ID

A certification was issued covering all workers separated on or after June 22, 1994.

NAFTA–TAA–00515; Stride-Rite Corp., Stride-Rite Manufacturing of Missouri, Fulton, MO

A certification was issued covering all workers separated on or after June 29, 1994.

NAFTA–TAA–00495; Emerson Electric Co., Motor Div., Ava, MO

A certification was issued covering all workers separated on or after June 17, 1994.

NAFTA–TAA–00499; Tillotson Corp., Tilly Balloon, Inc., Fall River, MA

A certification was issued covering all workers separated on or after June 15, 1994.

NAFTA–TAA–00501; Wadesboro Manufacturing Manufacturing Co., Inc., Wadesboro, NC

A certification was issued covering all workers separated on or after June 22, 1994.

NAFTA–TAA–00502; Gerhart Sales, El Paso, TX

A certification was issued covering all workers separated on or after June 19, 1994.

NAFTA–TAA–00531; Hayward Pool Products, Inc., Elizabeth, NJ

A certification was issued covering all workers separated on or after July 6, 1994.

I hereby certify that the aforementioned determinations were issued during the months of July and August, 1995. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: August 7, 1995.

**Russell Kile,**

*Acting Program Manager, Office of Trade Adjustment Assistance.*

[FR Doc. 95–20263 Filed 8–15–95; 8:45 am]

BILLING CODE 4510–30–M

## Occupational Safety and Health Administration

**[Docket No. NRTL–3–93]**

## Factory Mutual Research Corporation

**AGENCY:** Occupational Safety and Health Administration, Department of Labor.

**ACTION:** Notice of Renewal of Recognition as a Nationally Recognized Testing Laboratory.

**SUMMARY:** This notice announces the Agency's final decision on the Factory Mutual Research Corporation for renewal of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

**EFFECTIVE DATE:** This recognition will become effective on August 16, 1995 and will be valid for a period of five years from the date, until Asugust 16, 2000, unless terminated prior to that date, in accordance with 29 CFR 1910.7.

**FOR FURTHER INFORMATION CONTACT:** NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N3653, Washington, D.C. 20210.

**SUPPLEMENTARY INFORMATION:**

## Notice of Final Decision

Notice is hereby given that the Factory Mutual Research Corporation (FMRC) which made application pursuant to 29 CFR 1910.7 for renewal of its recognition as a Nationally Recognized Testing Laboratory, has had its recognition renewed as an NRTL for the equipment or material listed below.

The addresses of the laboratories covered by this application are:

1151 Boston-Providence Turnpike, Norwood, Massachusetts 02062, 743 Reynolds Road, West Glocester, Rhode Island 02814

## Background

When OSHA published its standard for NRTLs at 29 CFR 1910.7, it temporarily recognized Factory Mutual Research Corporation (FMRC) and Underwriters Laboratories Incorporated (UL). Both organizations had already been referenced by the Occupational Safety and Health Administration (OSHA) as acceptable organizations for testing or certifying certain workplace equipment and materials. Appendix A of section 1907 stated, in part, that Factory Mutual Research Corporation was recognized temporarily as a nationally recognized testing laboratory by the Assistant Secretary for a five-year period from June 13, 1988 through June 13, 1993. At the end of this five-year period FMRC was required to apply for renewal of that OSHA recognition utilizing certain specified procedures. FMRC applied for renewal of its recognition as an NRTL within the specified time frame (application dated October 8, 1992) and retained temporary recognition pending OSHA's final decision in this renewal process. The final on-site review report, consisting of on-site evaluations of FMRC testing facilities, including administrative and technical practices, located in Norwood, Massachusetts, and West Gloucester, Rhode Island, (Exhibit 2B, dated April 19, 1994, and Exhibit 2C, dated March 9, 1995) and the OSHA staff recommendation, were subsequently forwarded to the Assistant Secretary for a preliminary finding on the application. A notice of FMRC's application for renewal together with a positive preliminary finding was published in the **Federal Register** on March 29, 1995 (60 FR 16167). Interested parties were invited to submit comments.

There were no responses to the **Federal Register** notice of the FMRC application and preliminary finding (Docket No. NRTL–3–93).

The Occupational Safety and Health Administration has evaluated the entire record in relation to the regulations set out in 29 CFR 1910.7 and makes the following findings:

## Capability

Section 1910.7(b)(1) states that for each specified item of equipment or material to be listed, labeled or accepted, the laboratory must have the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs) to perform appropriate testing.

The on-site review reports indicate that FMRC has facilities, personnel, and testing equipment which are appropriate for the areas of recognition it seeks. The laboratories have available all of the general test equipment to perform the testing required by the standards. If any additional test equipment is necessary, it will be purchased or leased as required.

The two FMRC facilities have adequate equipment calibration procedures. There is a Test Equipment Coordinator who is responsible for the accuracy of test equipment as well as for reference measurement standards. All electrical measuring instruments are calibrated at least once a year.

FMRC utilizes an alpha-numeric system for tracking jobs in-house. The Operations and Quality Assurance Manual addresses record keeping requirements, including retention times. Test procedures are also listed in this Manual. All test standards are stored on-site.

The Operations and Quality Assurance manual documents the procedures for the control of quality of operations. It includes methods for evaluating and correcting quality system problems and includes all necessary components for an effective quality assurance program.

Monitoring the quality assurance program is carried out routinely. At least one audit annually of the Approval Division is carried out, and additional audits may be required for specific problems or conditions. Programs exist for employee feedback, and for problem identification and correction.

## Follow-Up and Field Inspection Procedures

Section 1910.7(b)(2) requires that the NRTL provide certain follow-up procedures, to the extent necessary, for the particular equipment or material to be listed, labeled, or accepted. These include implementation of control procedures for identifying the listed or labeled equipment or materials, inspecting the production run at factories to assure conformance with test standards, and conducting field inspections to monitor and assure the proper use of the label.

FMRC's follow-up program is detailed in the Operations and Quality Assurance Manual and discusses the initial and subsequent factory follow-up procedures for the approval/listing process.

Factory Mutual Research Corporation has sections dealing with approval or listing status and approval guide and listing procedures in its Operations and Quality Assurance Manual. These sections deal with requirements and limitations for the use of FMRC's certification marks.

## Independence

Section 1910.7(b)(3) requires that the NRTL be completely independent of employers subject to the tested equipment requirements, and of my manufacturers or vendors of equipment or materials being tested for these purposes.

OSHA believes, based upon an examination of the application, that the Factory Mutual Research Corporation is independent of employers subject to the tested equipment requirements and of any manufacturers or vendors of equipment or materials being tested for these purposes, within the meaning of 29 CFR 1910.7(b)(3).

## Creditable Reports/Complaint Handling

Section 1910.7(b)(4) provides that an OSHA recognized NRTL must maintain effective procedures for producing creditable findings and reports that are objective and without bias, as well as for handling complaints and disputes under a fair and reasonable system.

FMRC's application as well as the on-site review report indicate that FMRC

does maintain effective procedures for producing creditable findings and reports that are objective.

The Operations and Quality Assurance Manual describes in detail the various aspects of procedures for testing and for all written reports, as well as record keeping requirements including retention times.

With regard to the handling of complaints or contested results, if clients, FMRC personnel, users, or others, file a complaint or disagree with a decision relating to the test standard, engineering, use, or inspection, they can present and discuss their views with various administrative levels of FMRC personnel, up to and including the Chief Operating Officer in an effort to resolve any disagreement.

**Test Standards**

Section 1910.7 requires that an NRTL use ''appropriate test standards'', which are defined, in part, to include any standard that is currently designated as an American National Standards Institute (ANSI) safety designated product standard or an American Society for Testing and Materials (ASTM) test standard used for evaluation of products or materials. As to the non-ANSI, FMRC and UL test standards for which FMRC has applied to test products to, OSHA examined the status of the Factory Mutual Research Corporations standards and Underwriters Laboratories Inc. Standards for Safety with particular attention to the method of their development, revision and implementation, and determined that both groups of standards are appropriate test standards under the criteria described in 29 CFR 1910.7(c) (1), (2), and (3). That is, these standards specify the safety requirements for specific equipment or classes of equipment and are recognized in the United States as safety standards providing adequate levels of safety; they are compatible and remain current with periodic revisions of applicable national codes and installation standards; and they are developed by a standards developing organization under a method providing for input and consideration of views of industry groups, experts, users, consumers, governmental authorities, and others having broad experience in the safety fields involved.

**Programs and Procedures**

As discussed in the **Federal Register** notice (60 FR 16167), FMRC administers several operational programs and procedures. The following programs have been examined and found to be acceptable to OSHA on the basis of the procedures and specific criteria as detailed in 60 FR 12980, March 9, 1995, pertaining to the types of programs and procedures that NRTLs may engage in under the OSHA/NRTL program. See Exhibit 2C, an addendum to the original ''On-Site Review Report (Survey)'', dated March 10, 1995, (Exhibit 2B), which reviews the following programs on the basis of their conformance to the programs described in 60 FR 12980, March 9, 1995, ''Nationally Recognized Testing Laboratories; Clarification of the Types of Programs and Procedures''.

Basic Program—This program is one in which FMRC performs all of the necessary product testing and evaluation in-house prior to issuing a certification.

Witnessed Test Data Program—This program is utilized when characteristics such as the size, complexity, or uniqueness of a product require testing at the manufacturer's or other outside laboratory's facilities, or when a manufacturer is entering the Laboratory Qualification Program. The tests are in accordance with the appropriate recognized standard(s) and are witnessed by an FMRC technical representative. The specific information required by the FMRC Operations and Quality Assurance Manual to ensure equivalency with tests conducted at FMRC is recorded in the Project Data Record (test notebook).

FMRC Laboratory Qualification Program—Since 1979, manufacturers of electrical utilization equipment (process control and test and measuring instrumentation for use in ordinary ''non-hazardous'' locations) meeting specific criteria, have been allowed to submit test data to FMRC to be used as a part of the approval process. The data submitted by the manufacturer may be used in lieu of tests conducted by FMRC or, at its discretion, FMRC may conduct comparative tests to ensure accurateness of manufacturers' supplied data. This includes a review of the product submitted for approval.

The qualification procedures include on-site assessments and an evaluation for usage of proper standards, client personnel, testing facilities and verification testing. Part of the program includes periodic review visits.

A specific department of the client is qualified to generate the necessary test and evaluation information that a product meets the appropriate standards. Test equipment, calibration program, test personnel, test procedures, design origination and change, and the marking and documentation submittal are specified in the Laboratory Qualification Report. The information and a sample product is sent to FMRC for its review.

The program allows for unannounced on-site visits to the manufacturer's facility to verify compliance with the program. An up-to-date listing is maintained of the manufacturing laboratories that are qualified under this program.

International Electrotechnical Commission (IEC) CB Scheme—The IEC–CB Scheme is a certification program for gaining product approval recognition on an international level. Products tested by any National Certification Body (NCB) that participates in the CB Scheme will be accepted for approval without the need for retesting in other member (of the CB Scheme) countries.

Eligibility in the CB Scheme requires that members be recognized by their own governments as an accredited national organization having the authority to issue a listing or place a mark on products that meet specific national standards.

FMRC is accredited by the IEC for testing and evaluating electrical equipment for measurement,processing equipment including electrical business equipment.

Interlaboratory Agreements—FMRC tests products for, and accepts test data from, internationally recognized laboratories which have interlaboratory agreements with FMRC. The laboratory generating the test data conducts these tests in accordance with the nationally recognized standards of the laboratory certifying the product. Regularly scheduled audits are conducted at each laboratory to ensure the competence of the laboratory. The audits include a review of personnel, test equipment, test procedures, documentation control, and quality of operation.

FMRC asserts that it may accept components which have been tested at other laboratories after review of the test report and any additional evaluation necessary. The evaluation by the applicant includes an assurance that the other laboratory's performance meets the level that FMRC would provide had it performed the service.

**Final Decision and Order**

Based upon a preponderance of the evidence resulting from an examination of the complete application, the supporting documentation, and the OSHA staff finding including the on-site report, OSHA finds that the Factory Mutual Research Corporation has met the requirements of 29 CFR 1910.7 to have its recognition renewed by OSHA as a Nationally Recognized Testing

Laboratory to test and certify certain equipment or materials.

Pursuant to the authority in 29 CFR 1910.7, the Factory Mutual Research Corporation's recognition as a Nationally Recognized Testing Laboratory is hereby renewed subject to the limitations and conditions listed below:

**Limitations**

This recognition is limited to equipment or materials which, under 29 CFR Part 1910, require testing, listing, labeling, approval, acceptance, or certification, by a Nationally Recognized Testing Laboratory. This recognition is limited to the use of the following test standards for the testing and certification of equipment or materials included within the scope of these standards:

- FMRC has stated that all the standards in these categories are used to test equipment or materials which may be used in environments under OSHA's jurisdiction. These standards are all considered appropriate test standards under 29 CFR 1910.7(c):

FMRC 1110—Indicator Posts
FMRC 1221—Backflow Preventers
FMRC 1321—Controllers for Electric Motor Driven Fire Pumps
FMRC 1333—Diesel Engine Fire Dump Drivers
FMRC 1635—Plastic Pipe and Fittings for Automatic Sprinkler Systems
FMRC 3600—Electrical Equipment for Use in Hazardous (Classified) Locations, General Requirements
FMRC 3610—Intrinsically Safe Apparatus and Associated Apparatus for Use in Class I, II and III, Division 1 Hazardous (Classified) Locations
FMRC 3611—Electrical Equipment for Use in Class I, Division 2; Class II, Division 2; and Class III, Division 1 and 2 Hazardous Locations
FMRC 3615—Explosionproof Electrical Equipment, General Requirements
FMRC 3620—Purged and Pressurized Electrical Equipment for Hazardous (Classified) Locations
FMRC 3810—Electrical and Electronic Test, Measuring, and Process Control Equipment
FMRC 6051—Safety Containers and Filing, Supply and Disposal Containers
FMRC 6310—Combustible Gas Detectors
FMRC 7812—Industrial Trucks—LP-Gas
FMRC 7816—Industrial Trucks—LP-Gas Dual Fuel
FMRC 7820—Industrial Trucks—Electric
ANSI Z8.1—Commercial Laundry and Drycleaning Equipment and Operations
ANSI/ISA S12.12—Electrical Equipment for Use in Class I, Division 2, Hazardous (Classified) Locations
ANSI/ISA S12.13.1—Performance Requirements for Combustible Gas Detectors
ANSI/ISA S12.15—Hydrogen Sulfide Detection Instruments
ANSI/ISA S82.01—Electrical and Electronic Test, Measuring Equipment
ANSI/ISA S82.02—Electrical and Electronic Test and Measuring Equipment
ANSI/ISA S82.03—Electrical and Electronic Process Measuring and Control
ANSI/NEMA ICS 2—Industrial Control Devices, Controllers and Assemblies
ANSI/NEMA 250—Enclosures for Electrical Equipment
ANSI/NFPA 11—Low Expansion Foam and Combined Agent Systems
ANSI/NFPA 11A—Medium- and High-Expansion Foam Systems
ANSI/NFPA 12—Carbon Dioxide Extinguishing Systems
ANSI/NFPA 12A—Halon 1301 Fire Extinguishing Agent Systems
ANSI/NFPA 13—Installation of Sprinkler Systems
ANSI/NFPA 16—Deluge Foam-Water Sprinkler and Spray Systems
ANSI/NFPA 17—Dry Chemical Extinguishing Systems
ANSI/NFPA 20—Centrifugal Fire Pumps
ANSI/NFPA 72—Installation, Maintenance, and Use of Protective Signaling Systems
ANSI/UL 8—Foam Fire Extinguishers
ANSI/UL 38—Manually Actuated Signaling Boxes for Use With Fire-Protective Signaling Systems
ANSI/UL 154—Carbon-Dioxide Fire Extinguishers
ANSI/UL 162—Foam Equipment and Liquid Concentrates
ANSI/UL 299—Dry Chemical Fire Extinguishers
ANSI/UL 346—Waterflow Indicators for Fire Protective Signaling Systems
ANSI/UL 347—High-Voltage Industrial Control Equipment
ANSI/UL 508—Electric Industrial Control Equipment
ANSI/UL 558—Industrial Trucks, Internal Combustion Engine-Powered
ANSI/UL 583—Electric-Battery-Powered Industrial Trucks
ANSI/UL 626—2½ Gallon Stored-Pressure, Water-Type Fire Extinguishers
UL 664—Commercial (Class IV) Electric Dry-Cleaning Machines
ANSI/UL 674—Electric Motors and Generators for Use in Hazardous (Classified) Locations
ANSI/UL 698—Industrial Control Equipment for Use in Hazardous (Classified) Locations
ANSI/UL 711—Fire Extinguishers, Rating and Fire Testing of
ANSI/UL 753—Alarms Accessories for Automatic Water-Supply Control Valves
ANSI/UL 781—Portable Electric Lighting Units for Use in Hazardous (Classified) Locations
ANSI/UL 823—Electric Heaters for Use in Hazardous (Classified) Locations
ANSI/UL 827—Central-Stations for Watchmen, Fire-Alarm, and Supervisory Services
ANSI/UL 844—Electric Lighting Fixtures for Use in Hazardous (Classified) Locations
ANSI/UL 863—Electric Time-Indicating and -Recording Appliances
ANSI/UL 864—Control Units for Fire-Protective Signaling Systems
ANSI/UL 877—Circuit Breakers and Circuit-Breaker Exclosure for Use in Hazardous (Classified) Locations
ANSI/UL 886—Electrical Outlet Boxes and Fittings for Use in Hazardous (Classified) Locations
ANSI/UL 894—Switches for Use in Hazardous (Classified) Locations
ANSI/UL 913—Intrinsically Safe Apparatus and Associated Apparatus for Use in Class I, II, and III, Division I, Hazardous (Classified) Locations
ANSI/UL 1002—Electrically Operated Valve for Use in Hazardous (Classified) Locations
ANSI/UL 1058—Halogen Agent Extinguishing System Units
ANSI/UL 1093—Halogenated Agent Fire Extinguishers
ANSI/UL 1203—Explosion-Proof and Dust-Ignition-Proof Electrical Equipment for Use in Hazardous (Classified) Locations
UL 1206—Electrical Commercial Clothes-Washington Equipment
ANSI/UL 1207—Sewage Pumps for Use in Hazardous (Classified) Locations
UL 1236—Electric Battery Chargers
UL 1240—Electric Commercial Clothes-Drying Equipment
ANSI/UL 1254—Pre-Engineered Dry Chemical Extinguishing System Units
ANSI/UL 1262—Laboratory Equipment
ANSI/UL 1555—Electric Coin-Operated Clothes-Washing Equipment
ANSI/UL 1556—Electric Coin-Operated Clothes-Drying Equipment

**Conditions**

The Factory Mutual Research Corporation shall also abide by the following conditions of its recognition, in addition to those already required by 29 CFR 1910.7:

- The Occupational Safety and Health Administration shall be allowed access to FMRC's facilities and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;
- If FMRC has reason to doubt the efficacy of any test standard it is using under this program, it shall promptly inform the organization that developed the test standard of this fact and provide that organization with appropriate relevant information upon which its concerns are based;′
- FMRC shall not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, FMRC agrees that it will allow no representation that it is either a recognized or accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;
- FMRC shall inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, including details;
- FMRC shall continue to meet the requirements for recognition in all areas where it has been recognized; and
- FMRC shall always cooperate with OSHA to assure with the spirit as well as the letter of its recognition and 29 CFR 1910.7.

*Effective Date:* This recognition will become effective on August 16, 1995 and will be valid for a period of five years from that date, until August 16, 2000, unless terminated prior to that date, in accordance with 29 CFR 1910.7.

Signed at Washington, D.C. this 10th day of August, 1995.

**Joseph A. Dear,**

*Assistant Secretary.*

[FR Doc. 95–20259 Filed 8–15–95; 8:45 am]

BILLING CODE 4510–26–M

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**[Docket No. NRTL–3–92]**

## TUV Rheinland of North America, Inc.

**AGENCY:** Occupational Safety and Health Administration, Department of Labor.

**ACTION:** Notice of Recognition as a Nationally Recognized Testing Laboratory.

**SUMMARY:** This notice announces the Agency's final decision on the application of TUV Rheinland of North America as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

**EFFECTIVE DATE:** This recognition will become effective on August 16, 1995 and will be valid for a period of five years from that date, until August 16, 2000, unless terminated prior to that date, in accordance with 29 CFR 1910.7.

**FOR FURTHER INFORMATION CONTACT:** NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N3653, Washington, D.C. 20210 .

**SUPPLEMENTARY INFORMATION:**

### Notice of Final Decision

Notice is hereby given that TUV Rheinland of North America, Inc. (TUV), which made application for recognition pursuant to 29 CFR 1910.7 for recognition as a Nationally Recognized Testing Laboratory, has been recognized as a Nationally Recognized Testing Laboratory for the equipment or material listed below.

The address of the laboratory covered by this recognition is: TUV Rheinland of North America, Inc., 12 Commerce Road, Newtown, Connecticut 06470.

### Background

TUV Rheinland of North America, Inc. is a privately held Product Safety and Quality Assurance Testing firm with offices throughout the United States and Canada. TUV Rheinland of North America, Inc. is wholly owned by TÜV Rheinland e. V. of Cologne, Germany. The only facility for which TUV has requested recognition is its North American Headquarters located in Newtown, Connecticut (see Exhibit 2. C., p 2 of cover letter, and Attachments 2, 3, and 4). TUV Rheinland of North America, Inc. is a U.S. corporation incorporated in the state of Delaware in 1983. (See Ex. 2. E., Att. 5).

On November 19, 1993, the Occupational Safety and Health Administration published a notice of application for recognition as a nationally recognized testing laboratory of TUV Rheinland of North America, Inc. in the **Federal Register**, pursuant to 29 CFR 1910.7 (58 FR 61101). The notice included a preliminary finding that TUV could meet the requirements for recognition detailed in 29 CFR 1910.7 and it invited public comment on the application by January 18, 1994.

On January 6, 1994, MET Laboratories, Inc. (MET) submitted comments in response to the preliminary finding (58 FR 61101) opposing TUV's recognition as a NRTL primarily based upon OSHA's not having referenced a determination of TUV/NA's status as either a foreign entity or foreign based. (See Ex. 4–1).

On January 12, 1994, ACIL (formerly, the American Council of Independent Laboratories, Inc.) requested an extension of time in which to submit comments on the application (Ex. 4–2). The ACIL claimed that its preliminary investigation had uncovered ''substantial deficiencies'' in the application and that more time was necessary to submit pertinent documentation related to the instant application. ACIL raised the issue of whether the applicant is completely independent from the parent organization. According to the ACIL, the resolution of the questions raised would require, among other things, the study and analysis of relevant German laws and requested additional time until March 18, 1994, to file its comments on TUV's application. (See Ex. 4–2).

The applicant responded to ACIL's comments on February 8, 1994, refuting ACIL's statement that TUV Rheinland of North America, Inc. may not be able to operate independently of TÜV Rheinland of Cologne. (See Ex. 5).

After a careful review of all comments, the request for an extension of time for comment was accepted by OSHA, and the comment period was actually extended until April 4, 1994, (59 FR 10432). (See Ex. 6).

Two comments were received in response to 59 FR 10432, the **Federal Register** notice of extension of the comment period.

One comment, dated March 3, 1994, was from MET Laboratories, Inc. (MET), and discussed TUV/NA's application for a registered certification mark and the status of TUV as a U.S. corporation. (See Ex. 7–2).

The other comment was from ACIL, and was dated March 4, 1994. The major issues raised pertained to the status of TUV as ''foreign based''; the improper use of a certification mark; and TUV Rheinland as an association consisting, in part, of manufacturers. (See Ex. 7–1).

After a thorough review of the comments and TUV's response, dated July 28, 1994 (Ex. 8), by both OSHA and the Office of the Solicitor of the U.S. Department of Labor, the determination was made that the applicant is independent in the sense that it is not a foreign entity or foreign based. While TUV Rheinland of North America, Inc., which is incorporated in the United States, is a subsidiary of TÜV Rheinland e. V., which is based in Cologne, Germany, it is no different from other NRTLs which are incorporated in the U.S. and owned by foreign entities, and which are not considered as foreign based. Further, the decision whether or not to certify a product under the NRTL program is made solely by TUV

Rheinland of North America, Inc. If a formal interpretation of any portion of a standard used to certify a product in conjunction with the Nationally Recognized Testing Laboratory (NRTL) program is necessary, it will be determined by means of internal staff meetings among senior engineers of TUV Rheinland of North America, Inc. In the event that an interpretation issue remains after such a meeting, it will be referred to the appropriate Technical Advisory Group (TAG) which, for the ANSI/UL 1950 test standard, is the U.S. TAG Technical Committee (TC) 74 of the International Electrotechnical Commission (IEC). (See Ex. 9).

With regard to its application to the U.S. Patent and Trademark Office for a certified registration mark, TUV Rheinland of North America, Inc. has filed an application for a certification mark registration which, in addition to a design, will also contain the name of the organization, i.e., '' TUV Rheinland of North America, Inc.''. (See Ex's. 8 and 10).

The Occupational Safety and Health Administration has evaluated the entire record in relation to the regulations set out in 29 CFR 1910.7 and makes the following findings:

**Capability**

Section 1910.7(b)(1) states that for each specified item of equipment or material to be listed, labeled or accepted, the laboratory must have the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs) to perform appropriate testing.

The on-site review report indicates that TUV does have testing equipment and facilities appropriate for the areas of recognition it seeks. The laboratory has available all the general test equipment required to perform the testing required by the standards.

TUV's laboratory has adequate floor space for testing and evaluation and an adequate number of technical and professional personnel to accomplish the services required for the present workload in the areas of recognition it seeks. Environmental conditions in the laboratory are adequately controlled for the type of testing performing in the laboratory.

OSHA has determined that TUV has appropriate written test procedures, and calibration and quality control programs to enable it to adequately perform appropriate testing.

**Creditable Reports/Complaint Handling**

Section 1910.7(b)(4) provides that an OSHA recognized NRTL must maintain effective procedures for producing creditable findings and reports that are objective and without bias. TUV Rheinland of North America, Inc. meets these criteria.

TUV's application as well as the on-site review report indicate that the applicant does maintain effective procedures for producing creditable findings and reports that are objective. The laboratory maintains a written procedure for identifying product samples submitted for testing to ensure that there is no confusion regarding the identity of the samples or the results of the measurement. These procedures include the receipt, retention, and disposal of products submitted for testing.

TUV also has a procedure for handling complaints from any interested parties as well as clients.

**Type of Testing**

The standard contemplates that testing done by NRTLs fall into one of two categories: Testing to determine conformance with appropriate test standards, or experimental testing where there might not be one specific test standard covering the new product or material. TUV has applied for recognition in the first category.

**Follow-Up Procedures**

Section 1910.7(b)(2) requires that the NRTL provide certain follow-up procedures, to the extent necessary, for the particular equipment or material to be listed, labeled, or accepted. These include implementation of control procedures for identifying the listed or labeled equipment or materials, inspecting the production run at factories to assure conformance with test standards, and conducting field inspections to monitor and assure the proper use of the label.

TUV has a written procedure making its clients subject to four unannounced on-site follow-up inspections annually. This formal inspection procedure includes standardized inspection forms. Listed products are also subject to field audits. TUV reserves the right to conduct field audits on any certified or listed product by purchasing the product from the manufacturer, distributor, or retailer. The audit procedure is the same that for a follow-up inspection.

**Test Standards**

Section 1910.7 requires that an NRTL use ''appropriate test standards'', which are defined, in part, to include any standard that is currently designated as an American National Standards Institute (ANSI) safety designated product standard or an American Society for Testing and Materials (ASTM) test standard used for evaluation of products or materials.

The standard that TUV has requested is an ANSI/UL standard and, therefore, meets the requirements of section 1910.7(c).

**Final Decision and Order**

Based upon a preponderance of evidence resulting from an examination of the complete application, the supporting documentation, the comments and rebuttal from TUV, and the OSHA staff finding including the on-site report, OSHA finds that TUV Rheinland of North America, Inc. has met the requirements of 29 CFR 1910.7 to be recognized by OSHA as a Nationally Recognized Testing Laboratory to test and certify certain equipment or materials.

Pursuant to the authority in 29 CFR 1910.7, TUV Rheinland of North America, Inc., is hereby recognized as a Nationally Recognized Testing Laboratory subject to the limitations and conditions listed below:

**Limitations**

This recognition is limited to equipment or materials which, under 29 CFR Part 1910, require testing, listing, labeling, approval, acceptance, or certification, by a Nationally Recognized Testing Laboratory. This recognition is limited to the use of the following test standard for the testing and certification of equipment or materials included within the scope of this standard:

- TUV has stated that the standard is used to test and certify equipment or materials which may be used in environments under OSHA's jurisdiction. This standard is considered an appropriate test standard under 29 CFR 1910.7(c):

ANSI/UL 1950—Information Technology Equipment Including Electrical Business Equipment

**Conditions**

TUV Rheinland of North America, Inc. shall also abide by the following conditions of its recognition, in addition to those already required by 29 CFR 1910.7:

- The Occupational Safety and Health Administration shall be allowed access to TUV's facilities and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

- Because of the interval between the on-site assessment and this recognition, those procedures authorized by the ''Nationally Recognized Testing Laboratories; Clarification of the Types of Programs and Procedures,'' 60 FR 12980, dated March, 9, 1995, must be applied for in accordance with the requirements specified therein;
- If TUV has reason to doubt the efficacy of any test standard it is using under this program, it shall promptly inform the organization that developed the test standard of this fact and provide that organization with appropriate relevant information upon which its concerns are based;
- TUV shall not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, TUV agrees that it will allow no representation that it is either a recognized or accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;
- TUV shall inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, including details;
- TUV shall continue to meet the requirements for recognition in all areas where it has been recognized; and
- TUV shall continue to cooperate with OSHA to assure compliance with the spirit as well as the letter of its recognition and 29 CFR 1910.7.

*Effective Date:* This recognition will become effective on August 16, 1995 and will be valid for a period of five years from that date, until August 16, 2,000, unless terminated prior to that date, in accordance with 29 CFR 1910.7.

Signed at Washington, D.C. this 10 day of August, 1995.

**Joseph A. Dear,**

*Assistant Secretary.*

[FR Doc. 95–20258 Filed 8–15–95; 8:45 am]

**BILLING CODE 4510–26–M**

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Meetings of Humanities Panel

**AGENCY:** National Endowment for the Humanities.

**ACTION:** Notice of meetings.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

**FOR FURTHER INFORMATION CONTACT:**

David C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

**SUPPLEMENTARY INFORMATION:** The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. *DATE*: September 14–16, 1995.
*TIME: 9 a.m. to 5:30 p.m.*
*ROOM:* 430.
*PROGRAM:* This meeting will review applications submitted to Special Projects for the Special Competitive deadline of July 28, 1995, submitted to the Division of Public Programs, for the projects beginning after January 1, 1996

2. *DATE*: September 15, 1995.
*TIME:* 8:30 a.m. to 5 p.m.
*ROOM:* 315.
*PROGRAM:* This meeting will review applications for projects in Interpretive Research Conference Projects, submitted to the Division of Research Programs, for projects beginning after January 1, 1996.

3. *DATE:* September 25–26, 1995.
*TIME:* 9 a.m. to 5:30 p.m.
*ROOM:* 315.
*PROGRAM:* This meeting will review proposals submitted to the September 15 deadline in the Higher Education Humanities Focus Grants Program, for projects beginning after April 1996.

**David C. Fisher, Jr.,**

*Advisory Committee, Management Officer.*

[FR Doc. 95–20280 Filed 8–15–95; 8:45 am]

**BILLING CODE 7536–01–M**

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on September 6, 1995, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and matters the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

*Wednesday, September 6, 1995–1:00 p.m. Until the Conclusion of Business*

The Subcommittee will discuss proposed ACRS activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone: 301/415–7360) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: August 10, 1995.

**Sam Duraiswamy,**

*Chief, Nuclear Reactors Branch.*

[FR Doc. 95–20236 Filed 8–15–95; 8:45 am]

BILLING CODE 7590–01–M

## Biweekly Notice

### Applications and Amendments to Facility Operating LicensesInvolving No Significant Hazards Considerations

### I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from July 21, 1995, through August 4, 1995. The last biweekly notice was published on Wednesday, August 2, 1995 (60 FR 39430).

### Notice Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By September 15, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if

proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

**Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland**

*Date of amendments request:* March 15, 1995, as supplemented on June 29, 1995.

Description of amendments request: The proposed amendments would revise the Calvert Cliffs Nuclear Power Plant, Units Nos. 1 and 2, Technical Specifications (TSs) Section 6, ''Administrative Controls,'' to be consistent with the guidance provided in NUREG-1432, ''Standard Technical Specifications, Combustion Engineering Plants.'' The proposed changes will relocate several requirements to other documents and programs consistent with NUREG-1432 and other NRC guidance addressing the administrative section of the TSs such as the ''Final Policy Statement on Technical Specification Improvements for Nuclear Power Reactors,'' published in the Federal Register on July 22, 1993 (58 FR 39132).

The Commission indicated that compliance with the Final Policy Statement satisfies Section 182a of the Act. In particular, the Commission indicated that certain items could be relocated from the TSs to licensee-controlled documents, consistent with the standard enunciated in Portland General Electric Co. (Trojan Nuclear Plant), ALAB-531, 9 NRC 263, 273 (1979). In that case, the Atomic Safety and Licensing Appeal Board indicated that ''technical specifications are to be reserved for those matters as to which the imposition of rigid conditions or limitations upon reactor operation is deemed necessary to obviate the possibility of an abnormal situation or event giving rise to an immediate threat to the public health and safety.'' The policy statement encouraged licensees to adopt the applicable improved STSs and provided some guidance for the conversion from the present plant-specific TSs to the improved Standard TSs.

The proposed changes will provide significant human factors improvement to the TSs by accomplishing the following: (1) relocating existing requirements to licensee controlled documents consistent with the policy statement; (2) eliminating requirements which duplicate regulations; (3) relocating similar requirements within the same section; (4) editorial changes; and (5) adding requirements consistent with NUREG-1432.

In addition, the licensee proposes dual rolls for the Shift Technical Advisor (STA) and the establishment of a TS Bases Control Program. Allowing the STA to perform dual rolls is not permitted by the current TSs, but the current NRC guidance allows the STA to perform a dual roll. The proposed new TS Bases Control Program will define the appropriate methods and reviews required to implement a TS Bases change which is also consistent with the current NRC guidance. Two other proposed changes, not specifically covered by the above groupings, include a reduction in reporting requirements and utilizing a more effective option for estimating doses.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Relocating existing requirements to Baltimore Gas and Electric Company (BGE)-controlled documents, eliminating requirements which duplicate regulations, locating similar requirements within the same sections and making necessary editorial corrections to incorporate the proposed changes provide Technical Specifications which are easier to use. Because existing requirements are relocated to established BGE programs where changes to those programs are controlled by regulatory requirements, there is no reduction in commitment and adequate control is still maintained. Likewise, the elimination of requirements which duplicate regulations enhances the usability of the Technical Specifications without reducing commitments. Locating similar requirements within the same sections and making necessary editorial corrections to incorporate the proposed changes neither add nor delete requirements, but merely clarify and improve the readability and understanding of the Technical Specifications. Since the requirements remain the same, these changes only affect the method of presentation and would not affect possible initiating events for accidents previously evaluated or any system functional requirement. Therefore, the proposed changes would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Since the Shift Technical Adviser (STA) is not considered an initiator to any previously evaluated accident nor considered in the accident's response, the use of a dual role STA would not increase the probability or consequences of any previously evaluated accident.

The Technical Specification Bases Control Program provides controls which ensure appropriate reviews of changes to the Bases. Because NRC approval is still needed for changes to the Bases which affect the Technical Specifications, the proposed Program would not affect the probability or consequences of a previously evaluated accident.

Eliminating the requirement for submitting two reports which place unwarranted administrative burden on both Baltimore Gas and Electric Company and the NRC has no affect on the probability or consequences of an accident previously evaluated. Therefore, the proposed changes would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Replacing the film badge with the electronic personal dosimeter provides a more effective, efficient, state-of-the art option for estimating dose and would not impact accidents previously evaluated. Therefore, the proposed change would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

As discussed previously, relocating existing requirements to BGE-controlled documents, eliminating requirements which duplicate regulations, locating similar requirements within the same sections and making necessary editorial corrections to incorporate the proposed changes will not affect any plant system or structure, nor will it affect any system functional or operability requirements. Consequently, no new failure modes are introduced as a result of the proposed changes. Therefore, these types of changes would not create the possibility of a new or different type of accident from any accident previously evaluated.

Because the STA does not perform equipment design or equipment manipulation, the use of a dual role STA would not create the possibility of a new or different type of accident from any accident previously evaluated. Since the Technical Specification Bases Control Program represents an administrative function performed under existing regulatory controls, it too would not create the possibility of a new or different type of accident from any previously evaluated.

The addition of new programs which incorporate existing Technical Specification requirements and commitments will have no effect on the design or operation of the plant and would not create the possibility of a new or different type of accident from any previously evaluated.

A reporting function such as report submittals would not change the configuration or operation of the plant. Consequently, the elimination of the requirement to submit the Startup Report and the Special Report dealing with iodine activity levels, would not create the possibility of a new or different type of accident from any accident previously evaluated.

Since the operation or configuration of the plant is not changed by the type of personal dosimeter, this change would not create the possibility of a new or different type of accident from any accident previously evaluated.

Therefore, the proposed changes would not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

Relocating existing requirements to BGE-controlled documents, eliminating requirements which duplicate regulations, locating similar requirements within the same sections and making necessary editorial corrections to incorporate the proposed changes would not affect the Updated Final Safety Analysis Report design bases, accident analysis assumptions or any margin of safety described in the Technical Specification Bases. In addition, these proposed changes do not affect effluent release limits, monitoring equipment or practices. Therefore, these proposed changes would not involve a significant reduction in a margin of safety.

The use of an STA should provide an additional margin of safety in the accident response function of licensed operators beyond that considered in the accident analysis. Since the STA is required to have the same training and educational qualifications in either the individual or dual role, the use of a dual role STA should have minimal impact. Consequently, the proposed change would not involve a significant reduction in a margin of safety. The Technical Specification Bases Control Program is an administrative change controlling how Technical Specification basis information is reviewed and incorporated. Therefore, this change would not involve a significant reduction in a margin of safety.

The addition of new programs which incorporate existing Technical Specification requirements and commitments will have no effect on the design or operation of the plant and would not result in a significant reduction in the margin of safety.

Activities described in the Startup Report will continue to be performed and corrective action taken when required. Similarly, iodine activity levels will continue to be monitored and actions taken, including the issuance of a Licensee Event Report when conditions warrant. Considering the above, elimination of the two reporting requirements would have no impact on the margin of safety.

Plant operating parameters are not affected by the type of personnel monitoring device used and as a consequence, would not impact a margin of safety. Since the replacement dosimeter provides a more effective mechanism for estimating dose, there is no degradation in personal safety levels. Consequently, the proposed change would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

*Local Public Document Room location:* Calvert County Library, Prince Frederick, Maryland 20678.

*Attorney for licensee:* Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Project Director:* Ledyard B. Marsh

**Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois**

*Date of application for amendment requests:* September 17, 1993, as supplemented July 28, 1995

*Description of amendment requests:* As a result of findings by a Diagnostic Evaluation Team inspection performed by the NRC staff at the Dresden Nuclear Power Station in 1987, Commonwealth Edison Company (ComEd, the licensee) made a decision that both the Dresden Nuclear Power Station and sister site Quad Cities Nuclear Power Station needed attention focused on the existing custom Technical Specifications (TS) used.

The licensee made the decision to initiate a Technical Specification Upgrade Program (TSUP) for both Dresden and Quad Cities. The licensee evaluated the current TS for both Dresden and Quad Cities against the Standard Technical Specifications (STS) contained in NUREG-0123, ''Standard Technical Specifications General Electric Plants BWR/4.'' The licensee's evaluation identified numerous potential improvements such as clarifying requirements, changing TS to make them more understandable and to eliminate interpretation, and deleting requirements that are no longer considered current with industry practice. As a result of the evaluation, ComEd has elected to upgrade both the Dresden and Quad Cities TS to the STS contained in NUREG-0123.

The TSUP for Dresden and Quad Cities is not a complete adoption of the STS. The TSUP focuses on (1) integrating additional information such as equipment operability requirements during shutdown conditions, (2) clarifying requirements such as limiting conditions for operation and action

statements utilizing STS terminology, (3) deleting superseded requirements and modifications to the TS based on the licensee's responses to Generic Letters (GL), and (4) relocating specific items to more appropriate TS locations.

The September 17, 1993, and July 28, 1995, applications proposed to upgrade only Section 3/4.5 (Emergency Core Cooling Systems) of the Dresden and Quad Cities TS.

*Basis for proposed no significant hazards considerationdetermination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because:

In general, the proposed amendment represents the conversion of current requirements to a more generic format, or the addition of requirements which are based on the current safety analysis. Implementation of these changes will provide increased reliability of equipment assumed to operate in the current safety analysis, or provide continued assurance that specified parameters remain within their acceptance limits, and as such, will not significantly increase the probability or consequences of a previously evaluated accident.

Some of the proposed changes represent minor curtailments of the current requirements which are based on generic guidance or previously approved provisions for other stations. The proposed amendment for Dresden and Quad Cities Station's Technical Specification Section 3/4.5 are based on STS guidelines or later operating BWR plants' NRC accepted changes. Any deviations from STS requirements do not significantly increase the probability or consequences of any previously evaluated accidents for Dresden or Quad Cities Stations. The proposed amendment is consistent with the current safety analyses and has been previously determined to represent sufficient requirements for the assurance and reliability of equipment assumed to operate in the safety analysis, or provide continued assurance that specified parameters remain within their acceptance limits. As such, these changes will not significantly increase the probability or consequences of a previously evaluated accident.

The associated systems that make up the Emergency Core Cooling Systems are not assumed in any safety analysis to initiate any accident sequence for Dresden or Quad Cities Stations; therefore, the probability of any accident previously evaluated is not increased by the proposed amendment. In addition, the proposed surveillance requirements for the proposed amendments to these systems are generally more prescriptive than the current requirements specified within the Technical Specifications. The additional surveillance requirements improve the reliability and availability of all affected systems and therefore, reduce the consequences of any accident previously evaluated as the probability of the systems outlined within Section 3/4.5 of the proposed Technical Specifications performing their intended function is increased by the additional surveillances.

Create the possibility of a new or different kind of accident from any previously evaluated because:

In general, the proposed amendment represents the conversion of current requirements to a more generic format, the addition of requirements which are based on the current safety analysis, and some minor curtailments of the current requirements which are based on generic guidance or previously approved provisions for other stations. These changes do not involve revisions to the design of the station. Some of the changes may involve revision in the operation of the station; however, these provide additional restrictions which are in accordance with the current safety analysis, or are to provide for additional testing or surveillances which will not introduce new failure mechanisms beyond those already considered in the current safety analyses.

The proposed amendment for Dresden and Quad Cities Station's Technical Specification Section 3/4.5 is based on STS guidelines or later operating BWR plants' NRC accepted changes. The proposed amendment has been reviewed for acceptability at the Dresden and Quad Cities Nuclear Power Stations considering similarity of system or component design versus the STS or later operating BWRs. Any deviations from STS requirements do not create the possibility of a new or different kind of accident previously evaluated for Dresden or Quad Cities Stations. No new modes of operation are introduced by the proposed changes. Surveillance requirements are changed to reflect improvements in technique, frequency of performance or operating experience at later plants. Proposed changes to action statements in many places add requirements that are not in the present technical specifications. The proposed changes maintain at least the present level of operability. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The associated systems that make up the Emergency Core Cooling Systems are not assumed in any safety analysis to initiate any accident sequence for Dresden or Quad Cities Stations. In addition, the proposed surveillance requirements for affected systems associated with the Emergency Core Cooling Systems are generally more prescriptive than the current requirements specified within the Technical Specifications; therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

Involve a significant reduction in the margin of safety because:

In general, the proposed amendment represents the conversion of current requirements to a more generic format, the addition of requirements which are based on the current safety analysis, and some minor curtailments of the current requirements which are based on generic guidance or previously approved provisions for other stations. Some of the latter individual items may introduce minor reductions in the margin of safety when compared to the current requirements. However, other individual changes are the adoption of new requirements which will provide significant enhancement of the reliability of the equipment assumed to operate in the safety analysis, or provide enhanced assurance that specified parameters remain with their acceptance limits. These enhancements compensate for the individual minor reductions, such that taken together, the proposed changes will not significantly reduce the margin of safety.

The proposed amendment to Technical Specification Section 3/4.5 implements present requirements, or the intent of present requirements in accordance with the guidelines set forth in the STS. Any deviations from STS requirements do not significantly reduce the margin of safety for Dresden or Quad Cities Stations. The proposed changes are intended to improve readability, usability, and the understanding of technical specification requirements while maintaining acceptable levels of safe operation. The proposed changes have been evaluated and found to be acceptable for use at Dresden or Quad Cities based on system design, safety analysis requirements and operational performance. Since the proposed changes are based on NRC accepted provisions at other operating plants that are applicable at Dresden or Quad Cities and maintain necessary levels of system or component reliability, the proposed changes do not involve a significant reduction in the margin of safety.

The proposed amendment for Dresden and Quad Cities Stations will not reduce the availability of systems associated with the Emergency Core Cooling Systems when required to mitigate accident conditions; therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

*Local Public Document Room location:* for Dresden, Morris Public Library, 604 Liberty Street, Morris, Illinois 60450; for Quad Cities, Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021

*Attorney for licensee:* Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

*NRC Project Director:* Robert A. Capra

**Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina**

*Date of amendment request:* June 17, 1993, as supplemented July 5, 1995

*Description of amendment request:* The initial proposed amendment request dated June 17, 1993, was previously noticed in the Federal Register on July 21, 1993 (58 FR 39048). The proposed amendment would revise Technical Specification 5.3.1, ''Fuel Assemblies'' to provide flexibility in the repair of fuel assemblies containing damaged and leaking fuel rods by reconstituting the assemblies in accordance with the guidance in Generic Letter (GL) 90-02, Supplement 1, ''Alternative Requirements For Fuel Assemblies In The Design Features Section Of Technical Specifications,'' issued on July 31, 1992. The application is also generally consistent with the format and content of the improved Standard Technical Specifications for Westinghouse plants provided in NUREG-1431.

Additional information was submitted on July 5, 1995, that added TS changes to increase the fuel enrichment limit from 4.0 to 5.0 weight percent U-235 that were not previously included the initial June 17, 1993, amendment application. This additional information is being noticed to provide for public comment and opportunity for hearing.

*Basis for proposed no significant hazards considerationdetermination:* As required by 10 CFR 50.91(a), the licensee provided its analysis of the issue of no significant hazards consideration (58 FR 39048). The NRC staff's analysis of the July 5, 1995, supplement against the standards of 10 CFR 50.92(c) is presented below.

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

There is no increase in the probability or consequences of an accident in the new fuel vault since the only accident that would be affected by this change would be a criticality accident and it has been shown that the worst-case $k_{eff}$ under optimum moderation conditions continues to be less than or equal to 0.98.

There is no increase in the probability of a fuel drop accident in the Spent Fuel Storage Pool since the mass of an assembly will not be significantly affected by the increase in fuel enrichment. The likelihood of other accidents, previously evaluated and described in Section 9.1.2 of the Final Safety Analysis Report (FSAR), is also not affected by the proposed changes. Since the increase in fuel enrichment will allow for extended fuel cycles, it could be postulated that there may be a decrease in fuel movement and the probability of an accident may likewise be decreased. There is also no increase in the consequences of a fuel drop accident in the Spent Fuel Pool since the fission product inventory of individual fuel assemblies will not change significantly as a result of increased initial enrichment. In addition, no change to safety-related systems is being made.

Therefore, the consequences of a fuel rupture accident remain unchanged. In addition, it has been shown that $k_{eff}$ is less than or equal to 0.95, under all conditions. Therefore, the consequences of a criticality accident in the Spent Fuel Pool remain unchanged as well.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not create the possibility of a new or different kind of accident since fuel handling accidents (fuel drop and misplacement) are not new or different kinds of accidents. Fuel handling accidents are already discussed in the FSAR for fuel with enrichments up to 4.0 weight % and additional analyses have been performed for fuel with enrichment up to 5.00 weight %.

3.

The proposed changes do not involve a significant reduction in the margin of safety.

The proposed change does not involve a significant reduction in the margin of safety since, in all cases, a spent fuel pool $k_{eff}$ less than or equal to 0.95 is being maintained. Criticality analyses have also been performed that show that the new fuel storage vault will remain subcritical under a variety of moderation conditions, from fully flooded to optimum moderation. As discussed above, the Spent Fuel Pool will remain sufficiently subcritical during any fuel misplacement accident.

Based on this analysis, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the supplemental amendment submittal involves no significant hazards consideration.

*Local Public Document Room location:: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730*

*Attorney for licensee:* Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

*NRC Project Director:* Herbert N. Berkow

**Duke Power Company, Docket Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units 1, 2 and 3, Oconee County, South Carolina**

*Date of amendment request:* July 26, 1995

*Description of amendment request:* The proposed amendments would provide a one-time extension of the allowable outage time from 72 hours to 7 days. This extension is necessary to implement a modification to the degraded grid protection system and the external grid trouble protection system.

*Basis for proposed no significant hazards considerationdetermination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

**Duke Power Company (Duke) has made the determination that this amendment request involves a No Significant Hazards Consideration by applying the standards established by NRC regulations in 10 CFR 50.92. This ensures that operation of the facility in accordance with the proposed amendment would not:(1) Involve a significant increase in the probability or consequences of an accident previously evaluated:**

Each accident analysis addressed within the Oconee Final Safety Analysis Report (FSAR) has been examined with respect to the change proposed within this amendment request. The design basis of the auxiliary electrical systems is to supply the required engineered safeguards (ES) loads of one unit and the safe shutdown loads of the other two units. The systems are arranged so that no single failure will jeopardize plant safety.

The probability of any Design Basis Accident (DBA) is not significantly increased by this change. In addition, the consequences of the accidents are within the bounds of the FSAR analyses. The reliability of the emergency power system is not significantly affected by a one time extension of allowable outage time for the overhead power path. The underground power path is adequate to assure operability of the Oconee ES loads. Finally, the enhancement of the Degraded [Grid] Protection System will eliminate a concern which was expressed by the EDSFI audit team.

(2) Create the possibility of a new or different kind of accident from any kind of accident previously evaluated:

Inoperability of the yellow bus is functionally equivalent to inoperability of the Keowee Main Step-up Transformer in that it renders the overhead emergency power path inoperable. The Keowee Main Step-up Transformer is allowed to be inoperable for a period not to exceed 28 days. This Technical Specification requirement for the

Keowee Main Step-up Transformer has been reviewed and approved by the NRC. Therefore, operation of ONS [Oconee Nuclear Station] in accordance with this Technical Specification amendment will not create any failure modes not bounded by previously evaluated accidents. Consequently, this change will not create the possibility of a new or different kind of accident from any kind of accident previously evaluated.

(3) Involve a significant reduction in a margin of safety:

The design basis of auxiliary electrical systems is to supply the required ES loads of one Unit and safe shutdown loads of the other two units. The underground power path is adequate to ensure operability of the ES loads during the outage of the yellow bus. The reliability of the emergency power system is not significantly affected by a one time extension of allowable outage time for the overhead power path. Therefore, there will be no significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

*Attorney for licensee:* J. Michael McGarry, III, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20036

*NRC Project Director:* Herbert N. Berkow

**Duquesne Light Company, et al., Docket Nos. 50-334 and 50-412 Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania**

*Date of amendment request:* July 10, 1995

*Description of amendment request:* The proposed amendment would modify the technical specifications to minimize the potential for boron deletion of the reactor coolant system (RCS) during startup of an isolated loop. The changes would permit RCS loop isolation only during Modes 5 and 6. RCS loop isolation valves would be required open with power removed from each isolation valve operator during Modes 1, 2, 3, and 4. Primary grade water would be isolated from the RCS during Modes 4, 5, and 6, except during planned boron dilution or makeup activities.

*Basis for proposed no significant hazards considerationdetermination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed amendment would modify the method used to prevent an inadvertent boron dilution event during hot shutdown, cold shutdown and during refueling. An uncontrolled boron dilution transient cannot occur during this mode of operation. Inadvertent boron dilution is prevented by administrative controls which isolate the primary grade water system isolation valves from the Chemical and Volume Control System, except during planned boron dilution or makeup activities. Thus unborated water can not be injected into the reactor coolant system, making an unplanned boron dilution at these conditions highly improbable, since the source of unborated water to the charging pumps is isolated. This precludes the primary means for an inadvertent boron dilution event in this mode of operation.

The primary grade water system isolation valves may be opened when directed by the control room during this mode of operation only for a planned boron dilution or makeup activity. The primary grade water system isolation valves will be verified to be locked, sealed or otherwise secured in the closed position after the planned boron dilution or makeup activity is completed. During planned boron dilution events, operator attention will be focused on the boron dilution process and any inappropriate blender operation will be readily identified.

The operator has prompt and definite indication of any boron dilution from the audible count rate instrumentation supplied by the source range nuclear instrumentation. High count rate is alarmed in the reactor containment and the control room. In addition a high source range flux level is alarmed in the control room. The count rate increase is proportional to the subcritical multiplication factor.

The proposed amendment would also modify the method used to prevent an adverse reactor transient during startup of an isolated reactor coolant loop. Procedures require that the isolated loop water boron concentration be verified prior to opening loop isolation valves. Procedures also require an isolated loop to be drained and refilled from water supplied from the Refueling Water Storage Tank (RWST) or Reactor Coolant System (RCS) prior to opening either the hot or cold leg isolation valves. Using water from the RWST or RCS ensures 1) that the boron concentration of the isolated loop is sufficient to prevent a dilution of the active reactor coolant loops and reducing the shutdown margin to below those values used in safety analyses when the isolated loop is returned to service, and 2) that no single failure could cause an isolated loop to be filled with unborated water.

Thus procedures and interlocks prevent inadvertent opening of loop isolation valves and require that the startup of an isolated loop be performed in a controlled manner that virtually eliminates any sudden positive reactivity addition from boron dilution. Thus the core cannot be adversely affected by the startup of an isolated loop and fuel design limits are not exceeded. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not create the possibility of a new or different kind of accident. No new systems, structures or components are being proposed. Acceptable alternative administrative controls are being proposed to address inadvertent boron dilution and the startup of inactive reactor coolant loops.

The primary source of unborated water will be isolated from injecting by the charging pumps into the reactor coolant system during hot shutdown, cold shutdown, and refueling, except for planned boron dilution events and makeup activities. The proposed administrative controls prevent the possible accident previously evaluated, i.e., an inadvertent boron dilution event.

A currently installed interlock to recirculate reactor coolant in an isolated loop is proposed to be deleted. In its place, each reactor coolant isolated loop will be drained and refilled with water supplied from the RWST just before the loop is returned to service. This administrative control will prevent any inadvertent reactivity transient when returning the loop to service. Thus, the proposed administrative controls will prevent the type of accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed changes will continue to ensure that adequate protection is provided against an inadvertent boron dilution and the adverse effects from the startup of an isolated reactor coolant loop. General Design Criteria 10 requirements will not be exceeded with respect to demonstrating specified acceptable fuel design limits. The required indications and functions are still maintained in accordance with current technical specification requirements and the shutdown margin is unaffected. Therefore, the proposed change will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* B. Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

*Attorney for licensee:* Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Project Director:* John F. Stolz

**Duquesne Light Company, et al., Docket No. 50-334, Beaver Valley Power Station, Unit 1, Shippingport, Pennsylvania**

*Date of amendment request:* July 11, 1995

*Description of amendment request:* The proposed amendment would revise the required area of the Reactor Coolant System (RCS) overpressure protection system vent from 3.14 square inches to 2.07 square inches. This vent is provided to relieve a potential RCS overpressure condition if the power-operated relief valves (PORVs) are not operable. The proposed vent area is equal to the relief area of a PORV. A single PORV is capable of providing sufficient relief capacity to mitigate potential low temperature overpressurization events.

*Basis for proposed no significant hazards considerationdetermination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change is considered to be editorial since it replaces the 3.14 square inch vent size stated in overpressure protection system (OPPS) Specifications 3.4.9.3, 3.1.2.1.b, and 3.1.2.3 and Bases 3/4.1.2 and 3/4.4.9 with a 2.07 square inch vent size. This ensures the vent size stated in the technical specifications is consistent with the actual size of an installed PORV. These changes maintain consistency with the analyses assumptions and the operation of the OPPS in accordance with applicable analyses and the UFSAR [Updated Final Safety Analyses Report]. Therefore, we have concluded that these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated in the UFSAR.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not involve any physical changes to the OPPS or their setpoints. These changes do not change any function previously provided by the OPPS. These changes do not affect any failure modes defined for any plant system or component important to safety nor has any new limiting single failure been identified as a result of these changes. Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated in the UFSAR.

3. Does the change involve a significant reduction in a margin of safety?

The proposed changes will not affect the operation of or the reliability of the OPPS. These changes do not affect the manner in which the plant is operated or involve a change to equipment or features that affect the operational characteristics of the plant. Therefore, operation of the plant in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

*Attorney for licensee:* Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Project Director:* John F. Stolz

**Duquesne Light Company, et al., Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania**

*Date of amendment request:* July 20, 1995

*Description of amendment request:* The proposed amendment would revise Technical Specification (TS) 3/4.8.1.1 to incorporate guidance provided in NRC Generic Letter (GL) 84-15, ''Proposed Staff Actions to Improve and Maintain Diesel Generator Reliability,'' and GL 93-05, ''Line-Item Technical Specification Improvements To Reduce Surveillance Requirements For Testing During Power Operation,'' which includes (1) revised requirements for testing the operable emergency diesel generators (EDGs) for various combinations of inoperable offsite circuits and EDGs and (2) revised surveillance requirements for the EDGs. The revised surveillance requirements include specifying generator voltage, frequency limits, and diesel starting time. In addition, several editorial changes would be made to TS 3/4.8.1.1 which would be consistent with the guidance provided in the NRC's Improved Standard Technical Specifications (NUREG-1431).

*Basis for proposed no significant hazards considerationdetermination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The probability of occurrence of a previously evaluated accident is not increased because the allowable outage times for the offsite circuits and diesel generators remain unchanged. The consequences of an accident previously evaluated is not increased because reducing the diesel generator test frequency and permitting additional test evolutions are intended to minimize diesel wear and mechanical stress. By eliminating excessive testing, which can lead to premature diesel failures and minimizing diesel wear and mechanical stress, the diesel generator reliability is increased. The consequences of an accident previously evaluated is also not increased because the addition of the parameters for generator voltage, frequency, and diesel starting time to the surveillance requirement will provide additional assurance that the diesel generators are performing as assumed in the safety analysis. This proposed change does not affect the availability or reliability of the offsite circuits.

Therefore, this change will not increase the probability or consequences of an accident previously evaluated due to the continued availability and reliability of the A.C. electrical power sources.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not alter the method of operating the plant. The changes do not introduce any new failure modes and are intended to increase the diesel generator reliability and provide additional assurance that the diesels are performing as assumed in the safety analysis. The revision to the various action statements and surveillance requirements provide assurance that the diesel generators will be able to power their respective safety systems if required. The proposed changes do not impact the performance of any safety system.

Therefore, this proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The margin of safety is not reduced because the A.C. electrical power sources will continue to provide sufficient capacity, capability, redundancy, and reliability to ensure availability of necessary power to engineered safety feature (ESF) systems. The ESF systems will continue to function, as assumed in the safety analyses, to ensure that the fuel, reactor coolant system and containment design limits are not exceeded. The elimination of excessive testing on the diesel generators are permitting additional test evolutions, which result in less diesel wear and mechanical stress, are intended to increase diesel reliability. The increased reliability of the diesels adds to the ability of the A.C. electrical power source to provide power to ESF systems. The proposed additions to the surveillance requirements will provide additional assurance of the ability of the A.C. electrical power sources to provide power to ESF systems.

Therefore, this proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the

amendment request involves no significant hazards consideration.

*Local Public Document Room Location:* B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

*Attorney for licensee:* Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Project Director:* John F. Stolz

**Duquesne Light Company, et al., Docket No. 50-412, Beaver Valley PowerStation, Unit 2, Shippingport, Pennsylvania**

*Date of amendment request:* July 24, 1995

*Description of amendment request:* The proposed amendment would revise Technical Specification (TS) 3/4.4.11, ''Relief Valves,'' and associated Bases to make Unit 2 TS 3/4.4.11 consistent with Unit 1 TS 3/4.4.11, which was revised by Unit 1 License Amendment No. 187 issued on May 15, 1995. The proposed amendment would also generally reflect the guidance provided in NRC Generic Letter 90-06 and in the NRC's Improved Standard Technical Specifications (NUREG-1431).

*Basis for proposed no significant hazards considerationdetermination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Implementation of these changes will increase the availability of the power-operated relief valves (PORVs) and their associated block valves. The increased availability is obtained through maintaining power to the block valves which are closed to control PORV seat leakage. Maintaining power to the block valve provides the flexibility of reopening the valves to control reactor coolant system pressure. The proposed change modifies Specification 3.4.11 actions, a surveillance requirement, and Bases to generally reflect the requirements of Generic Letter (GL) 90-06, and the guidance provided in NUREG-1431, ''Improved Standard Technical Specifications'' (ISTS) and is consistent with the changes the NRC approved for Unit No. 1. A revised stress analysis has been completed that takes credit for the speed at which the block valve opens when manually reducing reactor coolant system pressure. The block valve relatively slow opening speed reduces the peak pressure surge and results in acceptable downstream piping stress values. The PORV downstream piping has been evaluated assuming manual vent path operation with cold loop seal slug flow and it has been determined that the piping supports can accept these design transient loads. The proposed change to the action statement to close the block valve to isolate a PORV and maintain power to the block valve does not significantly increase the probability of a small break loss of coolant accident. No PORV function has been deleted and the PORV and block valve continue to be capable of being manually closed at any time. As a result of the change to action ''a,'' an exception to the stroking requirements is no longer required, therefore, reference to action ''a'' in Surveillance Requirement 4.4.11.2 has been deleted. Closing the block valve for a PORV that is not capable of being manually cycled and removing power to the block valve assures that the valve will not be inadvertently opened when the condition of the PORV is uncertain.

The changes remain consistent with the analysis assumptions regarding the operation of the PORVs and block valves and provides increased assurance of their availability in mitigating the consequences of a steam generator tube rupture (SGTR) accident. The requirements of GL 90-06 are substantially addressed in the ISTS which have been incorporated here except for specific design differences. Minor editorial changes involving capitalization have been incorporated to maintain the format and content and do not affect any of the requirements, the accident analyses, or the operation of the plant. Therefore, we have concluded that these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated in the UFSAR [Updated Final Safety Analysis Report].

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes to the action statements for the PORVs and the associated block valves will improve the availability of these valves for normal operation and for mitigation of a SGTR accident. The proposed changes do not involve any physical changes to the PORVs or their setpoints. These changes do not delete any design basis accident function previously provided by the PORV vent path nor has the probability of inadvertent opening been increased. Accordingly, no new limiting single failure has been identified as a result of these changes. Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated in the UFSAR.

3. Does the change involve a significant reduction in a margin of safety?

The proposed changes have been incorporated to provide the capability to manually stroke the vent path using the block valve to control the pressure surge as a PORV opens. The resultant downstream piping forces were found acceptable, therefore, power can be maintained to the block valve when the block valve has been closed to isolate a PORV because of excessive seat leakage. This will allow operation of the PORVs in a manner similar to the guidance provided in GL 90-06 to improve PORV availability. These changes will improve the operator use of an isolated PORV since it is now analyzed to be manually cycled with the block valve closed and power maintained so the operator can use the PORV if required to mitigate the effects of a SGTR accident. This is consistent with the intent of the ISTS and does not affect the UFSAR, therefore, operation of the plant in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room Location:* B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 1500l.

*Attorney for licensee:* Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Project Director:* John F. Stolz

**Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas**

*Date of amendment request:* April 4, 1995

*Description of amendment request:* The proposed amendment revises the minimum water level that is required to be maintained over irradiated fuel assemblies during latching and unlatching of control element assemblies.

*Basis for proposed no significant hazards considerationdetermination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The fuel handling accident analysis assumes that a fuel assembly is dropped during fuel handling. During the latching and unlatching of the CEAs, the upper guide structure is in place and the CEDM extension shaft assemblies are disconnected from their CEA for subsequent removal with the vessel upper guide structure. The dropping of a CEA from the maximum height of six inches will not damage that particular fuel assembly or any surrounding fuel assemblies since this movement is confined to within the upper guide structure and the guide tubes of the associated fuel assembly during this activity. This less than six inches of movement does not have the potential to result in a fuel handling accident; therefore, an increase in the probability of this accident does not occur. The requirement to have at least 23 feet of water over the top of the irradiated fuel assemblies during fuel and CEA movement ensures that, should a fuel handling accident occur, the resulting offsite dose consequences are mitigated. The six inch movement of the CEA during CEA decoupling does not constitute fuel or CEA

movement which would result in a fuel handling accident. As such, Technical Specifications are unchanged with respect to the mitigating requirements for a fuel handling accident.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed change does not change the design, configuration, or method of operation of the plant; therefore, it does not create the possibility of a new or different kind of accident. Because no new equipment is being introduced, and no equipment is being operated in a manner inconsistent with its design, the possibility of equipment malfunction is not increased. The proposed change adds an exception to the applicability section and is bounded by the existing fuel handling accident analysis.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in the Margin of Safety.

There is no reduction in margin of safety in that 23 feet of water is still maintained over the irradiated fuel assemblies anytime there is a potential for a fuel handling accident. Adding the exception of the latching and unlatching of the CEAs to the applicability section does not involve a change in the accident analysis for fuel handling which remains bounding.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room Location:* Tomlinson Library, Arkansas Tech University, Russellville, AR 72801

*Attorney for licensee:* Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

*NRC Project Director:* William D. Beckner

**Entergy Operations, Inc., et al., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi**

*Date of amendment request:* July 21, 1995

*Description of amendment request:* The proposed change requests that the current expiration date for license NPF-29 be changed to reflect the issuance date of the new license granted Grand Gulf on November 1, 1984. The change consists of extending the expiration date to 40 years from the date of issuance of license NPF-29 (November 1, 1984 to November 1, 2024).

*Basis for proposed no significant hazards considerationdetermination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

a. No significant increase in the probability or consequences of an accident previously evaluated results from this change.

The proposed change does not affect the design or operation of any plant system. The effect of 40 years of full power operations has previously been evaluated and documented in the Updated Final Safety Analysis Report (UFSAR). The design life of structures, systems and components is controlled by existing plant problems [sic., programs] and processes that are not affected by this change. The proposed change will simply allow Grand Gulf to achieve its original planned 40 years of service. Equipment associated with initiating event frequencies or accident mitigation must continue to meet all applicable maintenance and operability requirements regardless of license duration (It is also interesting to note that the license duration limitation of 40 years, as contained in 10 CFR 50.51 is not a limitation resulting from concerns over plant aging effects. ''In fact, the limit was a compromise between the efforts of the Justice Department and electric cooperatives, who championed a 20-year limit on the basis of antitrust concerns, and the view of the utility industries that a longer period was necessary to ensure full amortization of a nuclear power plant.'' (56 FR 64961, December 13, 1991)). Therefore, the probability or consequences of previously analyzed accidents are not significantly increased.

b. The change would not create the possibility of a new or different kind of accident from any previously analyzed.

The proposed change will not add any plant equipment or introduce any new modes of plant operation. The change will only amend the operating license to allow 40 years of full power operations. The proposed change does not affect the current maintenance or surveillance practices, which are designed to maintain and monitor the current service life of plant structures, systems and components in accordance with regulatory requirements. Therefore, the proposed change does not create the possibility of new equipment failure modes or a new or different kind of accident from any accident previously evaluated.

c. The change would not involve a significant reduction in a margin of safety.

The proposed change does not involve a significant reduction in a margin of safety since it only provides for 40 years of full power operations for which the plant is designed. Current Technical Specification surveillance requirements (e.g. associated with 10 CFR 50 Appendix H) and other regulatory requirements remain in place and will ensure continued compliance with applicable safety margins.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room Location:* Judge George W. Armstrong Library, 220 S. Commerce Street, Natchez, Mississippi 39120

*Attorney for licensee:* Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., 12th Floor, Washington, DC 20005-3502

*NRC Project Director:* William D. Beckner

**Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania**

*Date of amendment request:* June 20, 1995

*Description of amendment request:* The proposed Technical Specifications (TS) changes would remove the surveillance interval text for the 10 CFR Part 50, Appendix J, Type A test (Integrated Leak Rate Test or ILRT), and Drywell-to-Suppression Chamber (bypass) leakage test specified in TS Surveillance Requirements (SR) 4.6.1.2.a, 4.6.1.2.b, and 4.6.2.1.e.

*Basis for proposed no significant hazards considerationdetermination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The primary containment and the suppression chamber are not considered to be accident initiators, they are accident mitigators. There are no physical or operational changes to the containment or suppression structure, system or components being made as a result of the proposed changes. These changes will not impose different requirements and adequate control of information will be maintained. These TS changes will not alter assumptions made in the safety analysis and licensing basis. Therefore, the proposed TS changes to eliminate the details of the test intervals will not increase the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes remove the specific surveillance test interval text from TS and address the interval by direct reference to the applicable regulation. The proposed TS changes do not make any physical or operational changes to existing plant systems or components. Furthermore, the primary containment and suppression chamber act as

accident mitigators not initiators. Therefore, the possibility of a new or different kind of accident than from any accident previously evaluated is not introduced.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

LGS [Limerick Generating Station] TS Bases 3/4 6.1.2 state that surveillance testing is consistent with 10 CFR 50, Appendix J and does not specify a SR test interval. TS Bases 3/4 6.2, describing the bypass test does not specify a SR test interval. However, the NRC Safety Evaluation related to amendment Nos. 68 (Unit 1) and 31 (Unit 2) concluded that it is acceptable for the drywell-to-suppression chamber test frequency to coincide with the 10 CFR 50, Appendix J, Type A test, since individual vacuum breaker leakage tests are an acceptable alternative to an integrated suppression pool bypass test during outages for which a Type A containment integrated leak rate test is not conducted. The alternative bypass test requirement, TS SR 4.6.2.1.f, is not affected by these changes.

The Type A test, and bypass SR test intervals are adequately presented in the test implementing procedures, and TS will directly reference 10 CFR 50, Appendix J, for the appropriate test interval.

Therefore, the proposed TS changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room Location:* Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

*Attorney for licensee:* J. W. Durham, Sr., Esquire, Sr. V. P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

*NRC Project Director:* John F. Stolz

**Power Authority of The State of New York, Docket No. 50-286, Indian PointNuclear Generating Unit No. 3, Westchester County, New York**

*Date of amendment request:* July 21, 1995

*Description of amendment request:* The proposed amendment would change Technical Specifications Section 6.0 (Administrative Controls) to replace the title-specific list of members on the Plant Operating Review Committee (PORC) with a more general statement of membership requirements. The scope of disciplines represented on the PORC would also be expanded to include nuclear licensing and quality assurance. The proposed amendment would also change the title ''Resident Manager'' to ''Site Executive Officer.'' This title change would not affect the reporting relationship, authority, or responsibility of the position.

*Basis for proposed no significant hazards considerationdetermination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the Indian Point 3 Nuclear Power Plant in accordance with the proposed amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes are administrative in nature and do not involve plant equipment or operating parameters. There is no change to any accident analysis assumptions or other conditions which could affect previously evaluated accidents. The proposed changes will not decrease the organization's ability to respond to a design basis accident.

2. Create the possibility of a new or different kind of accident from those previously evaluated.

Since the proposed changes are administrative in nature and do not involve hardware design, modifications or operation, the possibility of new or different accidents is not created.

3. Involve a significant reduction in the margin of safety.

The proposed title change for the Resident Manager is an administrative change and does not affect the responsibilities, authority, or reporting relationships for this management position. Replacing the title specific list of PORC members with a statement of membership requirements for the committee does not reduce the effectiveness of the committee to advise the Resident Manager (Site Executive Officer) on matters regarding nuclear safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room Location:* White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

*Attorney for licensee:* Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

*NRC Project Director:* Ledyard B. Marsh

**Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey**

*Date of amendment request:* March 30, 1995

*Description of amendment request:* The proposed change to the Technical Specifications (TS) would change TS Table 3.3.1-2, ''Reactor Protection System Response Times'', TS Table 3.3.2-3, ''Isolation System Instrumentation Response Time'', TS Table 3.3.3-3, ''Emergency Core Cooling System Response Times'', and associated Bases. The proposed changes to the above-referenced TS Tables would eliminate the requirement to perform response time testing for certain classes of equipment.

*Basis for proposed no significant hazards considerationdetermination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The purpose of the proposed Technical Specification change is to eliminate response time testing requirements for selected instrumentation in the Reactor Protection System, Isolation System, and Emergency Core Cooling System. However, because of the continued application of other existing Technical Specification requirements such as channel calibrations, channel checks, channel functional tests, and logic system functional tests, the response time of these systems will be maintained within the acceptance limits assumed in plant safety analyses and required for successful mitigation of an initiating event. The proposed Technical Specification changes do not affect the capability of the associated systems to perform their intended function within their required response time.

The BWR Owners' Group has completed an evaluation (NEDO-32291, ''System Analyses for the Elimination of Selected Response Time Testing Requirements'') which demonstrates that response time testing is redundant to the other Technical Specification requirements listed in the preceding paragraph. These other tests are sufficient to identify failure modes or degradation in instruments response time and ensure operation of the associated systems within acceptance limits. There are no known failure modes that can be detected by response time testing that cannot be detected by the other Technical Specification tests. Hope Creek Generating Station is specifically bounded by the assumptions and justifications in General Electric Company Licensing Topical Report, NEDO-32291, ''System Analyses for Elimination of Selected Response Time Testing Requirements.''

2. Will not create the possibility of a new or different kind of accident from any accident previously evaluated.

As discussed above, the proposed Technical Specification changes do not affect the capability of the associated systems to perform their intended function within the acceptance limits assumed in plant safety analyses and required for successful mitigation of an initiating event. The proposed elimination of response time testing would not result in any new

equipment, operating modes, or plant configurations.

3. Will not involve a significant reduction in a margin of safety.

The current Technical Specification response times are based on the maximum allowable values assumed in the plant safety analyses. These analyses conservatively establish the margin of safety. As described above, the proposed Technical Specification changes do not affect the capability of the associated systems to perform their intended functions within the allowed response time used as the basis for the plant safety analyses. Plant and system response to an initiating event will remain in compliance within the assumptions of the safety analyses, and therefore the margin of safety is not affected.

Although not explicitly evaluated, the proposed Technical Specification changes will provide an improvement to plant safety and operation by:

a) Reducing the time safety systems are unavailable

b) Reducing safety system actuations

c) Reducing shutdown risk

d) Limiting radiation exposure to plant personnel

e) Eliminating the diversion of key personnel to conduct unnecessary testing.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room Location:* Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

*Attorney for licensee:* M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

*NRC Project Director:* John F. Stolz

**Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey**

*Date of amendment request:* April 18, 1995

*Description of amendment request:* The proposed changes to the Technical Specifications (TS) would change TS Table 4.3.7.1-1 ''Radiation Monitoring Instrumentation Surveillance Requirements.'' This change would increase the channel functional test interval from monthly to quarterly for each instrument.

*Basis for proposed no significant hazards considerationdetermination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change involves no hardware changes, no changes to the operation of any systems or components, and no changes to existing structures. Increasing the interval between channel functional tests for the radiation monitoring instrumentation represent changes that do not affect plant safety and do not alter existing accident analyses.

2. Will not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change is procedural in nature concerning the channel functional test frequency for the radiation monitoring instrumentation not already on a quarterly surveillance. The channel functional test methodology for these instruments remains unchanged. The proposed changes, while slightly increasing the possibility of an undetected instrument error, will not create a new or unevaluated accident or operating condition.

3. Will not involve a significant reduction in a margin of safety.

The proposed change is in accordance with recommendations provided by the NRC regarding the improvement of Technical Specifications. These changes will result in perpetuation of current safety margins while reducing regulatory burden and decreasing equipment degradation.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room Location:* Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

*Attorney for licensee:* M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

*NRC Project Director:* John F. Stolz

**Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey**

*Date of amendment request:* May 4, 1995

*Description of amendment request:* The proposed change to the Technical Specifications (TS) would change TS 3/4.6.1.8, ''Drywell and Suppression Chamber Purge System'', to increase the annual operational limit for the drywell and suppression chamber purge system from 120 to 500 hours.

*Basis for proposed no significant hazards considerationdetermination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change involves no hardware changes and no changes to existing structures. Increasing the annual operational limit of the drywell and suppression chamber purge system will not increase the probability of a loss-of-coolant accident. While increased usage of the purge system will result in a slight increase in the possibility that these valves will be open during a LOCA, it will not alter or impact previous LOCA analyses.

2. Will not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change will not result in an unanalyzed condition. While the increase in purge system operation will slightly increase the possibility of the containment vent and purge valves being open at the onset of a LOCA event, the valves have been established as capable of isolating the containment within five seconds. This is well within the bounds of existing LOCA analyses which assume an open duration of 175 seconds. Therefore, this change will not require a new or different accident analysis.

3. Will not involve a significant reduction in a margin of safety.

The proposed change will not alter existing systems, equipment, components, or structures. The method of operating the drywell and suppression chamber purge system will not be altered by the increased annual usage. While there is a slight increase in the possibility of purge operations at the onset of a LOCA, any resulting release would be insignificant and bounded by existing LOCA analyses. Operation of the drywell and suppression chamber purge system based on these proposed changes will remain within the guidance provided in the NRC's Branch Technical Position CSB 6-4.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room Location:* Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

*Attorney for licensee:* M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

*NRC Project Director:* John F. Stolz

**Saxton Nuclear Experimental Corporation (SNEC), Docket No. 50-146, Saxton Nuclear Experimental Facility (SNEF), Bedford County, Pennsylvania**

*Date of amendment request:* June 2, 1995, as supplemented on June 23, 1995.

*Description of amendment request:* The proposed changes to the technical specifications are administrative in

nature. The proposed amendment would revise the organization structure associated with the SNEF to allow General Public Utilities Nuclear Corporation resources to be applied to SNEC activities within their normal organizational structure; eliminating the need to identify and compartmentalize a portion of the organization as specific to SNEC. The proposed amendment would also revise the description and drawing of the SNEF site to reflect multiple gates in the SNEF fence.

*Basis for proposed no significant hazards considerationDetermination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below: The proposed changes do not involve a significant hazards considerations because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The administrative changes will not impact the physical condition of the containment vessel as it relates to the risk of fire, flood or radiological hazard.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

In its present condition, the only accidents applicable to the site are those addressed above.

3. Involve a significant reduction in a margin of safety.

The proposed administrative changes would have no effect on any margins of safety for any evaluated accidents.

The NRC staff has reviewed the analysis of the licensee and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room Location:* Saxton Community Library, 911 Church Street, Saxton, Pennsylvania 16678Attorney for the Licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037

*NRC Project Director:* Seymour H. Weiss

**South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina**

*Date of amendment request:* June 30, 1995

*Description of amendment request:* The proposed amendment would revise the Technical Specifications (TS) for the pressurizer power operated relief valves (PORVs) to follow the guidance of Generic Letter (GL) 90-06, Generic Issue 70, and the improved Westinghouse Standardized Technical Specifications (NUREG-1431, Rev. 1).

*Basis for proposed no significant hazards considerationdetermination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The probability or consequences of an accident previously evaluated is not significantly increased.

There is no increase in the probability of an accident because the physical characteristics of the PORVs and their block valves remain unchanged. No changes to any hardware or software that affects these components is planned.

The PORVs are pressure relieving devices and only two failure modes need to be considered. The first is that one or more PORVs or block valves fail to open when required. This is not

a significant concern and is not a credible cause of any accident. The second mode is failing to close which includes depressurization of the RCS [reactor coolant system] and a reactor trip on low pressurizer pressure or overtemperature [delta]T. The consequences for the more limiting Pressurizer Safety Valve Accidental Depressurization event has been analyzed with acceptable results.

There is no increase in the consequences of an accident as a result of this change, because only one PORV is required to mitigate the consequences of a design basis Steam Generator Tube Rupture. There is sufficient redundancy to ensure one PORV is available to perform this function even if one PORV is inoperable or incapable of being manually cycled. The validation of the Emergency Operating Procedures on the VCSNS [Virgil C. Summer Nuclear Station] simulator demonstrated that one pressurizer PORV has sufficient capacity to depressurize the RCS in a time frame which will not cause the offsite doses presented in the FSAR [Final Safety Analysis Report] to be exceeded.

The PORVs are utilized to depressurize the RCS and equalize the pressure between the primary and secondary systems. This stops the intrusion of RCS water into the secondary which can be released into the atmosphere. By the time the PORVs are called upon, the affected steam generator (SG) has been identified and steps have been taken to isolate the faulted SG. This acts to minimize the radiological impact on the health and safety of the public. In all cases, the dose results are within 10 CFR 100 limits.

2. The possibility of an accident or a malfunction of a different type than any previously evaluated is not created.

The proposed TSCR [TS Change Request] does not involve any physical changes to the plant or decrease the number of PORVs and block valves that must be capable of performing their intended function. These components are used to mitigate the effects of postulated events and their failure has already been considered. The worst case failure, either not opening or not closing, has been evaluated and is bounded by other more limiting accidents.

3. The margin of safety has not been significantly reduced.

The currently approved TS permits all three PORVs and/or their block valves to be inoperable as long as precautions are taken to assure that RCS would not leak-by, assuming single failures and spurious operation. The proposed TSCR would require a minimum of two PORVs and block valves to be operable, or at least capable of being manually cycled, in Modes 1, 2, and 3. This is in fact an increase in margin and provides for greater reliability with the added benefit that the probability of challenges to the pressurizer code safety valves will be lessened.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room Location:* Fairfield County Library, 300 Washington Street, Winnsboro, SC 29180

*Attorney for licensee:* Randolph R. Mahan, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218

*NRC Project Director:* Frederick J. Hebdon

**South Carolina Electric & Gas Company (SCE&G), South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina**

*Date of amendment request:* July 28, 1995

*Description of amendment request:* The proposed amendment would revise the Technical Specifications (TS) to exclude the requirement to perform the slave relay test of the 36-inch containment purge supply and exhaust valves on a quarterly basis while the plant is in Modes 1, 2, 3, or 4.

*Basis for proposed no significant hazards considerationdetermination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

No, the probability or consequences of an accident previously evaluated would not be increased since no credit is taken for the valves in FSAR [Final Safety Analysis Report] Chapter 15.

The only credible accident discussed in FSAR Chapter 15 that applies to these valves is a fuel handling accident inside

containment (15.4.5.1). The analysis assumes the escaped gases are released instantaneously to the environment via the Reactor

Building purge system. The analysis does not take credit for these valves nor for filtration or holdup time during release. The result of the analysis is acceptable and offsite doses are within the limits of 10 CFR 100.

TS 3.6.1.7 requires that these valves be sealed shut during Modes 1, 2, 3, and 4. When sealed shut, these valves will not open via any signal.

With these valves already in a shut position, neither the probability nor the consequences of an accident are increased.

2. Does the change create the possibility of a new or different kind of accident from any previously evaluated?

No, the 36'' [inch] containment purge exhaust and supply valves will not be placed in a condition different from that evaluated previously.

The only credible accident discussed in FSAR Chapter 15 that applies to these valves is a fuel handling accident inside containment (15.4.5.1). The analysis assumes the escaped gases are released instantaneously to the environment via the Reactor Building purge system. The analysis does not take credit for these valves nor for filtration or holdup time during release. The result of the analysis is acceptable and offsite doses are within the limits of 10 CFR 100.

Additionally, TS 3.6.1.7. requires that these valves be sealed shut during Modes 1, 2, 3, and 4. When sealed shut, these valves will not open via any signal.

3. Does the change involve a significant reduction in the margin of safety?

TS 4.3.2.1. requires that this slave relay test be performed quarterly. This surveillance is accomplished for the 36'' [inch] containment purge exhaust and supply valves by cycling the respective K615 relay. This will not provide assurance that the valve will perform its safety function since the valve is sealed closed. The proposed change will exclude the requirement to perform the K615 relay test (auto actuation logic and actuation relays - slave relay test) on a quarterly basis while the plant is in Modes 1, 2, 3,or 4.

TS 3.6.1.7. requires that these valves be sealed shut during Modes 1, 2, 3, and 4. When sealed shut, these valves will not open via any signal. Since this relay would not be needed to supply a signal to place these valves in the closed position, the margin of safety is not affected.

Based on the preceding analysis, SCE&G has determined that this change does no involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room Location:* Fairfield County Library, 300 Washington Street, Winnsboro, SC 29180

*Attorney for licensee:* Randolph R. Mahan, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218

*NRC Project Director:* Frederick J. Hebdon

**Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama**

*Date of amendment request:* June 2, 1995 (TS 353)

*Description of amendment request:* The proposed amendment supports replacement of the existing power range neutron monitoring equipment and implements ARTS/MELLL [average power range monitor and rod block monitor technical specifications/ maximum extended load line limit] analysis improvements.

*Basis for proposed no significant hazards considerationdetermination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Group A Changes: This proposed TS change is associated with the NUMAC PRNM [nuclear measurement analysis and control power range neutron monitor] retrofit design. The proposed TS change involves modification of the LCOs [limiting condition for operations] and SRs [surveillance requirements] for equipment designed to mitigate events which result in power increase transients. For the APRM [average power range monitor] system mitigative action is to block control rod withdrawal or initiate a reactor scram which terminates the power increase when setpoints are exceeded. For the RBM [rod-block monitor] system mitigative action is to block continuous control rod withdrawal prior to exceeding the MCPR [minimum critical power ratio] safety limit during a postulated Rod Withdrawal Error [RWE]. The worst case failure of either the APRM or the RBM systems is failure to initiate mitigative action (failure to scram or block rod withdrawal). Failure to initiate mitigative action will not increase the probability of an accident. Thus, the proposed change does not increase the probability of an accident previously evaluated.

For the APRM and the RBM systems, the NUMAC PRNM design, together with revised operability requirements (LCOs) and revised testing requirements (SRs), results in equipment which continues to perform the same mitigation functions under identical conditions with reliability equal to or greater than the equipment which it replaces. Because there is no change in mitigation functions and because reliability of the functions is maintained, the proposed change does not involve an increase in the consequences of an accident previously evaluated.

Group B Changes: This proposed change is associated with implementation of the ARTS/ MELLL analysis. The proposed change will permit expansion of the current allowable power/flow operating region and will apply a new methodology for assuring that fuel thermal and mechanical design limits are satisfied. Reference 3 evaluates operation in the MELLL region with assumed implementation of the ARTS changes. The conclusion of reference 3 is that for all events and parameters considered there is adequate design margin for operation in the MELLL region. Because operation in the MELLL region maintains adequate design margin, the proposed change does not significantly increase the probability of an accident previously evaluated.

In support of operation in the MELLL region, the proposed change modifies flow-biased APRM scram and rod block setpoints and implements new RBM power-biased setpoints. This potentially changes the way in which the APRM and RBM systems perform their mitigation functions. However, no credit for the flow-biased APRM scram or rod block is taken in mitigation of any design basis event; thus, changing the APRM setpoints does not impact the consequences of any accident previously evaluated. The proposed changes to the RBM system potentially impact mitigation of the RWE. However, per discussion in reference 3, the proposed RBM changes will assure that the RWE is not a limiting event; thus, the consequences of the RWE are not increased. The proposed change does not increase the consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes (Group A and Group B) involve modification and replacement of the existing power range neutron monitoring equipment, modification of the setpoints and operational requirements for the APRM and RBM systems, implementation of a new methodology for administering compliance with fuel thermal limits, and operation in an extended power/flow domain. These proposed changes do not modify the basic functional requirements of the affected equipment, create any new system interfaces or interactions, nor create any new system failure modes or sequence of events that could lead to an accident. The worst case failure of the affected equipment is failure to perform a mitigation action, and failure of this mitigative equipment does not create the possibility of a new or different kind of accident. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in a margin of safety.

Group A Changes: This proposed TS change is associated with the NUMAC PRNM retrofit design. The NUMAC PRNM change does not impact reactor operating parameters nor the functional requirements of the power

range neutron monitoring system. The replacement equipment continues to provide information, enforce control rod blocks and initiate reactor scrams under appropriate specified conditions. The proposed change does not revise any safety margin requirements. The replacement APRM/RBM equipment has improved channel trip accuracy compared to the current system and meets or exceeds system requirements previously assumed in setpoint analysis. Thus, the ability of the new equipment to enforce compliance with margins of safety equals or exceeds the ability of the equipment which it replaces. The proposed change does not involve a reduction in a margin of safety.

Group B Changes: This proposed change is associated with implementation of recommendations presented in the ARTS/MELLL analysis. Operation in the MELLL region does not affect the ability of the plant safety-related trips or equipment to perform their functions, nor does it cause any significant increase in offsite radiation doses resulting from any analyzed event. Analyses documented in reference 3 demonstrate that for operation in the MELLL region adequate margin to design limits is maintained. Implementation of the ARTS improvements provides flow- and power-dependent thermal limits which maintain existing margins of safety in normal operation, anticipated operational occurrences and accident events. Implementation of power-biased RBM setpoints improves the margin of safety in a postulated RWE by assuring that the RWE is not a limiting event. The proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room Location:* Athens Public Library, South Street, Athens, Alabama 35611

*Attorney for licensee:* General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET llH, Knoxville, Tennessee 37902

*NRC Project Director:* Frederick J. Hebdon

**Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama**

*Date of amendment request:* June 8, 1995 (TS 361)

*Description of amendment request:* The proposed amendment clarifies the definition of operability for the RHRSW system standby coolant supply capability and revises the instrument numbers for several instruments that have been upgraded.

*Basis for proposed no significant hazards considerationdetermination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to TS 3.5.C.3 clarifies the operability requirements of the standby coolant supply capability. It does not change or degrade the nuclear safety characteristics of the RHRSW and RHR systems and will not affect the intent of the TS. The operation of the standby coolant supply capability is not a precursor to any design basis accident or transient analyzed in the BFN FSAR. The proposed changes to instrument numbers are administrative changes for the upgraded drywell temperature and pressure instrumentation. The proposed changes do not affect the design basis or the safety functions of the Primary Containment system, since the function and instrumentation range is not changed. Therefore, the probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the safety analysis report has not been increased.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The possibility for an accident or malfunction of a different type than any evaluated previously in the safety analysis report is not created by this change. The change to TS 3.5.C.3 adds the indication of associated valves of the function involved and a clarification of operability for the standby coolant supply connection to be commensurate with the RHR cross-connect capability. The proposed changes to instrument numbers are administrative changes effected by the upgrade of instrumentation. There are no automatic actions affected or compromised by these changes.

3. The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed change to TS 3.5.C.3 does not affect any acceptable limit of operation or analysis assumption in the TS or Bases. The changes affect neither setpoints, calibration intervals, nor functional test intervals. The change does not affect any acceptable limit of operation or analysis assumption found in the TS or their bases. The proposed administrative changes to the instrument numbers do not affect the setpoint, calibration interval or function of the instrumentation. These changes do not affect any limiting conditions of operation or analysis assumption in the TSs or their bases. Therefore, the change does not reduce the margin of safety as defined in the basis for any TS.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room Location:* Athens Public Library, South Street, Athens, Alabama 35611

*Attorney for licensee:* General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET llH, Knoxville, Tennessee 37902

*NRC Project Director:* Frederick J. Hebdon

**Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama**

*Date of amendment request:* June 16, 1995 (TS 360)

*Description of amendment request:* The proposed change will revise the BFN Units 1, 2, and 3 Technical Specifications (TS) to permit the Traversing In-Core Probe (TIP) system to be considered operable with less than five TIP machines operable. The proposed amendment will allow the utilization of substitute data in lieu of data from inaccessible TIP measurement locations. The substitute data will be derived from either symmetric TIP measurement locations (under certain core conditions) or from normalized TIP data as calculated by the on-line core monitoring system.

*Basis for proposed no significant hazards considerationdetermination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The TIP system is not used to prevent, or mitigate the consequences of any previously analyzed accident or transient; nor are any assumptions made in any accident analysis relative to the operation of the TIP system. The primary containment isolation function (TIP withdrawal) is not affected. The

proposed TS change does not alter the fundamental process involved in calibrating neutron instrumentation (LPRMs) [local power range monitors], but requires that only the equipment associated with the TIP channels necessary for recalibrating LPRMs and for core monitoring functions be operable. Collection and storage of TIP data without using all TIP channels is acceptable because TIP machine normalization factors are ultimately derived from the most recent full core TIP set, which intercalibrates the TIP machines in a common core location.

Additionally, the use of symmetric detectors and analytical values as substitute data for inaccessible TIP channels does not compromise the ability of the process computer to accurately represent the spatial neutron flux distribution of the reactor core.

The core monitoring methodology is presently based on symmetry of rod patterns and fuel loading. This is not changed but extended to use a higher order of symmetry (octant symmetry) which exists with ''type A'' sequence rod patterns. Therefore, this change does not increase the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve the installation of any new equipment, or the modification of any equipment designed to prevent or mitigate the consequences of accidents or transients. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in a margin of safety.

The total core TIP reading uncertainties will remain within the assumptions of the licensing basis. Therefore, the margin of safety to the MCPR [minimum critical power ratio] safety limits is not reduced. The ability of the process computer to accurately represent the spatial neutron flux distribution for the reactor core is not compromised. Additionally, the computer's ability to accurately predict the LHGR [linear heat generation rate], APLHGR [average planar linear heat generation rate], MCPR and its ability to provide for LPRM calibration is not compromised. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room Location:* Athens Public Library, South Street, Athens, Alabama 35611

*Attorney for licensee:* General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET llH, Knoxville, Tennessee 37902

*NRC Project Director:* Frederick J. Hebdon

**The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio**

*Date of amendment request:* October 21, 1994

*Description of amendment request:* The proposed amendment would revise Technical Specification (TS) 3/4.6.1.2, ''Primary Containment Leakage.'' The changes would clarify that the main steam line isolation valves leakage is accounted for separately from the integrated primary containment leak rate or combined local leak rate results. Also, two references would be deleted, the test duration for use of Bechtel Corporation Topical Report BN-TOP-1 would be clarified, and the requirement to perform the third integrated leak rate in each 10-year service period in conjunction with the 10-year plant inservice inspection would be deleted. Exemptions to 10 CFR Part 50 Appendix J, ''Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors,'' are also being requested in conjunction with the proposed TS changes.

*Basis for proposed no significant hazards considerationdetermination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

Part A - Formalize the Approval for Excluding the Main Steam Line Isolation Valve Leakages from Inclusion in i) the Overall Integrated Primary Containment Leak Rate and ii) the Combined Local Leak Rate, and Clarify that the Main Steam Lines are Not Required to be Vented and Drained for Type A Testing

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Since Appendix J was originally envisioned, alternative means of meeting the intent of these requirements have been developed which provide an equivalent level of protection of the public health and safety. However, since some of these alternatives deviate from the specific wording of Appendix J, exemptions are appropriate for these alternatives. Implicit in the FSAR treatment of the main steam line leakage, as well as the TS requirements for main steam line leakage, are several deviations from the specific requirements of Appendix J. Although PNPP's methods and practices for Appendix J testing have been previously described in correspondence to the NRC, a formal exemption was not recognized to be needed at that time in that the NRC's approval was perceived to be received by the issuance of the PNPP TS. Exemption to four separate paragraphs of 10 CFR 50 Appendix J will document the approvals previously received and incorporated into the TS for main steam line isolation valve testing during the initial licensing of the PNPP. This TS change adds references to footnotes within the TS LCO 3.6.3.1 to clarify which conditions represent exemptions to Appendix J. These exemptions are described in the Bases.

PNPP utilized the criteria described in the Standard Review Plan (SRP), Section 15.6.5, Appendix D, ''Radiological Consequences of a Design Basis Loss-of-Coolant Accident: Leakage from Main Steam Isolation Valve Leakage Control System (Rev. 1 - July 1981).'' This is an alternative, NRC approved method for assessing the MSIV leakage contribution and determining the radiological consequences.

In accordance with the SRP, the safety analysis for a design basis LOCA includes the maximum main steam line leak rate separately from the maximum containment leak rate. Within Appendix J it is implied that Type A tests are intended to measure the primary containment overall integrated leak rate, but this vas before the SRP Section was developed which allows the MSIV contribution to be accounted for separately in the safety analysis. Therefore, the MSIV leak rate should not be included in the measurement of the ILRT. Including the MSIV leakage in the combined local leak rate limit is also not necessary since a specific Type C MSIV leak rate has been specified in TS 3.6.1.2.

In summary, there is no change in the probability or consequences of any accident since the addition of the references and footnotes to clarify the TS LCO and Actions do not change the design of the plant, nor the operational characteristics of any plant system, nor the procedures by which the Operators run the plant. These changes only cite formal Appendix J exemptions which are requested to document the approval previously received. A formal request for exemption to the applicable paragraphs of 10 CFR 50 Appendix J is also being submitted in a separate letter in conjunction with this proposed TS change.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. There are no design changes being made that would create a new type of accident or malfunction, and the method and manner of plant operation remains unchanged. The only change being made is an exemption to 10 CFR 50 Appendix J which will be cited in the TS to document the implicit and explicit approvals of the PNPP design and testing methods for main steam line isolation valves. The requirements and bases for which the formal exemption is sought are currently presented and implemented in the licensing basis and the TS for PNPP. The objective of the regulation is being met and will continue to be met. The exemption to 10 CFR 50 Appendix J is being submitted in a separate letter in conjunction with this proposed TS change.

3. The proposed changes do not involve a significant reduction in a margin of safety.

These changes do not involve a significant reduction in the margin of safety because they are administrative in nature. The proposed change will only cite the NRC exemption that grants the deviation from Appendix J. The proposed changes do not affect any USAR design bases or accident assumptions. Therefore, the proposed changes do not reduce the margin of safety as defined in the bases for any Technical Specification.

Part B - Revise Surveillance Requirement 4.6.1.2 to Eliminate Unnecessary References and ClarifY the Use of BN-TOP-1

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Surveillance Requirement 4.6.1.2 is proposed to be revised to eliminate the direct reference to the ANSI Standards N45.4 and N56.8 within the text, because these same Standards are listed within Appendix J. It is unnecessary to repeat the references to the Standards within the Technical Specifications because the PNPP is still required to be in compliance with the regulations. No additional benefits are gained and licensee flexibility to upgrade to later versions of the Standards is reduced since a Technical Specification change is necessary to change the version of the Standard to which PNPP is committed. This change removes a redundant requirement to list these Standards in the Technical Specifications. Therefore, this change cannot involve a significant increase in the probability or consequences of an accident because the regulation is still required to be met.

A reference to Topical Report BN-TOP-1 continues to be retained within Surveillance Requirement 4.6.1.2, and the use of the report is clarified to be for test durations less than 24 hours. This reference is retained within the TS since a reference to BN-TOP-1, though not specifically included within Appendix J, is allowed by Section 7.6 of ANSI N45.4-1972 and has been approved for PNPP use by the NRC. The TS Bases are also proposed to be revised to include a statement that the use of BN-TOP-1 is in accordance with Appendix J.

These changes result in no changes to plant systems and have no effect on accident conditions or assumptions. These proposed changes do not affect possible initiating events for accidents previously evaluated, or any system functional requirements. Hence, these changes are purely administrative in that they are designed to eliminate a redundant requirement and clarify the applicability and acceptability of an alternative leak rate testing provision within the TS. These changes do not affect plant operation in any way. Therefore, the proposed changes do not affect the probability or consequences of any accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

There are no design changes being made that would create a new type of accident or malfunction, and the method and manner of plant operation remains unchanged. These changes eliminate a redundant requirement and clarify the applicability and acceptability of alternative leak rate testing provisions within the TS. Since the alternative leak rate testing provisions have been approved by the NRC, the objective of the regulation continues to be met. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

These changes do not involve a significant reduction in the margin of safety because they are administrative in nature and either eliminate a redundant requirement or clarify the applicability and acceptability of an alternative, NRC approved, leak rate testing provision within the TS. The proposed changes do not affect any USAR design bases or accident assumptions. Therefore, the proposed changes do not reduce the margin of safety as defined in the Bases for any Technical Specification.

Part C - Decouple Performance of the Third Type A Test from the Shutdown for the 10-Year Plant Inservice Inspection

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change revises Surveillance Requirement 4.6.1.2.a by removing the second sentence requiring that the third test of each containment Integrated Leak Rate Test (ILRT) set be conducted during the shutdown for the 10-year plant inservice inspection. A request for an exemption to 10 CFR 50 Appendix J, Paragraph III.D.l(a) is also being submitted in conjunction with this proposed change. Note that this change is also included in the proposed Appendix J rule changes currently under consideration and has been approved for several other plants. The deletion of this requirement from the Technical Specifications does not impact plant safety because the 10 CFR 50 Appendix J requirement that three Type A containment ILRT tests to be performed over a 10 year period is not affected. This change only removes an unnecessary connection between the two regulations.

The proposed change results in no changes to plant systems. The proposed change has no effect on accident conditions or assumptions. The proposed change does not affect possible initiating events for accidents previously evaluated, or any system functional requirements. Hence, the proposed change removes an unnecessary tie between regulations and does not affect plant operation in any way.

In summary, there is no change in the probability or consequences of any accident since the revision of the existing Surveillance Requirement to reflect the removal of an unnecessary tie between regulations does not change the design of the plant, nor the operational characteristics of any plant system, nor the procedures by which the Operators run the plant.

2. The propose change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change removes an unnecessary tie between regulations. The objective of the regulation continues to be met. There are no design changes being made that would create a new type of accident or malfunction, and the method and manner of plant operation remains unchanged. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change does not involve a significant reduction in the margin of safety because they are administrative in nature and remove an unnecessary tie between requirements. The proposed change does not affect any USAR design bases, accident assumptions. or Technical Specification Bases. Therefore, the proposed change does not reduce the margin of safety as defined in the bases for any TS.

Based upon the above considerations, it has been concluded that the proposed changes do not involve significant hazards considerations.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room Location:* Perry Public Library, 3753 Main Street, Perry, Ohio 44081

*Attorney for licensee:* Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037

*NRC Project Director:* Gail H. Marcus

**The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio**

*Date of amendment request:* June 9 and 30, 1995

*Description of amendment request:* The licensee has requested a one-time extension of the performance intervals for certain Technical Specification Surveillance Requirements (SRs). Affected SRs include valve testing, and undervoltage instrumentation testing.

*Basis for proposed no significant hazards considerationdetermination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS change requests one-time only extensions of the surveillance intervals related to: a) ASME Section XI valve leak rate, stroke and timing, and position indication testing; b) Accident Monitoring Instrumentation related to valve position indication testing; c) Division 1, 2, and 3 Degraded Voltage and Undervoltage instrumentation LSFT; and, d) leak rate testing for hydrostatically tested containment isolation valves.

Based on the discussion in the License Amendment Request which shows:

i) The extension of the interval for ASME Section XI stroke and timing, leak rate measurement and position indication testing

requirements are acceptable based on results of past testing which indicates a margin to TS limits will be maintained;

ii) The extension of the interval for Position Indication Calibration as specified in Table 4.3.7.5-1, Item 17 is acceptable based on the testing results from the past two refueling outages that indicate no failures have occurred:

iii) LSFT interval extension for the Division 1, 2, and 3 Degraded Voltage and Undervoltage instrumentation is acceptable based on the NRC Safety Evaluation Report (Peach Bottom Atomic Power Plant, Units 2 and 3, dated August 2, 1993) which supported extension of the interval for LSFT from 18 to 24 months. This was based on the small probability of relay or contact failure relative to mechanical component failure probability and, therefore, the increase in LSFT interval represented no significant change in the overall safety system unavailability; and,

iv) The extension of the interval for hydrostatic leak testing of containment isolation valves is acceptable based on the consistently low past leak rate data which is a small percentage of the TS limits.

Therefore, from the above it is shown that the proposed changes will not significantly increase the probability of an accident previously evaluated.

The proposed TS change requests one-time only extensions of the surveillance intervals related to TS SR 4.3.3.1, Table 4.3.3.1-1, Items D.1 and D.2, Division 1, 2, and 3 Degraded Voltage and Undervoltage instrumentation calibration. [...] extension of the interval for this instrumentation is acceptable based on the testing results from the past two refueling outages. No failures have occurred which would negate the assurance that the instrumentation would function as required for the requested extended period. Accordingly, the proposed change will not significantly increase the probability or consequences of an accident previously evaluated.

2. The proposed change would not create the possibility of a new or

different kind of accident from any accident previously evaluated.

The proposed TS change requests one-time extensions of the surveillance intervals for ASME Section XI valve testing, instrumentation calibration, instrument channel LSFT, containment isolation valve hydrostatic leak rate testing. The proposed changes do not necessitate a physical alteration to the plant (no new or different type of equipment will be installed). In that the requested extension durations are small as compared to the overall interval allowed by TS, NRC and industry evaluations support extension of LSFT, and past testing results provide confidence of no effect on equipment availability by extending the surveillance interval, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS change requests one-time extensions of the surveillance intervals for the Division 1, 2, and 3 Undervoltage and Degraded Voltage instrumentation calibration. The proposed changes do not necessitate a physical alteration to the plant (no new or different type of equipment will be installed). In that the requested extension durations are small as compared to the overall interval allowed by TS and past testing results provide confidence of no effect on equipment availability by extending the surveillance interval, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change will not involve a significant reduction in the margin of safety.

The proposed TS change requests a one-time extension of the surveillance intervals for ASME Section XI valve testing, instrumentation calibration, instrument channel LSFT, and containment isolation valve hydrostatic leak rate testing. The proposed changes do not necessitate a physical alteration to the plant (no new or different type of equipment will be installed). In that the requested extension durations are small as compared to the overall interval allowed by TS, NRC and industry evaluations support extension of LSFT, and past testing results provide confidence of no effect on equipment availability by extending the surveillance interval, the change does not involve a significant reduction in the margin of safety.

The proposed TS change requests a one-time extension of the surveillance intervals for the division 1, 2, and 3 Undervoltage and Degraded Voltage instrumentation calibration. The proposed changes do not necessitate a physical alteration to the plant (no new or different type of equipment will be installed). In that the requested extension durations are small as compared to the overall interval allowed by TS and past testing results provide confidence of no effect on equipment availability by extending the surveillance interval, the change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room Location:* Perry Public Library, 3753 Main Street, Perry, Ohio 44081

*Attorney for licensee:* Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037

*NRC Project Director:* Gail H. Marcus

## Previously Published Notices Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

### Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

*Date of application for amendments:* July 19, 1995

Description of amendments request: Amend the Sequoyah Nuclear Plant, Units 1 and 2 Technical Specification to incorporate new requirements associated with steam generator tube inspections and repair.

*Date of publication of individual notice in the* **Federal Register:** August 1, 1995 (60 FR 39198)

*Expiration date of individual notice:* August 31, 1995

*Local Public Document Room Location:* Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402.

## Notice Of Issuance Of Amendments To Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these

amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

**Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona**

*Date of applications for amendments:* December 30, 1993 and July 12, 1994. The December 30, 1993, application was supplemented by letters dated November 30, 1994, May 24, 1995, and June 21, 1995, and the July 12, 1994, application was supplemented by letter dated June 21, 1995.

*Brief description of amendments:* The amendments (1) revise the degraded voltage relay trip setpoint and (2) enhance the current presentation of the information regarding the loss-of-voltage relay setpoint. A time-voltage curve has been added to the technical specifications as a more accurate characterization of the inverse-time relay response.

*Date of issuance:* July 21, 1995

*Effective date:* July 21, 1995, to be implemented within 45 days of issuance.

*Amendment Nos.:* Unit 1 - Amendment No. 96; Unit 2 - Amendment No. 84; Unit 3 - Amendment No. 67

*Facility Operating License Nos.* NPF-41, NPF-51, and NPF-74: The amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** June 8, 1994 and August 17, 1994 (59 FR 29625 and 59 FR 42334) The November 30, 1994, May 24, 1995, and June 21, 1995, letters provided additional clarifying information and did not change the initial no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 21, 1995.No significant hazards consideration comments received: No.

*Local Public Document Room Location:* Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004.

**Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina**

*Date of application for amendment:* February 6, 1995

*Brief description of amendment:* The amendment allows the relocation of cycle-specific core operating limits of Figure 3.1-1, Shutdown Margin versus Boron Concentration in Technical Specification (TS) 3.1.1.2, Shutdown Margin- Modes 3, 4, and 5, to the plant Core Operating Limits Report.

*Date of issuance:* August 1, 1995

*Effective date:* August 1, 1995

*Amendment No.* 59

*Facility Operating License No.* NPF-63. Amendment revises the Technical Specifications

*Date of initial notice in* **Federal Register:** March 15, 1995 (60 FR 14017) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 1, 1995.No significant hazards consideration comments received: No

*Local Public Document Room Location:* Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

**Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina**

*Date of application for amendment:* March 30, 1995, as supplemented July 6, 1995. The July 6, 1995, submittal did not change the initial no significant hazards consideration determination; it contained clarifying information only.

*Brief description of amendment:* The amendment revises the Emergency Diesel Generator (EDG) surveillance requirements contained in TS 3/48.1.1.2 to be consistent with NUREG-1431, ''Standard Technical Specifications, Westinghouse Plants,'' and to eliminate the need for duplicate EDG testing being performed to satisfy the requirements of the Station Blackout Rule and the Maintenance Rule.

*Date of issuance:* August 1, 1995

*Effective date:* August 1, 1995

*Amendment No.:* 60

*Facility Operating License No.* NPF-63. Amendment revises the Technical Specifications

*Date of initial notice in* **Federal Register:** April 26, 1995 (60 FR 20515) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 1, 1995.No significant hazards consideration comments received: No

*Local Public Document Room Location:* Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

**Commonwealth Edison Company, Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois**

*Date of application for amendments:* June 8, 1995, which superseded the December 16, 1994, request in its entirety, and additional correspondence dated November 30, 1994, April 27, May 5, May 11 and June 23, 1995.

*Brief description of amendments:* The amendments revised Figure 3.4-4a ''Nominal PORV Pressure Relief Setpoint Versus RCS Temperature for the Cold Overpressure Protection (LTOP) System'' in the Braidwood Unit 1's Technical Specifications. The revision extends the applicability of Figure 3.4-4a from 5.37 effective full power years (EFPY) to 16 EFPY. In addition, the amendments remove the 638 psig administrative limit line from the LTOPS curve, because the appropriate instrument uncertainties and discharge piping pressure limits have been incorporated in the new curve. Finally, the amendments contains administrative changes to Figure 3.4-4a and its associated index page.

*Date of issuance:* July 24, 1995

*Effective date:* July 24, 1995

*Amendment Nos.:* 64 and 64

*Facility Operating License Nos.* NPF-72 and NPF-77: The amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** June 21, 1995 (60 FR 32360). The June 23, 1995, letter, corrected a collating error in the June 8, 1995, submittal and did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 24, 1995.No significant hazards consideration comments received: No

*Local Public Document Room Location:* Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

**Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois**

*Date of application for amendments:* March 23, 1994, as supplemented on July 26, 1994, and subsequently superseded by a submittal dated

February 15, 1995. The February 15, 1995, request was supplemented on February 28, 1995.

*Brief description of amendments:* The amendments approve a maximum moderator temperature coefficient (MTC) of +7 pcm/°F and relocate specification of the cycle specific MTC from the Technical Specifications to the operating limits report. The staff also approved the methodology proposed by the licensee for ensuring that the plants continue to meet the anticipated transient without scram (ATWS) rule (10 CFR 50.62) during operation with cycle specific MTCs.

*Date of issuance:* July 27, 1995Effective date: Immediately, to be implemented within 30 days.

*Amendment Nos.:* Byron Units 1 and 2 - 73, 73 and Braidwood Units 1 and 2 - 65, 65

*Facility Operating License Nos.* NPF-37, NPF-66, NPF-72 and NPF-77: The amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** April 12, 1995 (60 FR 18623) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 27, 1995.No significant hazards consideration comments received: No

*Local Public Document Room Location:* For Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

**Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois**

*Date of application for amendments:* July 29, 1992, as supplemented January 14, 1993, February 16, 1993, and May 9, 1995.

*Brief description of amendments:* The amendments upgrade the current custom Technical Specifications for Dresden and Quad Cities to the Standard Technical Specifications contained in NUREG-0123, ''Standard Technical Specification General Electric Plants BWR/4.'' These amendments upgrade only Section 3/4.3, ''Reactivity Control.''

*Date of issuance:* July 27, 1995 Effective date: Immediately, to be implemented no later than December 31, 1995, for Dresden Station and June 30, 1996, for Quad Cities Station.

*Amendment Nos.:* 137, 131, 158, and 154

*Facility Operating License Nos.* DPR-19, DPR-25, DPR-29 and DPR-30. The amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** June 23, 1993 (58 FR 34071) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 27, 1995. No significant hazards consideration comments received: No

*Local Public Document Room Location:* for Dresden, Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450; for Quad Cities, Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

**Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois**

*Date of application for amendments:* December 14, 1994

*Brief description of amendments:* The amendments revise the surveillance test intervals and allowed outage times for certain actuation instrumentation in the reactor protection, isolation, emergency core cooling, control rod withdrawal block, monitoring and feedwater/main turbine trip systems. The amendments also include changes to the feedwater/main turbine trip limiting condition for operation required actions, several mode related changes to the nuclear instrumentation and rod block specifications, shiftly channel check requirements for several systems, and several editorial changes to correct errors and remove outdated footnotes.

*Date of issuance:* August 2, 1995

*Effective date:* Immediately, to be implemented within 90 days.

*Amendment Nos.:* 104 and 90

*Facility Operating License Nos.* NPF-11 and NPF-18: The amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** March 1, 1995 (60 FR 11128) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 2, 1995.No significant hazards consideration comments received: No

*Local Public Document Room Location:* Jacobs Memorial Library, Illinois Valley Community College, Oglesby, Illinois 61348.

**Commonwealth Edison Company, Docket No. 50-295, Zion Nuclear Power Station, Unit 1, Lake County, Illinois**

*Date of application for amendment:* May 17, 1995, as supplemented on June 2, June 16, and July 12, 1995.

*Brief description of amendment:* The amendment allows a limited number of steam generator tubes with roll transition indications to remain in service until the September 1995 refueling outage.

*Date of issuance:* July 26, 1995

*Effective date:* July 26, 1995

*Amendment No.:* 167

*Facility Operating License No.* DPR-39: The amendment revises the Technical Specifications. The June 2, June 16, and July 12, 1995, submittals provided additional clarifying information that did not change the initial proposed no significant hazards consideration determination. The information, however, included changes to details of the administrative limits mentioned in the initial proposed no significant hazards consideration determination.Public comments requested as to proposed no significant hazards consideration determination: Yes (60 FR 27798). This notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by June 26, 1995, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment. The Commission's related evaluation of the amendments, finding of exigent circumstances and final no significant hazards consideration determination is contained in a Safety Evaluation dated July 26, 1995.

*Local Public Document Room Location:* Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

**Consumers Power Company, Docket No. 50-155, Big Rock Point Plant, Charlevoix County, Michigan**

*Date of application for amendment:* December 15, 1994

*Brief description of amendment:* The amendment revises Technical Specification 11.3.1.5 ACTION a. to eliminate the need to demonstrate that the actuation circuitry of the unaffected reactor depressurization system channels is operable. In addition, the amendment makes an editorial change to correct a typographical error.

*Date of issuance:* July 28, 1995

*Effective date:* July 28, 1995

*Amendment No.:* 115

*Facility Operating License No.* DPR-6. Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** April 26, 1995 (60 FR 20516) The Commission's related evaluation of the amendment is contained in a Safety

Evaluation dated July 28, 1995. No significant hazards consideration comments received: No.

*Local Public Document Room Location:* North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

**Consumers Power Company, Docket No. 50-155, Big Rock Point Plant, Charlevoix County, Michigan**

*Date of application for amendment:* March 4, 1993, as revised April 14, 1993, as supplemented April 19 and May 31, 1995

*Brief description of amendment:* The amendment revises the Technical Specifications (TS) to conform to the wording of the revised 10 CFR Part 20, ''Standards for Protection Against Radiation,'' and to reflect a separation of chemistry and radiation protection responsibilities.

*Date of issuance:* August 2, 1995

*Effective date:* August 2, 1995

*Amendment No.:* 16

*Facility Operating License No.* DPR-6. Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** May 12, 1993 (58 FR 28053), as corrected June 1, 1993 (58 FR 31222). The supplemental submittals were noticed on June 21, 1995 (60 FR 32361). The Commission's related evaluation of the amendment is contained in a Safety Evaluation datedNo significant hazards consideration comments received: No.

*Local Public Document Room Location:* North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

**Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan**

*Date of application for amendment:* April 7, 1994, as supplementedApril 27, 1995.

*Brief description of amendment:* This amendment relocates certain Technical Specifications (TS) that contain fuel cycle-specific parameter limits that change with core reloads to a Core Operating Limits Report. TS bases have also been revised to refer to limits relocated to the COLR. A portion of the amendment request was denied. A separate Notice of Denial of Amendment has been sent to the **Federal Register** for publication.

*Date of issuance:* July 26, 1995

*Effective date:* July 26, 1995

*Amendment No.:* 169

*Facility Operating License No.* DPR-20. Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** May 25, 1994 (59 FR 27053) The April 27, 1995, submittal provided clarifying information which was within the scope of the initial application and did not affect the staff's initial proposed no significant hazards consideration findings. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 26, 1995.No significant hazards consideration comments received: No.

*Local Public Document Room Location:* Van Wylen Library, Hope College, Holland, Michigan 49423.

**Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina**

*Date of application for amendments:* April 12, 1995

*Brief description of amendments:* The amendments delete Technical Specification (TS) 3/4.3.4, ''Turbine Overspeed Protection,'' and its associated Bases. The deletion of TS 3/4.3.4 and its Bases provides Duke Power Company the flexibility to implement the manufacturer's recommendations for turbine steam valve surveillance test requirements. These test requirements will be contained in the Selected Licensee Commitment Manual.

*Date of issuance:* July 21, 1995

*Effective date:* As of the date of issuance to be implemented within 30 days from the date of issuance

*Amendment Nos.:* 131 and 125

*Facility Operating License Nos.* NPF-35 and NPF-52: Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** June 21, 1995 (60 FR 32361) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 21, 1995. No significant hazards consideration comments received: No

*Local Public Document Room Location:* York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

**Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina**

*Date of application for amendments:* January 18, 1995.

*Brief description of amendments:* The amendments relocate the requirements for the seismic instrumentation, meteorological instrumentation, and loose-part detection system, and the associated Bases and surveillance requirements, from the TS to the Selected Licensee Commitment Manual (Chapter 16 of the FSAR). This will allow future changes to these controls to be performed under the provisions of 10 CFR 50.59. No changes are being made to the technical content of the affected TS pages.

*Date of issuance:* July 24, 1995

*Effective date:* As of the date of issuance to be implemented within 30 days

*Amendment Nos.:* 132 and 126

*Facility Operating License Nos.* NPF-35 and NPF-52: Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** May 10, 1995 (60 FR 24910) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 24, 1995.No significant hazards consideration comments received: No

*Local Public Document Room Location:* York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

**Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina**

*Date of application for amendments:* April 12, 1995

*Brief description of amendments:* The amendments delete Technical Specification (TS) 3/4.3.4, ''Turbine Overspeed Protection,'' and its associated Bases. The deletion of TS 3/4.3.4 and its associated Bases provides Duke Power Company the flexibility to implement the manufacturer's recommendations for turbine steam valve surveillance test requirements. These test requirements will be contained in the Selected Licensee Commitment (SLC) Manual. The SLC Manual is Chapter 16 of the Updated Final Safety Analysis Report.

*Date of issuance:* August 2, 1995

*Effective date:* As of the date of issuance to be implemented within 30 days from the date of issuance

*Amendment Nos.:* 156 and 138

*Facility Operating License Nos.* NPF-9 and NPF-17: Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** June 21, 1995 (60 FR 32362) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 2, 1995.No significant hazards consideration comments received: No.

*Local Public Document Room Location:* Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

**Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina**

*Date of application for amendments:* September 28, 1994, as supplemented

by letters dated May 3 and June 14, 1995.

*Brief description of amendments:* The amendments revise Technical Specification Tables 3.3-3, 3.3-4, 3.3-5, and 4.3-2 of the Engineered Safety Features Actuation System Instrumentation tables to update the ''Loss of Power'' function.

*Date of issuance:* August 2, 1995

*Effective date:* As of the date of issuance to be implemented within 60 days, or 60 days after the completion date of the Unit 2 modification, whichever is later.

*Amendment Nos.:* 157 and 139

*Facility Operating License Nos.* NPF-9 and NPF-17: Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** December 21, 1994 (59 FR 65811) The May 3 and June 14, 1995, letters provided clarifying information that did not change the scope of the September 28, 1994, application and the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 2, 1995. No significant hazards consideration comments received: No.

*Local Public Document Room Location:* Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

**Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina**

*Date of application for amendments:* January 18, 1995

*Brief description of amendments:* The amendments delete selected Technical Specification (TS) requirements related to instrumentation from the TS, and relocate them to the Selected Licensee Commitment (SLC) Manual, with their associated Bases and surveillance requirements. No changes are being made to the technical content of the affected TS pages. Future changes to the SLC Manual (Chapter 16 of the Final Safety Analysis Report) will be controlled by the provisions of 10 CFR 50.59. The relocated requirements include the following:

TS 3/4.3.3.3, Seismic Instrumentation

TS 3/4.3.3.4, Meteorological Instrumentation

TS 3/4.10, Loose-Part Detection System

*Date of issuance:* August 2, 1995

*Effective date:* As of the date of issuance to be implemented within 30 days from the date of issuance

*Amendment Nos.:* 158 and 140

*Facility Operating License Nos.* NPF-9 and NPF-17: Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** March 1, 1995 (60 FR 11132) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 2, 1995.No significant hazards consideration comments received: No.

*Local Public Document Room Location:* Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

**Duquesne Light Company, et al., Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania**

*Date of application for amendments:* February 4, 1994, as supplemented June 29, 1995.

*Brief description of amendments:* These amendments modify the Technical Specifications (TSs) related to containment air locks (TSs 1.8, 3/4.6.1.1 and 3/4.6.1.3) and associated Bases to make them as close to the NRC's Improved Standard Technical Specifications (NUREG-1431) as the plant-specific design will permit. The changes in TS 3/4.6.1.1 and 3/4.6.1.3 modify surveillance requirements and limiting conditions for operation and effect numerous administrative and format changes.

*Date of issuance:* July 26, 1995

*Effective date:* Units 1 and 2, as of the date of issuance and shall be implemented within 60 days.

*Amendment Nos.:* 190 and 72

*Facility Operating License Nos.* DPR-66 and NPF-73: Amendments revised the Units 1 and 2 Technical Specifications, and the Unit 2 License.

*Date of initial notice in* **Federal Register:** July 20, 1994 (59 FR 37070) The June 29, 1995 letter did not change the original no significant hazards consideration determination or expand the scope of the July 20, 1994 Federal Register notice.The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 26, 1995.No significant hazards consideration comments received: No.

*Local Public Document Room Location:* B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

**Entergy Operations, Inc., Docket No. 50-382, Waterford Steam ElectricStation, Unit 3, St. Charles Parish, Louisiana**

*Date of amendment request:* May 12, 1995

*Brief description of amendment:* The amendment removed the specific scheduling requirements for Type A containment leakage rate tests from the Technical Specifications for Waterford 3 and replaced these requirements with a requirement to perform Type A, testing in accordance with Appendix J to 10 CFR Part 50. The proposed changes adopt the wording for primary containment integrated leak rate testing that is consistent with the requirements of the Combustion Engineering Improved Standard Technical Specifications (NUREG 1432). The proposed changes also include several administrative changes.

*Date of issuance:* August 3, 1995

*Effective date:* August 3, 1995, to be implemented within 60 days of issuance.

*Amendment No.:* 110

*Facility Operating License No.* NPF-38. Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** June 6, 1995 (60 FR 29876) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 3, 1995.No significant hazards consideration comments received: No.

*Local Public Document Room Location:* University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122.

**Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia**

*Date of application for amendments:* October 13, 1994, as supplemented by letters dated January 13 and May 4, 1995.

*Brief description of amendments:* The amendments revise the Technical Specifications to lower the anticipated transient without scram-recirculation pump trip (ATWS-RPT) setpoint by approximately 2 feet 2 inches to minimize the potential for RPTs following reactor scram, and allow restarting the recirculation pump following an RPT when the temperature differential between the coolant at the reactor bottom head and the reactor steam dome cannot be obtained, provided certain conditions are met.

*Date of issuance:* July 21, 1995

*Effective date:* As of the date of issuance to be implemented within 60 days.

*Amendment Nos.:* 196 and 136

*Facility Operating License Nos.* DPR-57 and NPF-5. Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** December 21, 1994 (59 FR

65813). The January 13 and May 4, 1995, letters provided clarifying information that did not change the scope of the October 13, 1994, application and initial proposed no significant hazards consideration determination.The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 21, 1995. No significant hazards consideration comments received: No

*Local Public Document Room Location:* Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513.

**GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania**

*Date of application for amendment:* June 1, 1995

*Brief description of amendment:* The amendment revises the TMI-1 Technical Specifications to allow the use of two zirconium-based advanced fuel rod cladding materials manufactured by the Babcock & Wilcox Fuel Company.

*Date of issuance:* July 24, 1995

*Date of issuance:* July 24, 1995

*Effective date:* July 24, 1995

*Amendment No.:* 194

*Facility Operating License No.* DPR-50. Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** June 21, 1995 (60 FR 32366) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated July 24, 1995.No significant hazards consideration comments received: No.

*Local Public Document Room Location:* Law/Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

**Gulf States Utilities Company, Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana**

*Date of amendment request:* May 13, 1993 as supplemented by letter dated January 31, 1995

*Brief description of amendment:* The amendment revises Attachment 3 of the license conditions to remove several license conditions pertaining to the Division I and II Transamerica Delaval, Inc. emergency diesel generators. The conditions pertain to engine overhaul frequency, maintenance and surveillance program, and inspection of crankshafts, cylinder heads, engine block, and turbochargers.

*Date of issuance:* July 25, 1995

*Effective date:* July 25, 1995

*Amendment No.:* 82

*Facility Operating License No.* NPF-47. The amendment revised the operating license.

*Date of initial notice in* **Federal Register:** August 4, 1993 (58 FR 41505) The additional information contained in the supplemental letter dated January 31, 1995, was clarifying in nature and thus, within the scope of the initial notice and did not affect the staff's proposed no significant hazards consideration determination.The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 25, 1995.No significant hazards consideration comments received. No.

*Local Public Document Room Location:* Government Documents Department, Louisiana State University, Baton Rouge, LA 70803.

**Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas**

*Date of amendment request:* April 27, 1995, as supplemented by letters dated May 4 and 25, 1995.

*Brief description of amendments:* The amendments revised the tables associated with Technical Specifications (TSs) 3/4.3.3.5, Remote Shutdown System, to eliminate the requirement for core exit thermocouples (CETs). The amendments also revised the tables associated with TS 3/4.3.3.6, Accident Monitoring Instrumentation, to require two operable channels of CETs, where each channel is required to have at least two operable CETs per core quadrant. Each channel is also required to have at least four operable CETs in at least one quadrant to support the operability of the subcooling margin monitors.

*Date of issuance:* July 24, 1995

*Effective date:* July 24, 1995

*Amendment Nos.:* Unit 1 - Amendment No. 77; Unit 2 - Amendment No. 66

*Facility Operating License Nos.* NPF-76 and NPF-80. The amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** June 21, 1995 (60 FR 32366) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 24, 1995. No significant hazards consideration comments received: No

*Local Public Document Room Location:* Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488.

**Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas**

*Date of amendment request:* May 2, 1995

*Brief description of amendments:* The amendments revised Technical Specifications 3.4.2.2. and 3.7.1.1 (Table 3.7-2) by relaxing the lift setting tolerances of the pressurizer safety valves from plus or minus 1% to plus or minus 2% and the main steam safety valves from plus or minus 1% to plus or minus 3%, respectively. In addition, a footnote was added to require that the pressurizer safety valves and main steam safety valves setpoint tolerances be restored to within plus or minus 1% whenever a lift setting is determined to be outside plus or minus 1% following valve testing.

*Date of issuance:* July 25, 1995

*Effective date:* July 25, 1995, to be implemented within 30 days of issuance.

*Amendment Nos.:* Unit 1 - Amendment No. 78; Unit 2 - Amendment No. 67

*Facility Operating License Nos.* NPF-76 and NPF-80. The amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** June 6, 1995 (60 FR 29877) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 25, 1995.No significant hazards consideration comments received: No

*Local Public Document Room Location:* Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488.

**Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine**

*Date of application for amendment:* March 7, 1995, as supplemented on June 7, 1995.

*Brief description of amendment:* The amendment adds an Exception to Technical Specifications 3.6.A and 3.6.C. The Exception permits reduced component cooling water flow for short periods of time, while component cooling water heat exchangers are shifted.

*Date of issuance:* July 24, 1995

*Effective date:* As of the date of issuance, to be implemented within 30 days.

*Amendment No.:* 151

*Facility Operating License No.* DPR-36: Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** May 10, 1995 (60 FR 24911) The June 7, 1995, submittal provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 24, 1995.No significant hazards consideration comments received: No

*Local Public Document Room Location:* Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, ME 04578.

**Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut**

*Date of application for amendment:* May 24, 1995

*Brief description of amendment:* The amendment permits an individual who does not have a current senior reactor operator (SRO) license for Millstone Unit 1 to hold the Operations Manager position. In this case, the Operations Manager position would require the individual to have previously held an SRO license at a boiling water reactor and the individual serving in the capacity of the Assistant Operations Manager to hold a current SRO license for Millstone Unit 1. In addition, the amendment renumbers the applicable sections.

*Date of issuance:* July 24, 1995

*Effective date:* As of the date of issuance to be implemented within 60 days.

*Amendment No.:* 83

*Facility Operating License No.* DPR-21. Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** June 21, 1995 (60 FR 32370) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 24, 1995.No significant hazards consideration comments received: No.

*Local Public Document Room Location:* Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

**Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut**

*Date of application for amendment:* April 18, 1995

*Brief description of amendment:* The amendment allows the use of the ANSI/ANS 5.1-1979 decay heat model for the post-loss of coolant accident containment cooling analysis.

*Date of issuance:* July 24, 1995

*Effective date:* As of the date of issuance to be implemented immediately.

*Amendment No.:* 84

*Facility Operating License No.* DPR-21. Amendment revised the license.

*Date of initial notice in* **Federal Register:** May 10, 1995 (60 FR 24911). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 24, 1995. No significant hazards consideration comments received: No.

*Local Public Document Room Location:* Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

**Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut**

*Date of application for amendment:* April 28, 1995

*Brief description of amendment:* The amendment revises the diesel generator fuel oil testing that is performed on new fuel prior to the addition of new fuel to the storage tank.

*Date of issuance:* July 26, 1995

*Effective date:* As of the date of issuance to be implemented within 60 days.

*Amendment No.:* 118

*Facility Operating License No.* NPF-49. Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** June 6, 1995 (60 FR 29881) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 26, 1995. No significant hazards consideration comments received: No.

*Local Public Document Room Location:* Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

**PECO Energy Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station,Unit Nos. 2 and 3, York County, Pennsylvania**

*Date of application for amendments:* November 14, 1994 as supplemented by letter dated April 10, 1995.

*Brief description of amendments:* These amendments relocate Nuclear Review Board (NRB) review requirements, Independent Safety Engineering Group (ISEG) requirements, and certain review and audit requirements from the TS to the Peach Bottom Quality Assurance Program.

*Date of issuance:* July 25, 1995

*Effective date:* July 25, 1995

*Amendments Nos.:* 208 and 212

*Facility Operating License Nos.* DPR-44 and DPR-56: The amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** December 21, 1994 (59 FR 65822) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 25, 1995.No significant hazards consideration comments received: No

*Local Public Document Room Location:* Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

**Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey**

*Date of application for amendment:* July 27, 1994, as supplemented May 26, July 10, and July 25, 1995

*Brief description of amendment:* This amendment revises the Allowed Out-of-Service Times (AOTs) for Inoperable Station Service Water System (SSWS) pumps, inoperable safety Auxiliaries Cooling System (SACS) pumps, and inoperable Emergency Diesel Generators (EDGs). In addition, this amendment also allows on-line maintenance of the EDGs.

*Date of issuance:* August 1, 1995

*Effective date:* August 1, 1995

*Amendment No.:* 75

*Facility Operating License No.* NPF-57: This amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** August 31, 1994 (59 FR 45033) The supplemental letters did not change the original no significant hazards consideration determination nor the original Federal Register notice. The

Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 1, 1995.No significant hazards consideration comments received: No

*Local Public Document Room Location:* Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070.

**Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey**

*Date of application for amendment:* April 25, 1994, as supplemented July 24, 1995

*Brief description of amendment:* This amendment eliminates the requirement from the Hope Creek Technical Specifications to perform Type C leak rate tests, in accordance with 10 CFR Part 50, Appendix J, of identified containment isolation valves that penetrate the primary containment and terminate below the minimum water level in the suppression chamber (torus). The valves are still subject to testing in accordance with the American Society of Mechanical Engineers Boiler and Pressure Vessel Code.

*Date of issuance:* August 1, 1995

*Effective date:* As of the date of issuance to be implemented within 60 days.

*Amendment No.:* 76

*Facility Operating License No.* NPF-57: This amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** June 8, 1994 (59 FR 29632) The supplemental letter did not change the original no significant hazards consideration determination nor the original Federal Register notice.The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 1, 1995.No significant hazards consideration comments received: No

*Local Public Document Room Location:* Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070.

**Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey**

*Date of application for amendments:* April 18, 1995

*Brief description of amendments:* The amendments delete the quarterly leak rate test for the containment pressure-vacuum relief valves that is currently required because of the valves' resilient seat material. The changes are being made to accommodate replacement of the resilient valve seat material with a hard seat (metal-to-metal) design. The valves would remain in the 10 CFR Part 50, Appendix J, Type C leak rate test program.

*Date of issuance:* August 1, 1995

*Effective date:* Unit 1, As of the date of issuance, to be implemented prior to restart following the twelfth refueling outage; Unit 2, As of the date of issuance, to be implemented prior to restart following the current refueling outage.

*Amendment Nos.:* 172 and 153

*Facility Operating License Nos.* DPR-70 and DPR-75. The amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** May 23, 1995 (60 FR 27342) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 1, 1995.No significant hazards consideration comments received: No

*Local Public Document Room Location:* Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

**Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California**

*Date of application for amendments:* August 26, 1994

*Brief description of amendments:* These amendments revise Technical Specification 3/4.7.5, ''Control Room Emergency Air Cleanup System,'' to provide an exception to Limiting Condition for Operation 3.0.4 for Modes 5 and 6 and for a defueled configuration. These amendments also add the applicability statement ''or during movement of irradiated fuel assemblies.''

*Date of issuance:* July 26, 1995

*Effective date:* July 26, 1995

*Amendment Nos.:* Unit 2 - Amendment No. 123; Unit 3 - Amendment No. 112

*Facility Operating License Nos.* NPF-10 and NPF-15: The amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** November 9, 1994 (59 FR 55891) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 26, 1995.No significant hazards consideration comments received: No.

*Local Public Document Room Location:* Main Library, University of California, P. O. Box 19557, Irvine, California 92713.

**Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee**

*Date of application for amendments:* December 16, 1994; supplemented July 19, 1995 (TS 94-06)

*Brief description of amendments:* The amendments replace the present Auxiliary Feedwater system Specification 3/4.7.1.2 with new specifications that are modeled after the Westinghouse Standard Technical Specifications.

*Date of issuance:* August 2, 1995

*Effective date:* August 2, 1995

*Amendment Nos.:* 206 and 196

*Facility Operating License Nos.* DPR-77 and DPR-79: Amendments revise the technical specifications.

*Date of initial notice in* **Federal Register:** February 1, 1995 (60 FR 6309) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 2, 1995.No significant hazards consideration comments received: None

*Local Public Document Room Location:* Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402.

**Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia.**

*Date of application for amendments:* November 29, 1994

*Brief description of amendments:* These amendments allow the use of ZIRLO, a new zirconium-based alloy, as a fuel cladding material.

*Date of issuance:* July 27, 1995

*Effective date:* July 27, 1995

*Amendment Nos.:* 202 and 202

*Facility Operating License Nos.* DPR-32 and DPR-37: Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** January 4, 1995 (60 FR 508) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 27, 1995.No significant hazards consideration comments received: No

*Local Public Document Room Location:* Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

**Notice Of Issuance Of Amendments to facility Operating Licenses And Final Determination Of No Significant Hazards Consideration And Opportunity For A Hearing (Exigent Public Announcement Or Emergency Circumstances)**

During the period since publication of the last biweekly notice, the

Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By September 15, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such

a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

**Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas**

*Date of application for amendment:* July 28, 1995

*Brief description of amendment:* This amendment deletes the portion of License Condition 2.C.(1) that references Attachment 1. Attachment 1 requires the pump in the keepwarm system on the emergency diesel generator to satisfy the requirements of the American Society of Mechanical Engineers Code, Section III, Class 3.

*Date of issuance:* August 3, 1995I11*Effective date:* August 3, 1995

*Amendment No.:* 88

*Facility Operating License No.* NPF-42: The amendment revised the operating license.Public comments requested as to proposed no significant hazards consideration: No.The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated August 3, 1995.

*Local Public Document Room Location:* Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

*Attorney for licensee:* Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037

*NRC Project Director:* William H. Bateman

Dated at Rockville, Maryland, this 16th day of August 1995.

For The Nuclear Regulatory Commission

**Jack W. Roe,**

*Director, Division of Reactor Projects - III/ IV Office of Nuclear Reactor Regulation*

[Doc. 95–20122 Filed 8–15–95; 8:45 am]

**BILLING CODE 7590–01–F**

## Use of Probabilistic Risk Assessment Methods in Nuclear Regulatory Activities; Final Policy Statement

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final policy statement.

**SUMMARY:** This statement presents the policy that the Nuclear Regulatory Commission (NRC) will follow in the use of probabilistic risk assessment (PRA) methods in nuclear regulatory matters. The Commission believes that an overall policy on the use of PRA methods in nuclear regulatory activities should be established so that the many potential applications of PRA can be implemented in a consistent and predictable manner that would promote regulatory stability and efficiency. In addition, the Commission believes that the use of PRA technology in NRC regulatory activities should be increased to the extent supported by the state-of-the-art in PRA methods and data and in a manner that complements the NRC's deterministic approach. The pertinent comments received from the published draft policy statement are reflected in this final policy statement. This policy statement will be implemented through the execution of the NRC's PRA Implementation Plan.

**EFFECTIVE DATE:** August 16, 1995.

**ADDRESSES:** The proposed policy statement and the comments received may be examined at: NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Anthony Hsia, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415–1075.

**SUPPLEMENTARY INFORMATION:**



### I. Background

The NRC has generally regulated the use of nuclear material based on deterministic approaches. Deterministic approaches to regulation consider a set of challenges to safety and determine how those challenges should be mitigated. A probabilistic approach to regulation enhances and extends this traditional, deterministic approach, by: (1) Allowing consideration of a broader set of potential challenges to safety, (2) providing a logical means for prioritizing these challenges based on risk significance, and (3) allowing consideration of a broader set of resources to defend against these challenges.

Until the accident at Three Mile Island (TMI) in 1979, the Atomic Energy Commission (now the NRC), only used probabilistic criteria in certain specialized areas of licensing reviews. For example, human-made hazards (e.g., nearby hazardous materials and aircraft) and natural hazards (e.g., tornadoes, floods, and earthquakes) were typically addressed in terms of probabilistic arguments and initiating frequencies to assess site suitability. The Standard Review Plan (NUREG–0800) for licensing reactors and some of the Regulatory Guides supporting NUREG–0800 provided review and evaluation guidance with respect to these probabilistic considerations.

The TMI accident substantially changed the character of the analysis of severe accidents worldwide. It led to a substantial research program on severe accident phenomenology. In addition,

both major investigations of the accident (the Kemeny and Rogovin studies) recommended that PRA techniques be used more widely to augment the traditional nonprobabilistic methods of analyzing nuclear plant safety. In 1984, the NRC completed a study (NUREG–1050) that addressed the state-of-the-art in risk analysis techniques.

In early 1991, the NRC published NUREG–1150, ''Severe Accident Risks: An Assessment for Five U.S. Nuclear Power Plants.'' In NUREG–1150, the NRC used improved PRA techniques to assess the risk associated with five nuclear power plants. This study was a significant turning point in the use of risk-based concepts in the regulatory process and enabled the Commission to greatly improve its methods for assessing containment performance after core damage and accident progression. The methods developed for and results from these studies provided a valuable foundation in quantitative risk techniques.

PRA methods have been applied successfully in several regulatory activities and have proved to be a valuable complement to deterministic engineering approaches. This application of PRA represents an extension and enhancement of traditional regulation rather than a separate and different technology. Several recent Commission policies or regulations have been based, in part, on PRA methods and insights. These include the Backfit Rule (§ 50.109, ''Backfitting''), the Policy Statement on ''Safety Goals for the Operation of Nuclear Power Plants,'' (51 FR 30028; August 21, 1986), the Commission's ''Policy Statement on Severe Reactor Accidents Regarding Future Designs and Existing Plants'' (50 FR 32138; August 8, 1985), and the Commission's ''Final Policy Statement on Technical Specifications Improvement for Nuclear Power Reactors'' (58 FR 39132; July 22, 1993). PRA methods also were used effectively during the anticipated transient without scram (ATWS) and station blackout (SBO) rulemaking, and supported the generic issue prioritization and resolution process. Additional benefits have been found in the use of risk-based inspection guides to focus NRC inspector efforts and make more efficient use of NRC inspection resources. Probabilistic analyses were extensively used in the development of the recently proposed rule change to reactor siting criteria in 10 CFR Part 100 (59 FR 52255; October 17, 1994). The proposed rule change invoked the use of a probabilistic approach to estimate the Safe Shutdown Earthquake Ground Motion for a nuclear reactor site, instead of the purely deterministic method currently specified in Appendix A to 10 CFR Part 100.

Currently, the NRC is using PRA techniques to assess the safety importance of operating reactor events and is using these techniques as an integral part of the design certification review process for advanced reactor designs. In addition, the Individual Plant Examination (IPE) program and the Individual Plant Examination—External Events (IPEEE) program (an effort resulting from the implementation of the Commission's ''Policy Statement on Severe Reactor Accidents Regarding Future Designs and Existing Plants'') have resulted in commercial reactor licensees using risk-assessment methods to identify any vulnerabilities needing attention.

The Commission has been developing performance assessment methods for low-level and high-level waste since the mid-1970s and these activities intensified using performance assessments techniques in the late 1980s and early 1990s. This has involved the development of conceptual models and computer codes to model the disposal of waste. Because waste-disposal systems are passive, certain analysis methods used for active systems in PRA studies for power reactors had to be adapted to provide scenario analysis for the performance assessment of the potential geologic repository at Yucca Mountain, Nevada. In regard to high-level waste, the NRC staff participates in a variety of international activities (e.g., the Performance Assessment Advisory Group of the Organization for Economic Cooperation and Development, Nuclear Energy Agency) to ensure that consistent performance assessment methods are used to the degree appropriate.

The Commission believes that an overall policy on the use of PRA in nuclear regulatory activities should be established so that the many potential applications of PRA methodology can be implemented in a consistent and predictable manner that promotes regulatory stability and efficiency and enhances safety. In May 1994, the NRC staff forwarded a draft PRA policy statement to the Advisory Committee on Reactor Safeguards (ACRS) for review and briefed ACRS on the same subject. On August 18, 1994, the NRC staff proposed a PRA policy statement to the Commission in SECY–94–218, ''Proposed Policy Statement on the Use of Probabilistic Risk Assessment Methods in Nuclear Regulatory Activities.'' In that Commission paper, the staff proposed that an overall policy on the use of probabilistic risk assessment (PRA) methods in nuclear regulatory activities should be established and that the use of PRA technology in NRC regulatory activities should be increased. Comments from the ACRS regarding the policy statement as documented in a letter dated May 11, 1994, were incorporated. On August 19, 1994, the staff forwarded SECY–94–219, ''Proposed Agency-Wide Implementation Plan for Probabilistic Risk Assessment (PRA),'' to the Commission. On August 30, 1994, the staff discussed the PRA policy statement and the PRA implementation plan in a public meeting with the Commission. On September 13 and October 4, 1994, the Secretary issued two staff requirements memoranda (SRMs) providing Commission guidance regarding the draft policy statement. In these SRMs, the Commission directed the staff to revise the proposed PRA policy statement, publish the policy statement for public comment in the **Federal Register**, and conduct a public workshop on the PRA implementation plan.

As directed by the Commission, the staff conducted a public workshop on December 2, 1994, to discuss the PRA implementation plan. The purpose of the workshop was to inform the public of NRC activities related to increasing the use of PRA methods and techniques in regulatory applications and to receive public comments on these activities. After the staff incorporated the comments from the SRMs, the proposed policy statement ''Use of Probabilistic Risk Assessment Methods in Nuclear Regulatory Activities'' was published in the **Federal Register** on December 8, 1994 (59 FR 63389). The public comment period expired on February 7, 1995.

## II. Summary of Public Comments and NRC Responses

In January and February 1995, the NRC received 17 letters commenting on the proposed policy statement on ''Use of Probabilistic Risk Assessment Methods in Nuclear Regulatory Activities''. These comments were from the following organizations: Six utilities—PECO Energy Company, Detroit Edison, Washington Public Power Supply System, Carolina Power and Light Company, Virginia Power Company, and Centerior Energy; three State regulatory agencies—State of Illinois Department of Nuclear Safety, State of New Jersey Department of Environmental Protection, State of Nevada Agency for Nuclear Projects; two industry groups—Nuclear Energy Institute and Westinghouse Owners Group; two engineering firms—PLG,

Inc. and ICF Kaiser Engineers, Inc.; University of California at Los Angeles; Ohio Citizens For Responsible Energy; Winston and Strawn, Counsel to the Nuclear Utility Backfitting and Reform Group; and the Department of Energy. Copies of the letters may be examined at the NRC Public Document Room at 2120 L Street., NW. (Lower Level), Washington, DC.

*General Comments*

Twelve commenters explicitly supported the basic tenet of the policy to increase the use of PRA technology in NRC's regulatory activities. The other commenters did not object to the policy statement but provided recommendations for the NRC to modify and improve the policy statement and/or the PRA implementation plan. Five commenters indicated that they agreed with the NEI comments on the proposed PRA policy statement. The NRC staff has reviewed the comments and summarized them in the following areas. The staff response to the comments are also included in this final policy statement.

*Use of PRA in Regulatory Decisions*

Several comments dealt with the scope of the PRA applications (where can PRA be used) and the implementation of the policy statement (how can PRA be used).

One commenter felt that neither the policy statement nor the PRA implementation plan provided consistent decision criteria for accepting PRA results as part of the justification for licensing decisions. The commenter was concerned that the short term effect of the policy statement would likely be an increased burden on the licensees. For the long term, the commenter recommended a systematic review of the rules and regulations to identify opportunities for elimination of unnecessary regulations. The proposed policy statement directed the staff to use PRA and associated analyses, where appropriate, as part of the justification for licensing decisions. The PRA implementation plan describes how the stated policy is to be implemented. Appropriate decision criteria will be developed and documented as part of the PRA implementation plan. The Commission has already performed a systematic review of the many current rules and regulations to identify opportunities for the elimination of unnecessary regulations. In 1993, the NRC established the Regulatory Review Group (RRG) to conduct a structured review of power reactor regulations with special attention on the opportunity to reduce unnecessary regulatory burdens. The RRG recommendations to reduce the regulatory burden included the suggestion to use more risk-based approaches in quality assurance, inservice inspection and testing, and the concept of a PRA plan. The RRG recommendations were documented in SECY–94–003. To better focus the NRC's effort on the PRA related activities recommended by the RRG, the PRA Working Group, and the Regulatory Analysis Steering Group, the PRA implementation plan was developed in 1994. The implementation plan included a task to develop guidelines for determining when it is practical to use PRA technology and results in regulatory activities. The NRC has had discussions with volunteer licensees regarding the pilot applications of risk-based regulatory initiatives. Results from the pilot applications will be incorporated in the NRC's guidance for PRA applications in regulatory activities. A number of current regulatory requirements are being considered as part of the PRA implementation plan to determine if alternative risk-based approaches are practical. Over time, the Commission would expect some streamlining and refocusing of its rules and regulations as part of this process. The Commission has implemented a continuing regulatory improvement program which is responsive to the commenter's recommendation of a systematic examination of marginal regulatory requirements.

Another commenter recommended that the policy statement be amended to state that when backfitting analyses are performed, mean risk levels be the exclusive basis of regulatory decision-making when comparisons are made against the $1000/person-rem criterion. The Commission does not feel this policy statement needs to address the issue regarding the use of mean risk level as the exclusive basis for applying the $1000/person-rem criterion because the Commission's safety goal policy statement has already spoken to the use of mean values of risk in connection with the cost-benefit analyses. Furthermore, this issue is addressed in the proposed Revision 2 of NUREG/BR–0058, ''Regulatory Analysis Guidelines of the U. S. Nuclear Regulatory Commission, Draft Report for Comment.'' This commenter also recommended that the policy statement should direct the staff to use the relevant plant specific PRA in assessing the need for any backfitting action at that plant. For generic backfits, this commenter recommended that the policy should allow licensees to take credit for plant specific information to justify relief from NRC imposed action. The Commission believes that the use of the plant specific PRA in the backfit analysis to evaluate whether there is a substantial increase in the overall protection or to justify relief from NRC imposed action is acceptable when combined with other relevant deterministic considerations, as appropriate.

Regarding the use of safety goals, one commenter recommended retention of the language in SECY–94–218 to effect that safety goals could be used in granting relief from unnecessary requirements. Another commenter recommended that the safety goals should be used as a minimum goal, rather than the maximum level of safety. As stated in the proposed PRA policy statement published on December 8, 1994, the Commission's safety goals are ''* * * intended to be generically applied by the NRC as opposed to plant specific applications,'' and ''* * * to be used with appropriate consideration of uncertainties in making regulatory judgements in the context of backfitting new generic requirements on nuclear power plant licensees.'' In the Staff Requirement Memorandum (SRM) dated June 15, 1990, regarding the implementation of safety goals, the Commission directed that ''Safety goals are to be used in a more generic sense and not to make specific licensing decisions.'' Therefore, at this time, the NRC would use the safety goals in making regulatory decisions regarding backfitting new generic requirements but not to make specific licensing decisions including granting relief from unnecessary requirements. Any changes to the safety goal policy are outside the scope of the PRA policy statement and would, therefore, need to be pursued independently.

Referring to paragraphs 1 and 2 of the proposed policy statement, a commenter suggested that it should include the application to NRC enforcement decisions, including the severity levels. As noted in NUREG–1525, ''Assessment of the NRC Enforcement Program,'' the Commission does not support defining severity levels using PRA results. The NRC's basis for severity level categorization clearly is safety significance. In judging safety significance, the NRC considers (1) Actual consequences, (2) potential consequences, and (3) regulatory significance. It is recognized that PRA results may be helpful to provide risk insights on the likelihood and significance of potential consequences. The NRC plans to continue to consider the use of PRA results where relevant as

part of the integrated process considering all facets surrounding the violation in support of enforcement decisions.

Several commenters discussed the role of PRA in reducing the unnecessary conservatisms in regulations and to support additional regulatory requirements. One commenter's concern was that the proposed policy statement appeared to be biased in the direction of using PRA to support deregulation. Another commenter was concerned with the implication that PRA could result in an additional layer of regulation. The policy statement addressed the need to remove unnecessary conservatism associated with regulatory requirements. It is not the Commission's intent to replace traditional defense-in-depth concepts with PRA, but rather to exploit the use of PRA insights to further understand the risk and improve risk-effective safety decision-making in regulatory matters. In doing so, the Commission is focusing its attention and resource allocation to areas of true safety significance. Where appropriate, PRA should be used to support additional regulatory requirements, according to 10 CFR 50.109 (Backfit Rule).

One commenter recommended that the policy statement should explicitly state that the use of PRA by licensees in regulatory matters is at the discretion of each licensee. The commenter also believed that the NRC should not prescribe how and when PRA methods should be used by licensees in regulatory matters, but should address the potential impact the expanded use of PRA may have on regulatory interactions with licensees. The Commission's PRA policy statement is intended only to encourage the NRC staff and industry to use probabilistic risk assessment methods in regulatory matters. It is not intended to prescribe or require any of the many potential PRA applications. Any requirements for licensees to perform PRA analyses would be expected to occur through formal rulemaking.

One commenter's concern was that there was a wide range of applications for which PRA was being applied without consistency and standards. This commenter urged the NRC to insist on quality PRAs commensurate with the intended applications and to develop standards which require rigorous and living PRAs by regulation for nuclear power plant applications. The commenter also questioned whether the PRA analyses for the IPE may be used for other applications because of a lack of PRA standards. Another commenter expressed the concern that strict conformance to detailed PRA standards would not be desirable, and recommended that flexibility in PRA models should be allowed. The Commission issued Generic Letter (GL) 88–20 with the primary purpose of generating IPEs to identify severe accident vulnerabilities. The PRAs which supported the IPE efforts may be useful for other applications, however, this would have to be evaluated on a case-by-case basis under well-defined objectives. After the Commission briefing on the IPE program, the Commission recognized, as stated in the SRM dated April 28, 1995, that current industry IPE results do not provide a complete basis for supporting risk-based regulatory decision-making. The SRM suggested that ''* * * the industry should, in coordination with the staff, initiate the actions necessary to develop PRAs that are acceptable for risk-based regulatory use (i.e., standardized methods, assumptions, level of detail).'' The industry is encouraged to formulate a general approach for performing PRAs acceptable for regulatory use. This approach should include guidance on standardizing approaches for use of PRA techniques for specific applications, narrowing some of the variability in the IPE results, and strengthening its usefulness in the regulatory and safety decision-making process. The Commission is currently considering the quality level and scope of assessment necessary to justify use of specific PRAs for specific regulatory applications. The Commission will require PRA quality commensurate with the proposed application.

*PRA Methodology*

One commenter agreed with the NRC that the probabilistic approach should be used to complement the deterministic approach and that PRA numbers alone should not be used to make regulatory decisions. The commenter also believed that uncertainties should not prevent or delay the implementation of PRA in regulatory activities. The Commission understands that uncertainties exist in any regulatory approach. These uncertainties are derived from knowledge limitations that are not created by PRA, but are often exposed by it. The PRA implementation plan has provided a framework to assess the significance of potential uncertainties and to develop a strategy to accommodate them in the regulatory process.

One commenter stated that probabilistic analysis is simply an extension of deterministic analysis. They are not separate and distinctive concepts. The Commission agrees with this concept as the proposed policy statement stated that ''The probabilistic approach to regulation is, therefore, considered an extension and enhancement of traditional regulation by considering risk in a more coherent and complete manner.'' The Commission believes that the PRA method plays a complementary role in relationship to the deterministic method. This was reflected in the policy statement that ''Deterministic-based regulations have been successful in protecting the public health and safety and PRA techniques are most valuable when they serve to focus the traditional, deterministic-based, regulations and support the defense-in-depth philosophy.''

One commenter recommended that the most efficient use of NRC resources should be to enhance or improve the existing methods, but not to develop new ones. The Commission's principal focus will be on improving the existing methods, but some new methods development may also be useful.

Another commenter recommended that the PRA policy statement should seek a uniform and standard application of PRA within the NRC, and begin with a commitment to ensure that PRA is used consistently and is not ignored when required by those unfamiliar or reluctant to apply it. The Commission's PRA policy statement specifically emphasizes the need for consistent and predictable application of PRA within the Commission to promote regulatory stability and efficiency. The Commission believes that this goal can be achieved through the implementation plan which will ensure that the appropriate use of PRA is implemented by the staff.

*Schedule of PRA Activities*

Two letters commented that the activities discussed in the PRA implementation plan appeared to be on a protracted schedule and recommended that priority and urgency be stressed and reflected in the plan, including the use of PRA and PRA insights in the near term. The Commission's PRA implementation plan showed the target completion dates for all the tasks. The Commission fully realizes the need for near term PRA applications and has included them in the implementation plan wherever possible. These milestones include examples such as pilot applications for risk-based initiatives and transfer of IPE insights to NRC staff members for use in regulatory matters in the near term. The Commission plans to periodically review the progress of the ''living'' PRA

implementation plan and, as appropriate, to adjust the priorities.

One letter commented that the NRC review and approval of licensing actions that are based on PRA insights should not be contingent upon the schedule for implementation of the plan. The plan should not be an impediment to moving forward toward the goals outlined in the policy statement. The Commission's implementation plan had been developed to effectively and expeditiously establish a framework for increasing the use of PRA technology inside the Commission. Since it is a ''living'' plan, new tasks could be added and existing tasks could be modified, as the plan progresses. The Commission agrees that the plan should not be an impediment to moving forward to achieve the goals stated in the policy. The Commission welcomes risk-based regulatory initiatives from the industry as the plan is being carried out and will adjust resources, as appropriate.

One commenter asked how the NRC will propose to control the utilities' application of PRA and the timeframe to implement the consistent use of PRA within the NRC. The Commission's PRA implementation plan describes the activities and schedule to effect a coherent and consistent PRA application within the agency. As the plan is implemented, the NRC expects to interact with licensees and publish guidelines for the application of PRA in their submittal to the NRC.

*PRA Training*

Two commenters advocated PRA training for appropriate NRC and licensee staff as soon as possible to ensure proper application of PRA in regulatory matters. A PRA training program has been in place for the NRC staff for a number of years. As part of the PRA implementation plan, the existing training program is being enhanced. The existing PRA training curriculum serves as the basis on which to build a more comprehensive staff PRA training program. Six new courses have been incorporated in the training program to address the short term needs from the increasing use of PRA in regulatory activities. As a result of the PRA implementation plan, the number of NRC staff participating in the training program has increased significantly during the first half of fiscal year 1995.

One commenter recommended that NRC's PRA training should be extended to State agencies that can justify attendance. Historically, attendance at NRC courses has been routinely available on a space-available, no-cost basis to State personnel as well as for other non-NRC personnel (such as foreign regulators, EPA, DOE, and other Federal personnel). This has included training in the PRA area for a limited number of State regulators. In courses that were under-subscribed by NRC personnel, many had sufficient available space to allow acceptance of outside personnel. Logistics for these arrangements are handled by the NRC office responsible for interactions with the outside group (i.e., Office of State Programs for States or Office of International Programs for foreign personnel). NRC training currently is not available to NRC licensees. Because of recent budgetary constraints, as described in SECY–95–017 ''Reinventing NRC Fee Policies,'' full cost reimbursements from States for NRC training is expected in future years. However, NRC will continue its space-available policy for all courses, including PRA courses.

*Data Collection*

Several commenters expressed concerns about the potential data collection implications of the proposed PRA policy. They are summarized as follows:

One commenter stated that the desire to collect detailed data related to equipment and human reliability should not prohibit the use of PRA for applications or support for decision-making. The collection of plant-specific data must be commensurate with the benefit that specific information might have on the quality or insight from the PRA. Plant-specific information may not be statistically significant. Furthermore, requiring all plants to collect the same information without a focus based on plant performance, is counter to the concept behind the Maintenance Rule.

Another commenter stated that the discussion of uncertainties in Part II.(B) of the proposed policy statement is appropriate. However, in the implementation of this part of the policy, care must be exercised to restrain from requiring or implying the need for massive plant-specific component level failure rate data collection programs. Several commenters expressed concerns that a new or expanded nuclear power plant experience data collection rulemaking could further burden the licensees and the resulting benefit may well be marginal.

The Commission agrees that it should make every effort to avoid any unnecessary regulatory burdens in connection with collecting reliability and availability data. Specific comments on the types of data that should or should not be collected will be addressed in connection with proposed data collection requirements when they are published for comment.

*Radiation Medicine*

One commenter recommended that NRC should abandon the use of the linear hypothesis in estimating radiation-induced cancer and mutation risk. The commenter further stated that the NRC's PRA implementation plan refers to risk analysis to analyze nuclear medical devices and that, ''* * * there are no nuclear medicine devices that have risk to be analyzed.''

The International Commission on Radiation Protection, the United Nations Scientific Committee on the Effects of Atomic Radiation, and the National Academy of Sciences' Committee on the Biological Effects of Ionizing Radiation believe that, in the absence of convincing evidence that there is a dose threshold or that low levels of radiation are beneficial, the assumptions regarding a linear nonthreshold dose-effect model for cancers and genetic effects and the existence of thresholds only for certain nonstochastic effects remain appropriate for formulating radiation protection standards. NRC follows their guidelines. Although some data suggest the possible use of other models, there are still many scientists who believe there are insufficient data to deviate from the ''linear'' hypothesis. The issue of realism involved in continuing the use of the ''linear'' hypothesis is expected to be a matter of debate over the coming years.

The NRC regulates radiation medicine, which includes both nuclear medicine and radiation oncology. The intent of the policy statement concerning medical applications is to refer to medical devices containing byproduct material, in particular, those used in radiation oncology. The term ''nuclear medical device'' was revised in the recent status update on the PRA implementation plan (SECY–95–079) and clarified in the policy statement.

*Nuclear Waste*

One commenter recommended that the NRC expand its use of PRA to other areas such as radiological dose assessment during the site decommissioning process. The NRC intends to consider expansion of PRA techniques into additional areas with the proviso that the application of these techniques to these facilities should be tempered according to the complexity of the disposal system, its uncertainties and the estimated risk.

One commenter provided comments on several aspects of the proposed policy statement in the nuclear waste

area. Regarding the scope of the policy statement, the commenter recommended that the policy statement be amended to include risk assessment applications other than power reactors. The Commission agrees with that comment. The use of PRA should be considered for those applications that involve projecting system performance for very long time periods, such as hundreds or thousands of years. The policy statement stated that the use of PRA technology should be increased in all regulatory matters. Another recommendation was to temper the commitment to PRA to reflect inherent risk differences associated with different waste management facilities. Because of inherent differences in the regulations and practices associated with the licensing of waste management facilities, the application of performance assessment (PRA is called performance assessment for waste management systems) techniques to these facilities should be tempered according to the complexity of the disposal system, uncertainties surrounding the system performance, and the estimated risk. The Commission also agrees with the comments regarding uncertainties in projecting repository performance and the use of technical expert judgment in assessing these uncertainties, but feels the PRA policy statement is not the appropriate forum to discuss these items applicable only to waste management.

Regarding the suggestion of describing the reasons for using the PRA and the application of PRA in regulatory activities, the Commission included the reasons for using PRA in Section III of the policy statement and added a description of the impact of PRA on the rule changes to 10 CFR Part 100 in the background discussion.

Another commenter expressed concern that the proposed policy statement inappropriately encouraged the use of PRA in the licensing and regulation of nuclear waste disposal facilities. The Commission disagrees with this comment since PRA techniques are acceptable in a performance assessment for the geologic repository, but are only part of the requirements for a license. The commenter was also concerned that any new regulations proposed by the Environmental Protection Agency (EPA) and the NRC's 10 CFR Part 60 for a high-level waste (HLW) disposal facility proposed for Yucca Mountain will probably prohibit use of PRA for these facilities because of Type I faults at this site. The Commission anticipates that both probabilistic and deterministic hazard assessment methodologies will be applied to assess the significance of faulting at Yucca Mountain. Furthermore, the Commission does not interpret 10 CFR Part 60 so as to preclude the use of PRA as a basis for licensing a proposed repository at Yucca Mountain. The commenter did not agree with NRC's characterization of the waste disposal system as passive and believed that, at this time, there is no alternative to the use of deterministic techniques for waste disposal application because PRA techniques are in the embryonic stage. The ''Fault Tree Handbook'' (NUREG–0492, January 1981) refers to ''passive'' as a ''* * * mechanism (e.g., wire) whereby the output of one 'active' component becomes the input to a second 'active' component.'' ''Passive'' is generally used for ''engineered'' components that have no moving parts. Since there are no ''engineered'' components that are ''active'' (or causing motion in another engineered component) in the post-closure phase of the potential geologic repository at Yucca Mountain, the NRC has applied the traditional PRA concept to the waste disposal system and referred to it as a ''passive system.'' The remanded 1985 EPA Standard, 40 CFR 190, required a probabilistic analysis for a geologic repository. The NRC has developed this type of analysis since 1970 and has attained a state of maturity for these analyses that is accepted by internationally-known organizations (e.g., Organization for Economic Cooperation and Development (OECD)/ Nuclear Energy Agency (NEA)).

A number of editorial comments were received on the role of PRAs in the licensing of waste disposal facilities. The NRC has incorporated the appropriate comments in this final PRA policy statement.

## III. Deterministic and Probabilistic Approaches to Regulation

### *(A) Extension and Enhancement of Traditional Regulation*

The NRC established its regulatory requirements to ensure that a licensed facility is designed, constructed, and operated without undue risk to the health and safety of the public. These requirements are largely based on deterministic engineering criteria. Simply stated this deterministic approach establishes requirements for engineering margin and for quality assurance in design, manufacture, and construction. In addition, it assumes that adverse conditions can exist (e.g., equipment failures and human errors) and establishes a specific set of design-basis events. It then requires that the licensed facility design include safety systems capable of preventing and/or mitigating the consequences of those design-basis events to protect the public health and safety.

The deterministic approach contains implied elements of probability (qualitative risk considerations), from the selection of accidents to be analyzed as design-basis accidents (e.g., reactor vessel rupture is considered too improbable to be included) to the requirements for emergency core cooling (e.g., safety train redundancy and protection against single failure). The approach by the Commission for the use of performance assessment to implement its regulations for disposal of radioactive nuclear waste (10 CFR Part 60 for high-level waste disposal and 10 CFR Part 61 for low-level waste disposal) also contains implied elements of probability. The results of the numerous calculations obtained from a performance assessment for a given performance measure and for a particular type of facility (e.g., a spectrum of values for ground-water travel time or individual dose) are expressed in terms of statistical distributions that express the probability that a given measure of performance will be attained. When this distribution is compared to the appropriate deterministic standard in the Commission's regulations, the probability of not exceeding the standard can be obtained from the part of the distribution that falls below this standard.

PRA addresses a broad spectrum of initiating events by assessing the event frequency. Mitigating system reliability is then assessed, including the potential for multiple and common cause failures. The treatment therefore goes beyond the single failure requirements in the deterministic approach. The probabilistic approach to regulation is, therefore, considered an extension and enhancement of traditional regulation by considering risk in a more coherent and complete manner. A natural result of the increased use of PRA methods and techniques would be the focusing of regulations on those items most important to safety. Where appropriate, PRA can be used to eliminate unnecessary conservatism and to support additional regulatory requirements. Deterministic-based regulations have been successful in protecting the public health and safety and PRA techniques are most valuable when they serve to focus the traditional, deterministic-based, regulations and support the defense-in-depth philosophy. In addition, PRA techniques are appropriately used when considering regulations defined in probabilistic terms, and for estimating

safety of systems with very large uncertainties such as waste disposal systems (Note that PRA is called performance assessment for these waste disposal systems).

Beyond its deterministic criteria, the NRC has formulated guidance, as in the safety goal policy statement, that utilizes quantitative, probabilistic risk measures. The safety goal policy statement establishes top-level objectives to help assure safe operation of nuclear power plants. The safety goals are intended to be applied generically and are not for plant-specific applications. For the purpose of implementation of the safety goals, subsidiary numerical objectives on core damage frequency and containment performance have been established. The safety goals provide guidance on where plant risk is sufficiently low that further regulatory action is not necessary. Also, as noted above, the Commission has been using PRA in performing regulatory analysis for the proposed backfit of cost-beneficial safety improvements at operating reactors (as required by 10 CFR 50.109) for a number of years.

*(B) Uncertainties and Limitations of Deterministic and Probabilistic Approaches*

The treatment of uncertainties is an important issue for regulatory decisions. Uncertainties exist in any regulatory approach and these uncertainties are derived from knowledge limitations. These uncertainties and limitations existed during the development of deterministic regulations and attempts were made to accommodate these limitations by imposing prescriptive, and what was hoped to be, conservative regulatory requirements. A probabilistic approach has exposed some of these limitations and provided a framework to assess their significance and assist in developing a strategy to accommodate them in the regulatory process.

Human performance is an important consideration in both deterministic and probabilistic approaches. Assessing the influence of errors of commission and organizational and management issues on human reliability is an example that illustrates where current PRA methods are not fully developed. While this lack of knowledge contributes to the uncertainty in estimated risks, the PRA framework offers a powerful tool for logically and systematically evaluating the sensitivity and importance to risk of these uncertainties. Improved PRA techniques and models to address errors of commission and the influence of organizational factors on human reliability are currently being developed.

It is important to note that not all of the Commission's regulatory activities lend themselves to a risk analysis approach that utilizes fault tree methods. In general, a fault tree method is best suited for power reactor events that typically involve complex systems. Events associated with industrial and medical uses of nuclear materials generally involve a simple system, involve radiation overexposures, and result from human error, not equipment failure. Because of the characteristics of medical and industrial events, as discussed above, analysis of these events using relatively simple techniques can yield meaningful results. Power reactor events, however, generally involve complex systems and human interactions, can potentially involve more than one adverse consequence, and often result from equipment failures. Therefore, power reactor events can require greater use of more complex risk analysis techniques, such as fault tree analysis, to yield meaningful insights. PRA methods need to be adapted for waste disposal systems because they are passive systems subjected to interlocking natural and man-made processes and events that are dominated by complex phenomenology.

Given the dissimilarities in the nature and consequences of the use of nuclear materials in reactors, industrial situations, waste disposal facilities, and medical applications, the Commission recognizes that a single approach for incorporating risk analyses into the regulatory process is not appropriate. However, PRA methods and insights will be broadly applied to ensure that the best use is made of available techniques to foster consistency in NRC risk-based decision-making.

*(C) Defense-in-Depth Philosophy*

In the defense-in-depth philosophy, the Commission recognizes that complete reliance for safety cannot be placed on any single element of the design, maintenance, or operation of a nuclear power plant. Thus, the expanded use of PRA technology will continue to support the NRC's defense-in-depth philosophy by allowing quantification of the levels of protection and by helping to identify and address weaknesses or overly conservative regulatory requirements applicable to the nuclear industry. Defense-in-depth is a philosophy used by NRC to provide redundancy for facilities with ''active'' safety systems, e.g., a commercial nuclear power, as well as the philosophy of a multiple-barrier approach against fission product releases. Such barrier principles are mandated by the Nuclear Waste Policy Act of 1982, which provides redundancy for a geologic repository to contain and isolate nuclear waste from the human environment.

## IV. The Commission Policy

Although PRA methods and information have thus far been used successfully in nuclear regulatory activities, there have been concerns that PRA methods are not consistently applied throughout the agency, that sufficient agency PRA/statistics expertise is not available, and that the Commission is not deriving full benefit from the large agency and industry investment in the developed risk assessment methods. Therefore, the Commission believes that an overall policy on the use of PRA in nuclear regulatory activities should be established so that the many potential applications of PRA can be implemented in a consistent and predictable manner that promotes regulatory stability and efficiency. This policy statement sets forth the Commission's intention to encourage the use of PRA and to expand the scope of PRA applications in all nuclear regulatory matters to the extent supported by the state-of-the-art in terms of methods and data. Implementation of the policy statement will improve the regulatory process in three areas: Foremost, through safety decision making enhanced by the use of PRA insights; through more efficient use of agency resources; and through a reduction in unnecessary burdens on licensees.

Therefore, the Commission adopts the following policy statement regarding the expanded NRC use of PRA:

(1) The use of PRA technology should be increased in all regulatory matters to the extent supported by the state-of-the-art in PRA methods and data and in a manner that complements the NRC's deterministic approach and supports the NRC's traditional defense-in-depth philosophy.

(2) PRA and associated analyses (e.g., sensitivity studies, uncertainty analyses, and importance measures) should be used in regulatory matters, where practical within the bounds of the state-of-the-art, to reduce unnecessary conservatism associated with current regulatory requirements, regulatory guides, license commitments, and staff practices. Where appropriate, PRA should be used to support the proposal for additional regulatory requirements in accordance with 10 CFR 50.109 (Backfit Rule). Appropriate procedures for including PRA in the process for

changing regulatory requirements should be developed and followed. It is, of course, understood that the intent of this policy is that existing rules and regulations shall be complied with unless these rules and regulations are revised.

(3) PRA evaluations in support of regulatory decisions should be as realistic as practicable and appropriate supporting data should be publicly available for review.

(4) The Commission's safety goals for nuclear power plants and subsidiary numerical objectives are to be used with appropriate consideration of uncertainties in making regulatory judgments on the need for proposing and backfitting new generic requirements on nuclear power plant licensees.

*Policy Implications*

There are several important regulatory or resource implications that follow from the goal of increased use of PRA techniques in regulatory activities. First, the NRC staff, licensees, license applicants, and Commission must be prepared to consider changes to regulations, to guidance documents, to the licensing process, and to the inspection program. Second, the NRC staff and Commission must be committed to a shift in the application of resources over a period of time based on risk findings. Third, the NRC staff must undertake a training and development program, which may include recruiting personnel with PRA experience, to significantly enhance the PRA expertise necessary to implement these goals. Additionally, the NRC staff must continue to develop new and improved PRA methods and regulatory decision-making tools and must significantly enhance the collection of equipment and human reliability data for all of the agency's risk assessment applications, including those associated with the use, transportation, and storage of nuclear materials. However, it is recognized that there may be situations with material users where it may not be cost-effective to use PRA in their specific regulatory applications.

This policy statement affirms the Commission's belief that PRA methods can be used to derive valuable insights, perspective, and general conclusions as a result of an integrated and comprehensive examination of the design of nuclear facilities, facility response to initiating events, the expected interactions among facility structures, systems, and components, and between the facility and its operating staff.

The Commission also recognizes, and encourages, continuation of industry initiatives to improve PRA methods, applications and data collection to support increased use of PRA techniques in regulatory activities.

## V. Availability of Documents

Copies of documents cited in this section are available for inspection and/or for reproduction for a fee in the NRC Public Document Room, 2120 L Street, NW, (Lower Level), Washington, DC 20037. Copies of NUREGs cited in this document may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies are also available for purchase from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

In addition, copies of (1) SECY–94–218, ''Proposed Policy Statement on the Use of Probabilistic Risk Assessment Methods in Nuclear Regulatory Activities,'' (2) SECY–94–219, ''Proposed Agency-Wide Implementation Plan for Probabilistic Risk Assessment (PRA),'' (3) the Commission's Staff Requirements Memorandum of September 13, 1994, concerning the August 30, 1994, Commission meeting on SECY–94–218 and SECY–94–219, and (4) the Commission's Staff Requirements Memorandum of October 4, 1994, on SECY–94–218 can be obtained electronically by accessing the NRC electronic bulletin board system (BBS) Tech Specs Plus. These four WordPerfect® 5.1 documents are located in the BBS MISC library directory under the single filename ''PRAPLAN.ZIP''. The WordPerfect® 5.1 file for the final policy statement on the ''Use of Probabilistic Risk Assessment Methods in Nuclear Regulatory Activities,'' is located in the BBS MISC library directory under the filename ''PRPOLICY.ZIP''. The BBS operates 24 hours a day and can be accessed through a toll-free number, 1–800–679–5784, at modem speeds up to 9600 baud with communication parameters set at 8 data bits, no parity, 1 stop bit, full duplex, and using ANSI terminal emulation.

Dated at Rockville, Maryland, this 10th day of August, 1995.

For the Nuclear Regulatory Commission.

**Andrew L. Bates,**

*Acting Secretary of the Commission.*

[FR Doc. 95–20237 Filed 8–15–95; 8:45 am]

BILLING CODE 7590–01–P

## Performance Testing of Electronic Personnel Dosimeters: Availability

The Nuclear Regulatory Commission has issued a draft report NUREG/CR–6354 entitled ''Performance Testing of Electronic Personnel Dosimeters'' for review and comment.

The draft report discusses the use and applications of Electronic Personnel Dosimeters (EPDs) for incremental dose control and use as primary dosimeters for determination of the official dose for individuals. EPDs have been used as secondary or supplemental dosimeters for several years and presently being considered for use as primary dosimeters in place of the commonly used film badges and thermoluminescent dosimeters (TLDs). The authors of this report feel that consideration of EPDs as primary dosimeters is currently in the evolutionary phase, and point out that the EPD is not only a dosimeter, but in addition is an electronic device, subject to radio frequency, microwave, and electric fields and various environmental conditions. The authors feel that side-by-side testing of EPDs and conventional dosimeters are needed, both in the workplace and under laboratory controlled conditions, that a type-testing program is needed for EPDs, and lastly, that user guidelines be developed for their use as primary dosimeters.

Draft NUREG/CR–6354 is available for inspection and copying for a fee at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington DC 20555–0001. A free single copy of Draft NUREG/CR–6354, to the extent of the supply, may be requested by writing to Distribution Services, Printing and Mail Services Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Submit comments on draft NUREG/CR–6354 by (90 days after publication date). Mail comments to: Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publication Services, Mail Stop T–6 D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Comments may be hand-delivered to 11545 Rockville Pike, Maryland between 7:45 a.m. and 4:15 p.m. on Federal workdays.

Comments may also be submitted electronically, in either ASCII text or Wordperfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board on FEDWORLD. The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available

communications software packages, or directly via Internet.

If using a personal computer and modem, the NRC subsystem on FEDWORLD can be accessed directly by dialing the toll free number: 1–800–303–9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI terminal emulation, the NRC NUREG and Reg Guide Comments subsystem can then be accessed by selecting the ''NRC Rules Menu'' option from the ''NRC Main Menu.'' For further information about options available for NRC at FEDWORLD consult the ''Help/Information Center'' from the ''NRC Main Menu.'' Users will find the ''FEDWORLD Online User's Guides'' particularly helpful. Many NRC subsystems and databases also have a ''Help/Information Center'' option that is tailored to the particular subsystem.

The NRC subsystem on FEDWORLD can also be accessed by a direct dial phone number for the main FEDWORLD BBS: 703–321–3339; Telnet via Internet: fedworld.gov (192.239.92.3); File Transfer Protocol (FTP) via Internet: ftp.fedworld.gov (192.239.92.205); and World Wide Web using: http://www.fedworld.gov (this is the Uniform Resource Locator (URL)).

If using a method other than the toll free number to contact FEDWORLD, the NRC subsystem will be accessed from the main FEDWORLD menu by selecting the ''Regulatory, Government Administration and State Systems,'' then selecting ''Regulatory Information Mall.'' At that point, a menu will be displayed that has an option ''U.S. Nuclear Regulatory Commission'' that will take you to the NRC Online main menu. The NRC Online area can also be accessed directly by typing ''/go nrc'' at a FEDWORLD command line. If you access NRC from FEDWORLD's main menu, you may return to FEDWORLD by selecting the ''Return to FEDWORLD'' option from the NRC Online Main Menu. However, if you access NRC at FEDWORLD by using NRC's toll-free number, you will have full access to all NRC systems but you will not have access to the main FEDWORLD system.

If you contact FEDWORLD using Telnet, you will see the NRC area and menus, including the Rules menu. Although you will be able to download documents and leave messages, you will not be able to write comments or upload files (comments). If you contact FEDWORLD using FTP, all files can be accessed and downloaded but uploads are not allowed; all you will see is a list of files without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with descriptions, is included. There is a 15-minute time limit for FTP access.

Although FEDWORLD can be accessed through the World Wide Web, like FTP that mode provides access for downloading files and does not display the NRC Rules Menu. For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–5780; e-mail AXD3@nrc.gov.

Dated at Rockville, Maryland, this 4th day of August, 1995.

For the Nuclear Regulatory Commission.

**Sher Bahadur, Chief**

*Waste Management Branch, Division of Regulatory Applications, Office of Nuclear Regulatory Research.*

[FR Doc. 95–20240 Filed 8–15–95; 8:45 am]

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**[Docket No. 030–00472, License No. 37–02385–01, EA No. 95–021]**

## Carlisle Hospital, Carlisle, PA; Order Imposing a Civil Monetary Penalty

**I**

Carlisle Hospital (Licensee) is the holder of Byproduct Materials License No. 37–02385–01 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) on March 12, 1985. The License was most recently renewed by the Commission on April 7, 1993. The License authorizes the Licensee to possess and use certain byproduct materials in accordance with the conditions specified therein at the Licensee's facility in Carlisle, Pennsylvania.

**II**

An inspection of the Licensee's activities was conducted on February 2 and 3, 1994, at the Licensee's facility located in Carlisle, Pennsylvania. In addition, an investigation was conducted subsequently by the NRC Office of Investigations. The results of this inspection and investigation indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated June 6, 1995. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for one of the violations.

The Licensee responded to the Notice in a letter dated July 5, 1995. In its response, the Licensee admits the violation assessed a civil penalty (Violation I), and requests abatement or mitigation of the penalty.

**II**

After consideration of the Licensee's response and the statements of fact, explanation, and argument contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that an adequate basis was not provided for abatement or mitigation of the penalty and that a penalty of $5000 should be imposed.

**IV**

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, IT IS HEREBY ORDERED THAT:

The Licensee pay a civil penalty in the amount of $5000 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738.

**V**

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a ''Request for an Enforcement Hearing'' and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy to the Commission's Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, PA 19406.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be whether, on the basis of the violation admitted by the Licensee as set forth in

Section I of the Notice referenced in Section II above, this Order should be sustained.

Dated at Rockville, Maryland this 7th day of August, 1995.

For the Nuclear Regulatory Commission.

**James Lieberman,**

*Director, Office of Enforcement.*

**Appendix—Evaluations and Conclusion**

On June 6, 1995, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during an NRC inspection conducted at the Licensee's facility located in Carlisle, Pennsylvania. The penalty was issued for one violation. The Licensee responded to the Notice in a letter, dated July 5, 1995. In its responses, the Licensee admits the violation assessed a penalty (Violation I), and requests abatement or mitigation of the civil penalty. The NRC's evaluation and conclusion regarding the Licensee's requests are as follows:

*Restatement of Violation Assessed a Civil Penalty*

10 CFR 35.21(a) requires that the licensee, through the Radiation Safety Officer, ensure that radiation safety activities are being performed in accordance with regulatory requirements.

License Condition 11 of Amendment No. 19 of NRC License No. 37–02385–01, which expired on February 29, 1992, but which remained in effect (until Amendment No. 20 was issued on April 7, 1993) pursuant to a timely renewal application made on October 7, 1991, states that licensed material shall be used by, or under the supervision of, Charles K. Loh, M.D., or Robert F. Hall, M.D.

10 CFR 35.13(b), in effect at the time the violation occurred, provided that a licensee shall apply for and must receive a license amendment before it permits anyone, except a visiting authorized user described in 10 CFR 35.27, to work as an authorized user under the license.

10 CFR 35.11(b) provides that an individual may use byproduct material in accordance with the regulations in this chapter under the supervision of an authorized user as provided in 10 CFR 35.25, unless prohibited by license condition.

10 CFR 35.25(a)(3) requires, in part, that a licensee that permits the use of byproduct material by an individual under the supervision of an authorized user, shall periodically review the supervised individual's use of byproduct material and the records to reflect this use.

Contrary to the above, from December 3, 1992 to April 7, 1993, the licensee, through its Radiation Safety Officer, failed to ensure that radiation safety activities were being performed in accordance with the above requirements. Specifically, during this period, byproduct material was used by two individuals (other than Dr. Loh or Dr. Hall) to perform teletherapy; and the two individuals were not listed as authorized users on the license and did not qualify as visiting authorized users pursuant to 10 CFR 35.27, and the individuals' use of byproduct material was not under the supervision of Dr. Loh or Dr. Hall (in that neither Dr. Loh nor Dr. Hall reviewed the individuals' use of the byproduct material, and the related records reflecting such use).

This is a Severity Level III violation (Supplements VI and VII).

*Summary of Licensee's Request for Mitigation*

The Licensee maintains that it is committed to full regulatory compliance as illustrated by its past record. The Licensee stated that it has only been issued one other Notice of Violation and admitted that it involved a similar matter of concern as addressed by the present Notice. The Licensee stated that it was of the belief that this matter had been addressed adequately by having the authorized users supervise the unauthorized users. The Licensee further stated that its otherwise stellar record of compliance evidences its commitment to compliance with regulatory requirements of the NRC.

The Licensee also stated that, although the previously issued Notice involved unauthorized use similar to that described in the present Notice, it should not be the basis for escalation of the proposed penalty because the Licensee believed that the issue of unauthorized use had been adequately addressed. The Licensee contends that the underlying cause of the present violation stems primarily from poor channels of communication and that these causes were not apparent and not an issue, at the time of the previous Notice. The Licensee stated that it did not previously have the opportunity to address these communication issues.

The Licensee further stated that upon being apprised of the violations, it took effective and comprehensive actions to correct the violations and brought the Licensee into immediate compliance. The Licensee further stated that the violation upon which the civil penalty is based did not cause injury to patients, employees, or staff nor did it create a substantial risk. The Licensee also stated that the unauthorized physicians were well qualified, albeit unauthorized, and subsequently were listed on the license by the NRC, upon approval of the Licensee's amendment.

In addition, the Licensee contends that the violation would not have occurred if the license amendment was timely processed. The Licensee stated that it filed a license amendment with the NRC on October 7, 1991. The Licensee further stated that the two unauthorized physicians were to be added as authorized users. The Licensee notes that while it did not request that the amendment be expedited, the need to make such a request was not foreseen, because it believed that proper supervision was being provided.

For these reasons, the Licensee requests that the proposed civil penalty be wholly abated or, in the alternative, mitigated so as to preclude the 100% escalation of the proposed civil penalty.

*NRC Evaluation of Licensee's Request for Mitigation*

The NRC letter, dated June 6, 1995, transmitting the proposed civil penalty, notes that the base civil penalty amount of $2500 in this case was increased by 50% because the violation was identified by the NRC; increased by 100% because the Licensee had prior opportunity to prevent the violation from recurring given the issuance of the Notice of Violation on December 23, 1992, as well as the telephone inquiry by NRC in February 1993; and decreased 50% based on the Licensee's prompt and comprehensive corrective actions. As a result, a penalty of $5000 was proposed.

The Licensee's enforcement history includes one violation identified during an NRC inspection conducted in 1991, and one violation identified during an NRC inspection conducted in 1992 that involved the failure to apply for an amendment before permitting physicians to work as authorized users. The latter violation was identified again during the most recent inspection conducted in February 1994.

The Licensee was given prior notice regarding this violation based on the Notice of Violation dated December 23, 1992. It is the Licensee's responsibility to assure that the violation does not recur. The underlying cause of the violation identified during the 1994 inspection may in fact be different from the cause of the similar violation in 1992; however, under the NRC Enforcement Policy, the Licensee is expected to implement lasting corrective action that will not only prevent recurrence of the violation at issue but will be appropriately comprehensive to prevent the occurrence of similar violations in the future. The Licensee committed to providing supervision of the unauthorized users, and it is the Licensee's responsibility to assure that the supervision was provided. The supervision did not occur, even though a Licensee Vice President informed the NRC during a February 1993 telephone conversation that it was occurring.

The Licensee requests that credit be given for its prompt and comprehensive corrective action for the violations identified during the 1994 inspection. The NRC notes that the base civil penalty amount was mitigated 50% based on the Licensee's prompt and comprehensive corrective actions, as provided by the NRC Enforcement Policy. Therefore, no further adjustment of the base civil penalty is warranted based on this factor.

While the Licensee also contends that the violation did not cause injury, the NRC notes that classification of a violation at Severity Level III is based on its safety and regulatory significance, and is not premised on an injury to an individual. If a violation were to contribute directly to an injury to an individual, a higher Severity Level could be assigned and a higher civil penalty could be issued.

The NRC recognizes that the Licensee filed a request for renewal of its NRC license on October 7, 1991, and the processing of that renewal by the NRC was not completed until April 7, 1993. However, during the exit interview following the 1992 inspection, the Licensee informed the NRC inspector that the unauthorized users would be supervised by physicians named on the NRC license. Then, during a February 1993 telephone call to the Licensee's Vice President, General Services, the Licensee again informed the NRC that such supervision was being provided. Had

the Licensee provided accurate information to the NRC as required by 10 CFR 30.9, the NRC staff could have focused its review on the qualifications of the unauthorized physicians and issued a separate license amendment on an expedited basis to ensure that regulatory compliance was maintained while patient teletherapy services continued. Under these circumstances, the NRC staff believes that the timeliness of the processing of the license renewal should not be a mitigating factor in assessing the civil penalty amount.

Accordingly, based on the Enforcement Policy in effect at the time, a $5,000 civil penalty was appropriate.

The NRC notes that its Enforcement Policy was revised on June 30, 1995 (60 FR 34381). In applying the revised NRC Enforcement Policy, the same civil penalty of $5,000 would be warranted given the willful nature of the violation; the fact that it was identified by the NRC; consideration of the Licensee's good corrective actions; and the exercise of discretion as warranted under the circumstances, including the facts that the violation represents a recurrence (i.e., directly repetitive) of an earlier violation and the Licensee missed a number of opportunities to correct it. Therefore, application of the new policy results in the same civil penalty being assessed.

*NRC Conclusion*

The NRC has concluded that the Licensee did not provide an adequate basis for abatement or mitigation of the civil penalty. Accordingly, the proposed civil penalty in the amount of $5000 should be imposed.

[FR Doc. 95–20239 Filed 8–15–95; 8:45 am]
**BILLING CODE 7590–01–P**

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**[IA 95–029]**

## Steven Cody; Order Prohibiting Involvement in NRC-Licensed Activities (Immediately Effective)

**I**

From approximately January 1990, to April 24, 1993, Steven Cody was employed as a radiographer by Mid American Inspection Services, Inc. (Mid American Inspection or Licensee). Mid American Inspection holds Byproduct Material License No. 21–26060–01 issued by the U. S. Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 34 on June 13, 1989. The license authorizes the use of iridium–192 in sealed sources for industrial radiography and depleted uranium as solid metal to shield exposure devices and source changers. Licensed material is authorized for use at the facility located at 1206 Effie Road, Gaylord, Michigan, and at job sites located throughout the United States where the NRC maintains jurisdiction. The license was due to expire on August 31, 1994, but is under timely renewal.

**II**

During the period of approximately October 1992 to April 1993 the Licensee performed industrial radiography on a gas line project near Kalkaska, Michigan. Mr. Steven Cody was a radiographer assigned to the project. As a radiographer, Mr. Cody was responsible for compliance with the Commission's regulations, including the personal supervision of any radiographic operation performed by radiographer's assistants working with him. 10 CFR 34.2 defines a radiographer's assistant as any individual who under the personal supervision of a radiographer, uses radiographic exposure devices, sealed sources or related handling tools, or radiation survey instruments in radiography.

On May 13, 1993, the Licensee received information that indicated that Mr. Cody routinely failed to supervise radiographer's assistants during radiographic operations at the Kalkaska, Michigan, project. On May 14, 1993, the Licensee notified the NRC Region III office of the potential violation.

The NRC Office of Investigations (OI) investigated the matter. Sworn testimony of radiographer's assistants confirmed that Mr. Cody was not always present when the assistant performed radiographic operations. The testimony indicated that at times Mr. Cody left the work site leaving the radiographer's assistant alone to conduct radiographic operations. Mr. Cody admitted to OI in a sworn statement that he sometimes left the job site while an assistant conducted radiographic operations. Mr. Cody stated to OI and during the enforcement conference that he would only leave the job site at the assistant's suggestion that the remaining radiographic operations could be performed without any assistance from Mr. Cody.

OI developed information that indicated that Mr. Cody was familiar with the NRC requirement to have a radiographer present whenever a radiographer's assistant performed radiographic operations.

Mr. Cody's failure to supervise radiographer's assistants during radiography operations is a violation of 10 CFR 34.44, ''Supervision of radiographers' assistants.'' 10 CFR 34.44 requires that whenever a radiographer's assistant uses radiographic exposure devices, sealed sources or related source handling tools, or conducts radiation surveys required by 10 CFR 34.43(b) to determine that the sealed source has returned to the shielded position after an exposure, he shall be under the personal supervision of a radiographer. The personal supervision shall include: (a) The radiographer's personal presence at the site where the sealed sources are being used, (b) the ability of the radiographer to give immediate assistance if required, and (c) the radiographer's watching the assistant's performance of the operations referred to in this section.

Contrary to the requirements of 10 CFR 34.44, Mr. Cody was not personally present on more than one occasion at the site where sealed sources were used. Therefore, he did not have the ability to give immediate assistance if required and he could not watch the assistant's performance of radiographic operations.

Furthermore, 10 CFR 30.10 states that any licensee or any employee of a licensee may not engage in deliberate misconduct that causes or, but for detection, would have caused a licensee to be in violation of any rule, regulation, or order, or any term, condition, or limitation of any license issued by the Commission. Deliberate misconduct means, in part, an intentional act or omission that the person knows: (1) Would cause a licensee to be in violation of any rule, regulation or any term, condition, or limitation of any license issued by the Commission; or constitutes a violation of a procedure of a licensee.

Mr. Cody's failure to be present during radiographic operations conducted by a radiographer's assistant is a violation of 10 CFR 34.44 and his violation of that requirement is considered deliberate because Mr. Cody was fully aware of the requirements of 10 CFR 34.44, yet he intentionally elected to leave the job site.

**III**

Based on the above, the NRC concludes that Steven Cody engaged in deliberate misconduct that caused a violation of 10 CFR 34.44 when he failed to be personally present whenever a radiographer's assistant under his supervision performed radiographic operations. The NRC must be able to rely on its licensees and the employees of licensees, to comply with NRC requirements, including the requirement that radiographic operations cannot be conducted by a radiographer's assistant unless a radiographer is present during such operations. The deliberate violation of 10 CFR 34.44 by Mr. Cody, as discussed above, has raised serious doubt as to whether he can be relied on to comply with NRC requirements.

Consequently, I lack the requisite assurance that Steven Cody will conduct licensed activities in compliance with the Commission's

requirements or that the health and safety of the public will be protected if Mr. Cody was permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that for a period of one year from the date of this Order, Steven Cody be prohibited from any involvement in NRC-licensed activities for either: (1) An NRC licensee, or (2) an Agreement State licensee performing licensed activities in areas of NRC jurisdiction in accordance with 10 CFR 150.20. In addition, for three years commencing after the one year period of prohibition, Mr. Cody must notify the NRC of his employment or involvement in NRC-licensed activities to ensure that the NRC can monitor the status of Mr. Cody's compliance with the Commission's requirements and his understanding of his commitment to compliance. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. Cody's conduct is such that the public health, safety, and interest require that this Order be immediately effective.

**IV**

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, it is hereby ordered, effective immediately, that:

1. Steven Cody is prohibited for one year from the date of this Order from engaging in any NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. For three years after the above one year period of prohibition has expired Steven Cody shall, within 20 days of his acceptance of each employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first notification, Steven Cody shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Cody of good cause.

**V**

In accordance with 10 CFR 2.202, Steven Cody must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. When good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Cody or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20055, to the Assistant General Counsel for Hearings and Enforcement at the same address, and to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, Illinois 60632–4531 if the answer or hearing request is by a person other than Mr. Cody. If a person other than Mr. Cody requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by the Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Cody or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Steven Cody, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provision specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Part IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this Order.

Dated at Rockville, Maryland this 7th day of August 1995.

For the Nuclear Regulatory Commission.

**James Lieberman,**

*Director, Office of Enforcement.*

[FR Doc. 95–20238 Filed 8–15–95; 8:45 am]

BILLING CODE 7590–01–P

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**[Docket No. 030–31252, License No. 35–26996–01, IA 95–028]**

## Maria Hollingsworth, Tulsa, Oklahoma; Order Prohibiting Involvement in NRC-Licensed Activities and Requiring Certain Notification to NRC (Effective Immediately)

**I**

Maria Hollingsworth is the owner and operator of Blackhawk Engineering, Inc. (Licensee or Blackhawk) and served as the radiation safety officer with respect to its Nuclear Regulatory Commission (NRC or Commission) license. Blackhawk was issued Byproduct Materials License No. 35–26996–01 by the NRC, pursuant to 10 CFR Part 30, on August 22, 1989. The license authorized Blackhawk to possess and utilize sealed sources of radioactive material contained in moisture/density gauges in accordance with the conditions specified therein. The license expired on August 31, 1994, and Blackhawk did not submit a renewal application as provided in 10 CFR 30.37. On February 14, 1995, the NRC issued an order requiring Blackhawk to cease use of, and transfer, all NRC-licensed material in its possession to a person authorized to receive and possess such material (EA 95–018). Blackhawk complied with the terms of the order and on May 17, 1995, the NRC issued a Notice of Termination of Blackhawk's NRC license.

**II**

The February 14, 1995 order was issued to Blackhawk because: (1) Blackhawk continued to utilize gauges containing NRC-licensed material after

the NRC license had expired, and Ms. Hollingsworth had specifically agreed not to utilize this material, as confirmed by a Confirmatory Action Letter (CAL) from the NRC to Blackhawk on November 8, 1994; and (2) Ms. Hollingsworth was not truthful in statements made to NRC personnel regarding the continued use of the gauges. Ms. Hollingsworth's actions were in violation of 10 CFR 30.10, a regulation prohibiting deliberate misconduct by any licensee or employee of a licensee. Deliberate misconduct includes an intentional act or omission that a person knows would cause a licensee to be in violation of NRC requirements, or deliberate submission to the NRC of material information that the person submitting the information knows to be incomplete or inaccurate. In brief, Ms. Hollingsworth violated 10 CFR 30.10 because, as she admitted to NRC investigators: (1) She understood in November 1994 that she no longer was authorized to use the gauges but did use the gauges until December 22, 1994, to complete a construction job; and (2) she deliberately provided false information when she told an NRC inspector on December 19, 1994 that she had not used the gauges since 1992.

On June 5, 1995, the NRC conducted a telephonic enforcement conference with Ms. Hollingsworth to determine whether her deliberate misconduct warranted enforcement action directly against her as an individual. Ms. Hollingsworth stated that prior to November 1994, she had responded to NRC inquiries regarding the renewal of Blackhawk's license and believed that she had taken care of it. However, she admitted that, after being contacted by the regional office in November 1994 and receiving a November 8, 1994 Confirmatory Action Letter (CAL) from NRC, she made a conscious decision to continue using the gauges, contrary to the terms of the CAL, to complete a construction job. Ms. Hollingsworth also stated that she did so without contacting the NRC for further guidance or assistance because she believed that NRC would not have allowed her to continue using licensed material. Ms. Hollingsworth stated that she would comply with all NRC regulations in the future.

**III**

Ms. Hollingsworth admits both to deliberately violating NRC requirements by using NRC-licensed material after being made aware of the expiration of Blackhawk's license, and to deliberately making a false statement to an NRC inspector. Given Ms. Hollingsworth's position as owner and operator of Blackhawk and her role as the radiation safety officer with respect to the NRC license, the NRC considers her deliberate misconduct particularly significant. NRC must be able to rely on licensee management to comply with NRC requirements, especially the requirement to provide accurate information to the NRC. Despite her commitment to comply with NRC requirements in the future, Ms. Hollingsworth's past deliberate misrepresentation to the NRC and deliberate violation of other NRC requirements raise serious doubt as to whether she can be relied upon to comply with NRC requirements in the future, including the requirement to provide complete and accurate information to the NRC.

Consequently, I lack the requisite reasonable assurance that licensed activities would be conducted in compliance with the Commission's requirements and that the health and safety of the public would be protected if Ms. Hollingsworth were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Ms. Hollingsworth be prohibited from any involvement in NRC-licensed activities for a period of one year. Additionally, Ms. Hollingsworth is required to notify the NRC of her involvement in NRC-licensed activities for one year following the one year prohibition period. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Maria Hollingsworth's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

**IV**

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, it is hereby ordered, effective immediately, that:

1. Maria Hollingsworth is prohibited from engaging in NRC-licensed activities for a period of one year from the date of this Order. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. For a period of one year after the one year period of prohibition has expired, Maria Hollingsworth shall, within 20 days of her acceptance of each employment offer involving NRC-licensed activities, or her becoming involved in NRC-licensed activities as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or the entity where she is, or will be, involved in NRC-licensed activities. In the first notification, Ms. Hollingsworth shall include a statement of her commitment to compliance with NRC requirements and the basis why the Commission should have confidence that she will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Ms. Hollingsworth of good cause.

**V**

In accordance with 10 CFR 2.202, Maria Hollingsworth must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Ms. Hollingsworth or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555; to the Assistant General Counsel for Hearings and Enforcement at the same address; to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011; and to Ms. Hollingsworth if the answer or hearing request is by a person other than Ms. Hollingsworth. If a person other than Ms. Hollingsworth requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Ms. Hollingsworth or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Maria Hollingsworth, or any other person adversely affected by this Order may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be effective and final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Part IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for a hearing shall not stay the immediate effectiveness of this Order.

Dated at Rockville, Maryland this 3rd day of August 1995.

For the Nuclear Regulatory Commission

**James Lieberman,**

*Director, Office of Enforcement.*

[FR Doc. 95–20241 Filed 8–15–95; 8:45 am]

BILLING CODE 7590–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–36081; File No. SR–Amex–94–30]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Transaction Charges

August 10, 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 July 21, 1995, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange has made a determination to waive Exchange transaction charges for proprietary equity trades effected on the Floor by Registered Equity Market Makers (''REMMs'').

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

In 1991, for the first time, the Exchange imposed transaction charges on proprietary equity trades by members and member organizations. While these charges were waived for proprietary trades of equity specialists to facilitate their market making function, members trading on the Floor as REMMs were not similarly exempted.

REMMs are members that trade on a proprietary basis on the Floor in designated equity securities. Exchange Rule 114 sets forth the obligations and requirements under which REMMs are permitted to conduct such proprietary trading on the Floor. When trading in their designated securities, REMMs are required under the Rule to contribute to the maintenance of a fair and orderly market in such securities. REMMs also are required to engage in dealings in such securities which contribute to price continuity or depth or minimize the effects of a temporary disparity between the supply and demand for such securities. Thus, while not subject to a specialist's continuous market making obligation, when REMMs effect proprietary equity trades on the Floor, they are required to comply with the same market making obligations as specialists.

In view of this requirement to comply with market making obligations similar to those of specialists, the Exchange believes that REMMs should be treated the same as specialists with respect to transaction charges on proprietary equity trades. Accordingly, the Exchange has made a determination, as it did with specialists, to waive transaction charges on proprietary equity trades effected by REMMs to facilitate their market making function.

Although the Exchange currently has 30 members registered to trade as REMMs, less than half that number trade on a regular basis.

2. Statutory Basis

The fee change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(4) in particular in that it is intended to assure the equitable allocation of reasonable dues, fees, and other charges among members, issuers, and other persons using the Exchange's facilities.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The fee change will impose no burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

No written comments were solicited or received with respect to the fee change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule proposal changes a fee imposed by the Exchange and therefore has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements

with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–95–30 and should be submitted by September 6, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–20208 Filed 8–15–95; 8:45 am]

**BILLING CODE 8010–01–M**

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**[Release No. 34–36082; File No. SR–CBOE–95–16]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the Chicago Board Options Exchange, Incorporated, Related by Multi-Market Orders

August 10, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 1, 1995, the Chicago Board Options Exchange, Incorporated (''CBOE'' 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 Exchange. On June 22, 1995, the Exchange filed Amendment No. 1 to the proposal.[3] The Commission is publishing this notice of 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 Exchange proposes to amend Rule 6.48 to specify certain duties of CBOE members in effecting an option transaction on the CBOE that is part of a combined stock-option order. The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Section (A), (B), and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The purpose of the proposed rule change is to set forth in existing CBOE Rule 6.48 the duties of CBOE members executing an options order that is a component of a ''package'' stock-option order, the execution of which involves transactions in CBOE's option market and in another market (a ''multi-market'' order), and to specify the sole basis on which an options trade that is a component of a multi-market order may be cancelled by the members that are parties thereto. The proposed rule change would also make it inconsistent with just and equitable principles of trade, and consequently a violation of Exchange Rule 4.1, for a member to fail to fulfill the new requirements.

CBOE Rule 6.48 currently provides that bids or offers made and accepted in accordance with Exchange rules constitute binding contracts, but the Rule does not address the execution and cancellation of complex multi-market orders. Because such orders have become more prevalent at the CBOE as trading strategies have become more intricate, and because such orders involve concurrent executions at the CBOE and in markets other than the CBOE, the Exchange proposes to adopt new paragraph (b) to Rule 6.48. The Exchange believes that this amendment should establish well-defined conditions and requirements in its Rules that members must observe in executing and cancelling such transactions.

Proposed CBOE Rule 6.48(b) would apply to stock-option combination orders,[4] other than orders respecting index options,[5] and would impose two requirements on CBOE members who are parties to a stock-option combination order. First, a member announcing such an order to a trading crowd must disclose all legs of the order and must identify the specific markets and prices at which the non-option leg(s) are to be filled. Second, concurrent with the execution of the option leg of any multi-market order, the initiating member and each member that is a counterpart to the trade must take steps immediately to execute the non-option leg(s) in the identified market(s). Because both of these requirements are essential to fair and efficient order execution, proposed new paragraph (c) of Rule 6.48 would provide that any failure to observe either requirement will constitute a violation of CBOE's Rule 4.1, which prohibits conduct inconsistent with just and equitable principles of trade. The Exchange believes that these new provisions will clarify members' expectations about the execution of multi-market orders covered by the proposed rule and will promote prompt execution of each non-option component of such orders.

In addition to establishing requirements incident to execution, the proposed rule change sets forth one exclusive basis on which members may cancel an executed option transaction that is part of a multi-market order. Proposed Rule 6.48(b)(ii) indicates that

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange proposes to amend subparagraph (b)(ii) of CBOE Rule 6.48 to clarify that the market conditions that prevent the execution of the non-option leg(s) at the agreed upon price(s) would be the only basis for any one party to a trade representing the options leg of a multi-market order to cancel a trade. *See* Letter from Michael Meyer, Attorney, Schiff Hardin & Waite, to John Ayanian, Attorney, Office of Market Supervision, Division of Market Regulation, Commission, dated June 22, 1995 (''Amendment No. 1'').

The types of ''market conditions'' arising in a non-CBOE market that would be sufficient under proposed Rule 6.48(b)(ii) to justify cancellation of the CBOE leg(s) of a multi-market order, include, but are not limited to, a sudden change in the price of the underlying securities prior to execution of the stock trade, and a trading halt or systems failure that precludes immediate execution of the stock trade at the agreed upon price. *See* Letter from Dan Schneider, Attorney, Schiff Hardin & Waite, to John Ayanian, Attorney, OMS, Market Regulation, Commission, dated June 30, 1995.

[4] A stock-option order is an order to buy or sell a stated number of units of an underlying or a related security coupled with either (a) the purchase or sale of option contract(s) of the same series on the opposite side of the market representing the same number of units of the underlying or related security or (b) the purchase and sale of an equal number of put and call option contracts, each having the same exercise price, expiration date and number of units of the underlying or related security, on the opposite side of the market representing in aggregate twice the number of units of the underlying or related security. *See* CBOE Rule 1.1(ii).

[5] The CBOE believes that paragraph (iii) of proposed Rule 6.48(b) makes it clear that the proposed rule change will not apply to bids or offers included in combination orders that entail the purchase or sale of index options.

any member that is a party to an options transaction that is part of a multi-market order may have the options transaction cancelled only in the event that market conditions in any of the identified non-CBOE markets prevent the execution of one or more of the non-option legs of the order. The Exchange believes that cancellation under this exclusive circumstance is fair and appropriate.

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that it is designed to deal with special circumstances of multi-market orders in a manner that promotes just and equitable principles of trade and the protection of investors and the public interest.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, 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, NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to SR–CBO–95–16 and should be submitted by September 6, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–20207 Filed 8–15–95; 8:45 am]

BILLING CODE 8010–01–M

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**[Release No. 34–36087; File No. SR–PHLX–95–63]**

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Proposing to Extend its OTC/UTP Pilot Program

August 10, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 3, 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and simultaneously is approving the proposal.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Phlx, pursuant to Rule 19b–4 of the Act, proposes to extend the effectiveness of the pilot program and its accompanying rules regarding the trading of Nasdaq/National Market (''Nasdaq/NMS'') securities on the Exchange pursuant to unlisted trading privileges (''Phlx OTC/UTP Pilot Program'') for a six month period ending February 12, 1996.

The Exchange requests the Commission to find good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after publication in the **Federal Register**. Due to the non-controversial nature of the Phlx OTC/UTP Pilot Program, coupled with the impending lapse of the Phlx's OTC/UTP privileges on August 12, 1995, the Phlx respectfully requests accelerated approval of this filing.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

In 1985, the Commission published its policy to allow the extension of unlisted trading privileges (''UTP'') by national securities exchanges in certain over-the-counter (''OTC'') securities, provided that certain terms and conditions are satisfied. On June 26, 1990, the Commission approved the Joint Industry Plan for UTP in OTC securities (''Joint OTC/UTP Plan''), submitted by the National Association of Securities Dealers, Inc. (''NASD''), the American Stock Exchange, the Boston Stock Exchange, The Midwest Stock Exchange (''MSE,'' currently operating as the Chicago Stock Exchange, or ''Chx''), and the Phlx.[3] The Joint OTC/UTP Plan governs the collection, consolidation, and dissemination of quotation and transaction information for Nasdaq/NMS securities traded on exchanges and by NASD market makers.

The Phlx files the current proposed rule change to continue the

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[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] *See* Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917. The Commission has approved two extensions of the effectiveness of the Joint OTC/UTP Plan. *See* Securities Exchange Act Release No. 34371 (July 13, 1994), 59 FR 37103 (order approving Amendment No. 1 to File No. S7–24–89), and Securities Exchange Act Release No. 35221 (January 11, 1995), 60 FR 3886 (order approving Amendment No. 2 to File No. S7–24–89, thereby extending the effectiveness of the Joint OTC/UTP Plan through August 12, 1995).

effectiveness of the Phlx OTC/UTP Pilot Program that provides for trading of Nasdaq/NMS securities on the Exchange pursuant to UTP. Although the Chx has been trading Nasdaq/NMS securities since 1987, the Phlx obtained temporary approval of its rules to facilitate trading Nasdaq/NMS securities in late 1992,[4] and began trading the securities in February 1993. Currently, the Phlx has temporarily ceased trading the securities pending reorganization of its OTC/UTP program. Because the Phlx intends to reinstate OTC/UTP trading in the future, the Phlx seeks an extension of the pilot program.

2. Statutory Basis

This proposal is consistent with the Section 6(b)(5) of the Act and the rules and regulations promulgated thereunder. Specifically, the proposal is calculated to promote just and equitable principles of trade and to protect investors and the public interest. It is also consistent with Section 11A(a)(1)(C)(ii) and (iv) of the Act which assures fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets, and promotes the practicability of brokers executing investors' orders in the best market.

Due to the non-controversial nature of the Phlx OTC/UTP Pilot Program, coupled with the impending lapse of the Phlx's OTC/UTP privileges on August 12, 1995, the Phlx respectfully requests accelerated approval of this filing.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Phlx does not believe that the proposed rule change will be a burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

No written comments were either solicited or received.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying 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–95–63 and should be submitted by September 6, 1995.

## IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission believes that the Phlx's proposal to extend the effectiveness of the Phlx OTC/UTP Pilot Program and accompanying rules with respect to UTP in OTC securities is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] Specifically, the Commission believes that the proposed rule change is consistent with Sections 6(b)(5), 11A and 12(f) of the Act.[6]

In 1985, the Commission published its policy to extend UTP to national securities exchanges in certain OTC securities provided certain terms and conditions were satisfied.[7] The Commission's policy stated that UTP approval would be conditioned, in part, on the approval of a plan to consolidate and disseminate exchange and OTC quotation data and transaction data upon which UTP is granted. As noted above, in 1990, the Commission approved the Plan which provides for the collection, consolidation, and dissemination of quotation and transaction information for Nasdaq/NMS securities listed on an exchange or traded on an exchange pursuant to a grant of UTP.[8] Transactions in securities pursuant to the Plan are and will continue to be reported in the consolidated transaction reporting system established under the Plan.

The Commission has emphasized that Phlx specialists trading Nasdaq/NMS securities pursuant to the grant of UTP are subject to Plan requirements as well as the Phlx OTC/UTP Pilot Program and Phlx By-Laws and Rules, in general.[9] Moreover, the Commission has stated its intent to monitor any potential abuse of the informational advantage that options traders could acquire from the Phlx equity floor with respect to securities traded under the Phlx OTC/UTP Pilot Program.[10] These requirements and the Commission's intent to monitor for abuses will continue in effect, particularly if the Phlx removes its temporary suspension of trading pursuant to its OTC/UTP Program and the Plan.

The Commission believes that it is appropriate to extend the Phlx OTC/UTP Pilot Program through February 12, 1996, while the Commission evaluates the overall program for OTC/UTP and any enhancements or changes to the program that may be necessary to further the purposes of the Act. In the interim, however, the Commission continues to believe that the Phlx OTC/UTP Pilot Program, as limited by the Joint OTC/UTP Plan, generally furthers the objectives of a national market system and is consistent with the maintenance of fair and orderly markets and the protection of investors as required by Sections 6(b)(5), 11A and 12(f) of the Act.

## V. Conclusion

For the reasons stated above, the Commission believes that it is appropriate to extend the Phlx OTC/UTP Pilot Program through February 12, 1996.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. In light of the previously scheduled expiration of the Phlx OTC/UTP Pilot Program on August 12, 1995, the Commission believes that

[4] *See* Securities Exchange Act Release No. 31672 (December 30, 1992), 58 FR 3054 (order approving File No. SR–PHLX–92–04). The effectiveness of the Phlx OTC/UTP Pilot Program has been extended three times, most recently through August 12, 1995. *See* Securities Exchange Act Release No. 35933 (July 3, 1995), 60 FR 36170.

[5] The Commission incorporates the findings with respect to the Phlx OTC/UTP Pilot Program and its consistency with the Act previously made in Securities Exchange Act Release No. 31672, *id.*

[6] 15 U.S.C. §§ 78f(b)(5), 78K–1 (1988), and 78*l*(f) (1988) (as amended October 22, 1994). Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Section 11A provides, among other things, that it is in the public interest and appropriate for the protection of investors to assure fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets. Section 12(f), as recently amended by the UTP Act of 1994, provides, among other things, that exchanges may extend UTP to securities that are registered, but not listed on any exchange, provided that certain conditions are met.

[7] *See* Securities Exchange Act Release No. 22412 (September 16, 1985), 50 FR 38640.

[8] *See* note 3, *supra.*

[9] *See* note 4, *supra.*

[10] *Id.*

accelerated approval of the proposal is appropriate in order to allow the Phlx to continue to have rules in place for OTC/UTP trading. Further, the Phlx OTC/UTP Pilot Program and the accompanying rules have been noticed previously in the **Federal Register** for the full statutory period, and the Commission received no comments on the proposal.[11]

It is therefore ordered, pursuant to Section 19(b)(2)[12] that the proposed rule change is hereby approved on a pilot basis through February 12, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–20254 Filed 8–15–95; 8:45 am]

BILLING CODE 8010–01–M

## Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Tridex Corp.; Common Stock, No Par Value) File No. 1–5513

August 10, 1995.

Tridex Corporation (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the American Stock Exchange, Inc. (''Amex'').

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, the Board of Directors of the Company adopted resolutions on July 19, 1995 to withdraw the Security from listing on the Amex and instead, to list such Security on the National Association of Securities Dealers Automated Quotations National Market System (''Nasdaq/NMS'').

The decision of the Board followed a thorough study of the matter and was based upon the belief that listing the Security on the Nasdaq/NMS will be more beneficial to the Company's stockholders than the present listing on the Amex for the following reasons. According to the Company, there seems to be a hesitance on the part of many trading firms to trade or market the Security on the Amex. This, the Company believes, has resulted in the usually thin trading in the Security. The Company also believes money managers, taking a position in stock of companies of our size, prefer to work with a specific market know and trust, rather than deal with an Amex specialist. Further, the Company believes that greater sponsorship is available in the Nasdaq/NMS through market makers, and these market makers are more likely to issue research reports on the Company. Overall, the Company believes that listing on the Nasdaq/NMS will improve the visibility of the Company's Security and enhance the corporate image.

Any interested person may, on or before August 31, 1995, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 95–20255 Filed 8–15–95; 8:45 am]

BILLING CODE 8010–01–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent (NOI) To Prepare a Programmatic Environmental Assessment (EA) and Four Site-Specific Environmental Assessments (EAs) for the Proposed National Wide Area Augmentation System (WAAS)

**AGENCY:** Federal Aviation Administration (FAA , Department of Transportation (DOT).

**ACTION:** Notice of Intent to prepare a Programmatic EA for four site-specific EAs.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its intent to prepare a programmatic environmental assessment (EA) and four site-specific environmental assessments (EAs) for the proposed construction and operation of the following:

(1) A nationwide system of hardware and software, and

(2) Four antenna sites, called ground earth stations (GESs), collectively known as the Wide Area Augmentation System (WAAS). The WAAS will receive, process, correct data from Global Positioning System (GPS) satellites, and transmit navigation corrections to communication satellites. An aircraft equipped with a WAAS receiver will navigate using the signals from the communication satellites. This satellite-based navigation system will provide better navigation information to aircraft, thus enhancing safety. Senate Report 103–310 of the Committee on Appropriations, Department of Transportation and Related Agencies Appropriations, fiscal year 1995, stated that the WAAS schedule ''should be accelerated to enable a quicker realization of what promises to be significant benefits to aviation system users.''

The FAA is conducting a scoping process for the programmatic EA and the four GES EAs. The scoping process will consist of a 30-day period for written comments.

**DATES:** Written comments on the scope of the programmatic EA will be accepted at the address below until September 29, 1995. Comments submitted after the September 29 deadline will be considered to the extent practicable.

**ADDRESSES:** Written comments on the scope of the programmatic EA may be sent to the FAA at the following address: Federal Aviation Administration, Satellite Program Office, ATTN: Ms. Susan Burmester, AND–510, 800 Independence Avenue, S.W., Washington, DC 20591.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan Burmester, Federal Aviation Administration, (202) 358–5408.

**SUPPLEMENTARY INFORMATION:** The FAA's WAAS is a system consisting of equipment and software which will augment the existing U.S. Department of Defense (DoD)-provided GPS Standard Positioning System (SPS). The WAAS will provide a signal to aircraft to support more precise navigation and landing capabilities.

The GPS satellite data will be received and processed at widely dispersed sites, referred to as Wide Area Reference Stations (WRSs). The WRS will transmit these data via existing communication links to central data processing sites, referred to as Wide Area Master Stations (WMSs). The WMSs will determine the integrity, differential corrections, residual errors, and ionospheric information for each monitored GPS satellite. Then, these calculations will be sent to the GESs.

[11] *See supra* note 4.

[12] 15 U.S.C. § 78s(b)(2) (1988).

[13] 17 CFR 200–30–3(a)(12) (1991).

The GESs will transmit this information to communications satellites. The communication satellites will rebroadcast the data for navigational use by aircraft.

Generally, a WRS will be composed of computer processors, time synchronization equipment, and GPS receivers. It will require no more than 50 square feet within an existing FAA facility. Additionally, three GPS antennas will be installed on the roof of the facility. These antennas will be similar in size to existing roof mounted antennas, but will include a small dome approximately 18 inches in diameter.

A WMS will be composed of a WRS and communication equipment that will connect all of the WRSs and GESs to the WMSs. This equipment will require no more than 150 square feet within an existing FAA facility.

The proposed WAAS would be composed of 29 sites at existing FAA facilities and 4 GES sites. Five of these 29 sites will constitute the Functional Verification System (FVS): Atlantic City, NJ; Bangor, ME; Dayton, OH; Oklahoma City, OK; and Wilmington, NC. The FVS will be the testbed for the WAAS. All sites are WRSs with the exception of Atlantic City and Oklahoma City, which are WMSs. Listed below are the remaining 24 sites that would compose the initial operational system for the WAAS. All sites are WRSs with the exception of Nashua and Palmdale, which are WMSs:

Albuquerque, NM
Anchorage, AK
Auburn, WA
Aurora, IL
Billings, MT
Farmington, MN
Forth Worth, TX
Fremont, CA
Hampton, GA
Honolulu, HI
Houston, TX
Indianapolis, IN
Jacksonville, FL
Leesburg, VA
Longmont, CO
Memphis, TN
Miami, FL
Nashua, NH
Oberlin, OH
Olathe, KS
Palmdale, CA
Ronkonkoma, NY
Salt Lake City, UT
San Juan, PR

The four proposed WAAS GES sites would be located on the east and west coasts of the continental United States. Two of the proposed GES sites would be located at existing facilities in: Whitinsville, MA and Brewster, WA. Two of the proposed GES sites will be developed in the vicinity of Hampton, GA and in the vicinity of Palmdale–Rosamond, CA.

The programmatic EA will include a discussion of the proposed action and alternatives, the affected environment, potential impacts or consequences of the proposed action, and potential mitigation measures.

### Alternatives

In addition to the proposed action, the following alternatives will be considered in the programmatic EA: (1) enhancement of the existing navigation system, (2) the no action alternative under which the existing navigation system would be maintained.

### Public Scoping

The FAA is conducting a scoping process for the programmatic EA and the four GES EAs. The national scoping meeting for the programmatic EA will address the overall WAAS architecture. This meeting will be held in the vicinity of Washington, DC on or about Tuesday, September 19. Further information regarding the programmatic EA and the four GES EAs will be announced in national and local newspapers of general circulation.

Issued in Washington, DC on August 11, 1995.

**James C. Johns,**

*WAAS Project Manager, Satellite Program Office, AND–510, FAA Headquarters.*

[FR Doc. 95–20264 Filed 8–15–95; 8:45 am]

**BILLING CODE 4910–13–M**

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## Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Dubuque Regional Airport, Dubuque, IA

**AGENCY:** Federal Aviation Administration, (FAA), DOT.

**ACTION:** Notice of Intent to Rule on Application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Dubuque Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

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

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address:

Federal Aviation Administration, Central Region, Airports Division, 601 E. 12th Street, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Paul Frommelt, Chairman, Dubuque Airport Commission, Dubuque, Iowa, at the following address: Dubuque Regional Airport, 11000 Airport Road, Dubuque, Iowa.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Dubuque Regional Airport, under section 158.23 of Part 158.

**FOR FURTHER INFORMATION CONTACT:** Ellie Anderson, PFC Coordinator, FAA, Central Region, 601 E. 12th Street, Kansas City, MO 64106, (816) 426–4728. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Dubuque Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On August 4, 1995 the FAA determined that the application to impose and use the revenue from a PFC submitted by the Dubuque Regional Airport, Dubuque, Iowa, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 17, 1995.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00
Proposed charge effective date: February 1, 1996
Proposed charge expiration date: November 1, 1999
Total estimated PFC revenue: $394,694

Brief description of proposed project(s): Rwy 13/31 Rehabilitation; acquire snow removal equipment (runway broom); replace emergency generator; terminal area sidewalk replacement; replace landside lighting system; and reconstruct t-hangar taxi lane areas.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Dubuque Regional Airport.

Issued in Kansas City, Missouri on August 09, 1995.

**James W. Brunskill,**

*Acting Manager, Airports Division, Central Region.*

[FR Doc. 95–20267 Filed 8–15–95; 8:45 am]

**BILLING CODE 4910–13–M**

## Research and Special Programs Administration

## Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemptions or Applications to Become a Party to an Exemption

**AGENCY:** Research and Special Programs Administration, DOT.

**ACTION:** List of Applications for Modification of Exemptions or Applications to Become a Party to an Exemption.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of applications have been shown in earlier Federal Register publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. Application numbers with the suffix ''P'' denote a party to request. These applications have been separated from the new applications for exemptions to facilitate processing.

**DATES:** Comments must be received on or before August 31, 1995.

**ADDRESS COMMENTS TO:** Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590. Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

**FOR FURTHER INFORMATION CONTACT:**

Copies of the application are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

| Application No. | Applicant | Renewal of exemption |
|---|---|---|
| 4354–M | PPG Industries, Inc., Pittsburgh, PA (See Footnote 1) | 4354 |
| 7235–M | BOC Gases, Murray Hill, NY (See Footnote 2) | 7235 |
| 8131–M | NASA Washington, DC (See Footnote 3) | 8131 |
| 8692–M | Mitsubishi International Corp., New York, NY (See Footnote 4) | 8692 |
| 9184–M | The Carbide/Graphite Group, Inc., Louisville, KY (See Footnote 5) | 9184 |
| 9393–M | Sexton Can Company, Inc., Martinsburg, WV (See Footnote 6) | 9393 |
| 10094–M | Air Products & Chemicals, Inc., Allentown, PA (See Footnote 7) | 10094 |
| 10867–M | Pacific Scientific, Durate, CA (See Footnote 8) | 10867 |
| 11248–M | HAZMATPAC, Houston, TX (See Footnote 9) | 11248 |
| 11321–M | E.I. du Pont de Nemours & Company, Inc., Wilmington, DE (See Footnote 10) | 11321 |

[1] To modify the exemption to authorize continued use of plastic composite drums which do not meet the 80 psi hydrostatic pressure test and additional modifications per HM–181.

[2] To modify the exemption to provide for an additional class of material in Division 4.3.

[3] To modify the exemption to provide for an alternative service life of 25 years or 300 pressurizations for transporting oxygen in nonprescribed packagings.

[4] To modify the exemption to provide for an alternative packing method on bulk bags used in transporting sodium persulfate.

[5] To modify the exemption to provide for reusable semi-bulk bags for the 1,200 and 4,400 design for use in transporting Division 4.3 material.

[6] To modify the exemption to provide for transportation of compressed gas, n.o.s., Division 2.2, in non-DOT specification steel cylinders.

[7] To modify the exemption to provide for replacement linings on insulated tank car tanks for use in transporting Division 5.1 material.

[8] To modify the exemption to provide for various design changes to non-DOT specification cylinders for use in transporting Division 2.2 material.

[9] To modify the exemption to provide for an alternate type of absorbent material for use in specifically-designed combination packaging.

[10] To modify the exemption to provide for MC 312, 330, 331 and 412 cargo tanks of SA 516 Gr 70 steel construction for use in transporting a Class 8 material.

| Application No. | Applicant | Parties to exemption |
|---|---|---|
| 6626–P | Red Ball Oxygen Co., Shreveport, LA | 6626 |
| 6670–P | Air Products and Chemicals, Inc., Allentown, PA | 6670 |
| 6805–P | Red Ball Oxygen Co., Shreveport, LA | 6805 |
| 7616–P | Florida East Coast Railway Company, St. Augustine, FL | 7616 |
| 7887–P | Luna Tech, Inc., Owens Cross Roads, AL | 7887 |
| 8006–P | Esquire Canada, Inc., Port Robinson, Ontario, CN | 8006 |
| 8009–P | Motorfuelers, Inc., Clearwater, FL | 8009 |
| 8554–P | Gibson-IRECO, Inc., Duffield, VA | 8554 |
| 8627–P | Nalco/Exxon Energy Chemicals, L.P., Sugar Land, TX | 8627 |
| 9184–P | American Welding Products, L.L.C., Newport Beach, CA | 9184 |
| 9275–P | Elizabeth Arden Co., Roanoke, VA | 9275 |
| 9275–P | Fashion Fair Cosmetics, Chicago, IL | 9275 |
| 9689–P | ANGUS Chemical Company, Buffalo Grove, IL | 9689 |
| 9723–P | CMAX Transportation, Inc., Oklahoma City, OK | 9723 |
| 9769–P | McCutcheon Enterprises, Inc., Apollo, PA | 9769 |
| 10001–P | Red Ball Oxygen Co., Shreveport, LA | 10001 |
| 10094–P | Continental Nitrogen & Resources Corp., Rosemount, MN | 10094 |

| Application No. | Applicant | Parties to exemption |
|---|---|---|
| 10709–P | Coastal Fluid Technologies, Inc., Abbeville, LA | 10709 |
| 10709–P | Nalco/Exxon Energy Chemicals, L.P., Sugar Land, TX | 10709 |
| 10821–P | Healthcare Waste Removal & Services, Inc., Pompano Beach, FL | 10821 |
| 10933–P | Rollins CHEMPAK, Inc., Bridgeport, NJ | 10933 |
| 10975–P | Boise Cascade Corporation, Boise, ID | 10975 |
| 11159–P | Hawman Container Services, Holland Landing, Ontario, CN | 11159 |
| 11197–P | Chem Coast, Inc., La Porte, TX | 11197 |
| 11197–P | Westinghouse Electric Corporation, Pittsburgh, PA | 11197 |
| 11197–P | Bostik, Inc., Middleton, MA | 11197 |
| 11197–P | Cook Composites & Polymers Co., Kansas City, MO | 11197 |
| 11230–P | ETI Explosives Technologies International, Inc., Wilmington, DE | 11230 |
| 11294–P | Environmental Services of America, Inc., Ellington, CT | 11294 |
| 11432–P | Schlumberger Well Services, Houston, TX | 11432 |

This notice of receipt of applications for modification of exemptions and for party to an exemption is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on August 10, 1995.

**J. Suzanne Hedgepeth,**

*Chief, Exemption Programs, Office of Hazardous Materials Exemptions and Approvals.*

[FR Doc. 95–20309 Filed 8–15–95; 8:45 am]

**BILLING CODE 4910–60–M**

## Office of Hazardous Materials Safety; Notice of Applications for Exemptions

**AGENCY:** Research and Special Programs Administration, DOT.

**ACTION:** List of Applications for Exemptions.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, exemptions for the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follow: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

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

**ADDRESS COMMENTS TO:** Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590. Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

**FOR FURTHER INFORMATION CONTACT:**

Copies of the applications are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Street, SW. Washington, DC.

NEW EXEMPTIONS

| Application No. | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|
| 11442–N | Union Tank Car Co., East Chicago, IN. | 49 CFR 173.31 | To authorize an alternative retesting schedule for DOT 111A100W–6 tank cars. (Mode 2.) |
| 11443–N | Hercules Inc., Wilmington, DE | 49 CFR 173.225(e) | To authorize the transportation of Division 5.2 organic perodixes intermediate bulk containers equipped with the same pressure releases system as DOT–57 portable tanks. (Mode 1.) |
| 11513–N | Thiokol Corp., Brigham City, UT | 49 CFR 172.101 | To authorize the transportation cyclotetramethyle tetranitramine (HMX) dry, Division 1.1D containing less than 10 percent water transported in non-DOT specification 25 lb. plastic bags overpacked in 21–C or UN approved container. (Mode 1.) |
| 11518–N | Petroleum Marketers Assoc. of America, Arlington, VA. | 49 CFR 180.405(b), (c), (g), (h), (j), 180.407(c), (d)(1), (e), (g), (h), (i). | To authorize an alternative testing and inspection procedure of small cargo tanks of 3,500 gallons or less carrying petroleum products. (Mode 1.) |
| 11519–N | B&R Specialities Inc., Hyde Park, NY. | 49 CFR 172.101, Column 8.c, 173.197. | To authorize the transportation of regulated medical waste in polyethylene carts mounted on bases with roller coasters transported in specifically designed trucks. (Mode 1.) |
| 11520–N | Albemarle Corp., Baton Rouge, LA. | 49 CFR 173.249(b) | To authorize the one-time shipment of a partial load of bromine, Class 8, PIH (approximately 754 gallons) in a 1788 gallon capacity nickel-clad DOT Specification MC–312 cargo tank. (Mode 1.) |
| 115121–N | City of Cincinnati, Cincinnati, OH | 49 CFR 174.67(i) and (j) | To authorize a tank car to stand with unloading connections attached after unloading without the physical presence of an unloader. (Mode 2.) |

NEW EXEMPTIONS—Continued

| Application No. | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|
| 11522–N | The American Waterways Operators, Seattle, WA. | 49 CFR 176.905(k) | To authorize battery cables in (self-propelled) vehicles to remain connected and stowed in closed freight containers and transported on unmanned open-deck steel barges. (Mode 3.) |
| 11523–N | Bio-Lab, Inc. Conyers, GA | 49 CFR 172.407 | To authorize the transportation of palletized non-DOT specification high density polyethylene bottles of 5 pound capacity, containing calcium hypochlorite, hydrated, Division 5.1 (Mode 1.) |

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on August 10, 1995.

**J. Suzanne Hedgepeth,**

*Chief, Exemption Programs, Office of Hazardous Materials Exemptions and Approvals.*

[FR Doc. 95–20310 Filed 8–15–95; 8:45 am]

**BILLING CODE 4910–60–M**

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

### Information Collection Submitted to OMB for Review

**AGENCY:** Office of the Comptroller of the Currency, Treasury.

**ACTION:** Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

**SUMMARY:** In accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Office of the Comptroller of the Currency (OCC) hereby gives notice that it has sent to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act, an information collection titled ''Comptroller's Corporate Manual''.

**DATES:** Comments on this information collection are welcome and should be submitted by September 15, 1995.

**ADDRESSES:** A copy of the information collection may be obtained by calling or writing the OCC contact.

**SUPPLEMENTARY INFORMATION:** In accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Office of the Comptroller of the Currency (OCC) has sent to OMB an information collection for review under the Paperwork Reduction Act as follows:

**OMB Control Number 1557–0014**

*Title:* Comptroller's Corporate Manual.

*Type of Review:* Regular submission.

*Description:* The Comptroller's Corporate Manual explains the OCC's policies and procedures for the formation of a new national bank, entry into the national banking system by other institutions, and corporate expansion and structural changes by existing national banks.

*Form Number:* None.

*OMB Number:* 1557–0014.

*Affected Public:* Businesses or other for-profit.

*Number of Respondents:* 3,000 respondents.

*Total Annual Responses:* 10,390 responses.

*Average Hours Per Response:* 2.16 hours.

*Total Annual Burden Hours:* 20,812 hours.

*OMB Reviewer:* Milo Sunderhauf, (202)395–7340, Paperwork Reduction Project 1557–0014, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

*OCC Contact:* John Ference or Jessie Gates, (202)874–5090, Legislative and Regulatory Activities Division (1557–0014), Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

*Comments:* Comments regarding the information collection should be addressed to both the OMB reviewer and the OCC contact listed above.

Dated: August 9, 1995.

**Julie L. Williams,**

*Chief Counsel.*

[FR Doc. 95–20053 Filed 8–15–95; 8:45 am]

**BILLING CODE 4810–33–P**

# Sunshine Act Meetings

**Federal Register**

Vol. 60, No. 158

Wednesday, August 16, 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:** 12:00 noon, Monday, August 21, 1995.

**PLACE:** William McChesney Martin, Jr. Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 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: August 11, 1995.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 95–20360 Filed 8–14–95; 8:45 am]

BILLING CODE 6210–01–M

# Corrections

**Federal Register**

Vol. 60, No. 158

Wednesday, August 16, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Docket 39-95]**

### Foreign-Trade Zone 15, Kansas City, Missouri; Application for Expansion

*Correction*

In notice document 95–19822 appearing on page 40820 in the issue of Thursday, August 10, 1995, make the following corrections:

1. On page 40820, in the second column, in the fifth full paragraph, in the seventh and eighth lines, ''[60 days from date of publication].'' should read ''October 10, 1995''.

2. On the same page, in the same column, in the same paragraph, in the last line, ''[75 days from date of publication]).'' should read ''October 24, 1995''.

**BILLING CODE 1505–01–D**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Docket 40-95]**

### Foreign-Trade Zone 2, New Orleans, LA Proposed Foreign-Trade Subzone BP Exploration & Oil Inc. (Oil Refinery Complex) New Orleans, Louisiana, Area

*Correction*

In notice document 95–19823 appearing on page 40819 in the issue of Thursday, August 10, 1995, make the following corrections:

1. On page 40819, in the third column, in the second full paragraph, in the sixth and seventh lines, ''[60 days from date of publication].'' should read ''October 10, 1995''.

2. On the same page, in the same column, in the same paragraph, in the last line, ''[75 days from date of publication]).'' should read ''October 24, 1995''.

**BILLING CODE 1505–01–D**

federal register

Wednesday
August 16, 1995

# Part II

# Department of Defense
# General Services Administration
# National Aeronautics and Space Administration

**48 CFR Part 1, et al.**
**Federal Acquisition Regulations; Final Rules**

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Chapter 1**

**[Federal Acquisition Circular 90–31]**

## Federal Acquisition Regulation; Introduction of Miscellaneous Amendments

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Summary presentation of final rules.

**SUMMARY:** This document serves to introduce the final rules which follow and which comprise Federal Acquisition Circular (FAC) 90–31. The Federal Acquisition Regulatory Council has agreed to issue FAC 90–31 to amend the Federal Acquisition Regulation (FAR).

**DATES:** For effective dates, see individual documents following this one.

**FOR FURTHER INFORMATION CONTACT:** The team leader whose name appears in relation to each FAR case or subject area. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC, 20405 (202) 501–4755. Please cite FAC 90–31 and FAR case number(s).

**SUPPLEMENTARY INFORMATION:** Federal Acquisition Circular 90–31 amends the Federal Acquisition Regulation (FAR) as specified below:

| Item | Subject | FAR case | Team leader |
|---|---|---|---|
| I | Consolidation and Revision of the Authority to Examine Records. | 94–740 | Tucciarone (703) 767–2270 |
| II | Contract Award Implementation | 94–701 | Rider (703) 614–1634 |
| III | Penalties on Unallowable Indirect Costs | 94–751 | Belton (703) 602–2357 |
| IV | Implementation of Various Cost Principle Provisions | 94–754 | Belton (703) 602–2357 |
| V | Entertainment, Gift, and Recreation Costs for Contractor Employees. | 94–750 | Belton (703) 602–2357 |
| VI | Contractor Overhead Certification | 94–752 | Belton (703) 602–2357 |
| VII | Technical Amendments. | | |

### Case Summaries

For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

### Item I—Consolidation and Revision of the Authority to Examine Records (FAR Case 94–740)

This final rule implements Sections 2201(a), 2251(a), 4102(c), and 4103(d) of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355). The rule (1) permits contractors to store records in electronic form; (2) restricts contracting officers from requesting a preaward audit of indirect costs if the results of a recent audit are available; (3) deletes the clause at 52.215–1, Examination of Records by Comptroller General; (4) and revises the clauses at 52.214–26, Audit and Records—Sealed Bidding, and 52.215–2, Audit and Records—Negotiation, to provide for examination of records by the Comptroller General.

### Item II—Contract Award Implementation (FAR Case 94–701)

This final rule implements Sections 1002, 1003, 1005, 1011, 1012, 1013, 1014, 1052, 1053, 1055, 1061, 1062, 1063, 1064, 1555, 7203, and 10004 of Pub. L. 103–355. The rule (1) requires agencies to report additional information on procurements exceeding $25,000; (2) expands the criteria for establishing or maintaining alternative sources of supplies or services; (3) permits use of other than full and open competition to acquire expert services for litigation; (4) places limitations on the use of other than full and open competition when authorized or required by statute; (5) clarifies approval requirements for written justifications for other than full and open competition; (6) revises procedures for specifying evaluation factors and subfactors in solicitations, for conducting written or oral discussions, and for providing postaward notices and debriefings to offerors; (7) requires a written determination before providing for evaluation of options in sealed bid procurements; (8) permits nonprofit agencies for the blind or severely disabled to use Government supply sources in performing contracts under the Javits-Wagner-O'Day Act; and (9) allows award without discussion to other than the lowest overall cost offeror.

### Item III—Penalties on Unallowable Indirect Costs (FAR Case 94–751)

This final rule implements Sections 2101 and 2151 of Pub. L. 103–355. The rule contains procedures for the assessment of penalties on unallowable indirect costs under contracts exceeding $500,000. These procedures are essentially the same as those contained in the Defense FAR Supplement.

### Item IV—Implementation of Various Cost Principle Provisions (FAR Case 94–754)

This final rule implements Section 2101 of Pub. L. 103–355. The rule adds the costs of lobbying the legislative body of a political subdivision of a state to the list of unallowable costs; adds the cost of ''conventions'' to the costs to be clarified in the cost principles; and expands the coverage to the Coast Guard and the National Aeronautics and Space Administration. Section 2151 amends 41 U.S.C. 256 to include all the provisions of 10 U.S.C. 2324, as amended by Section 2101. Therefore, the provisions are made generally applicable to all other executive agencies. The new FAR language, with only minor variations, was transferred from the current coverage in the Defense Federal Acquisition Regulation Supplement.

### Item V—Entertainment, Gift, and Recreation Costs for Contractor Employees (FAR Case 94–750)

This rule finalizes the interim rule published in FAC 90–25. The rule implements Section 2192 of Pub. L. 103–355 to revise the cost principles governing entertainment, gift, and recreation costs for contractor employees. The final rule differs from the interim rule in that it (1) clarifies that gifts do not include certain employee performance and achievement awards; (2) clarifies the restrictions

pertaining to entertainment and recreation costs; and (3) eliminates the requirement that certain costs are allowable only if the net amount per employee is reasonable. This final rule replaces the interim rule in its entirety for any contracts containing the interim rule. Thus, the provisions of the interim rule will not apply to costs incurred under any contract under any circumstances.

**Item VI—Contractor Overhead Certification (FAR Case 94–752)**

This final rule implements Section 2151 of Pub. L. 103–355. The rule contains procedures for obtaining contractor certification of a proposal to establish or modify billing rates or to establish final indirect cost rates. These procedures are essentially the same as those contained in the Defense FAR Supplement.

Dated: August 7, 1995.

**Edward C. Loeb,**

*Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.*

**Federal Acquisition Circular**

[Number 90–31]

Federal Acquisition Circular (FAC) 90–31 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90–31 is effective October 1, 1995, except for Item VII which is effective August 16, 1995. FAC Items I through VI are applicable for solicitations issued on or after October 1, 1995. Contracting officers may, at their discretion, include the provisions and clauses in FAC Items I through VI in solicitations issued before October 1, 1995, for contracts expected to be awarded on or after October 1, 1995.

Dated: August 3, 1995.

**Eleanor R. Spector,**

*Director, Defense Procurement.*

Dated: August 3, 1995.

**Ida M. Ustad,**

*Associate Administrator for Acquisition Policy, General Services Administration.*

Dated: August 7, 1995.

**Deidre A. Lee,**

*Associate Administrator for Procurement, National Aeronautics & Space Administration.*

[FR Doc. 95–19857 Filed 8–15–95; 8:45 am]

BILLING CODE 6820–EP–M

**48 CFR Parts 1, 4, 14, 15, 25, 50, and 52**

**[FAC 90–31; FAR Case 94–740; Item I]**

**RIN 9000–AG24**

## Federal Acquisition Regulation; Consolidation and Revision of the Authority To Examine Records

**AGENCY:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** This final rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994, Public Law 103–355 (the Act). The Federal Acquisition Regulatory Council is amending the Federal Acquisition Regulation (FAR) to implement Sections 2201(a), 2251(a), 4102(c) and 4103(d) of the Act. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**EFFECTIVE DATE:** October 1, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mr. Daniel J. Tucciarone at (703) 767–2270 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–31, FAR case 94–740.

**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, the Truth in Negotiations Act, and introduction of the Federal Acquisition Computer Network.

Title 2, Subtitle C of the Act is entitled Audit and Access to Records. Section 2201(a) of the act merges the audit provision of TINA (10 U.S.C. 2306a) and the audit coverage in 10 U.S.C. Section 2313 into a single comprehensive section at 10 U.S.C. 2313. Section 2201(a) includes subsections that: (1) limit obtaining preaward information when the results of a recent audit are already available, (2) allow a contractor to store original records in electronic form, (3) allow the use of images as original records, and (4) provide a new definition of records.

Section 2251(a) of the Act consolidates the audit rights for civilian agencies and conforms those rights with the provisions in 10 U.S.C. Section 2313 to ensure identical audit authorities for both DOD and civilian agencies.

Sections 2201(a) and 2251(a) both discuss subpoena authorities.

By its terms, the Act at Sections 2201(a) and 2251(a) provides that all cost-reimbursement, incentive, time-and-materials, labor-hour or price-redeterminable subcontracts will be subject to audit. FAR 52.215–2(g), therefore, requires the flowdown of the Audit and Records—Negotiation clause into all subcontracts of these types and into subcontracts when cost or pricing data are required, or when cost performance reports are required. This rule, however, exempts from the flowdown requirement all subcontracts below the simplified acquisition threshold. This conforms the audit rights at the subcontract level with those at the prime contract level.

An Alternate III was added to the clause at FAR 52.215–2 to provide for waiver of the right to examination of records by the Comptroller General.

**B. Regulatory Flexibility Act**

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small businesses are awarded competitively on a firm-fixed-price basis and, therefore, are not subject to audit requirements.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose additional recordkeeping or information collection requirements, or additional collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* For civilian agency procurements, recordkeeping is reduced due to the higher cost or pricing data threshold.

**D. Public Comments**

A proposed rule was published in the **Federal Register** at 59 FR 66408, December 23, 1994. During the public comment period, 11 comments were received. Comments were also received during two agency comment periods. Changes were made to the proposed rule

to achieve clearer, more concise wording based on these comments.

**List of Subjects in 48 CFR Parts 1, 4, 14, 15, 25, 50, and 52**

Government procurement.

Dated: August 7, 1995.

**Edward C. Loeb,**

*Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.*

Therefore, 48 CFR Parts 1, 4, 14, 15, 25, 50, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 1, 4, 14, 15, 25, 50, and 52 continues to read as follows:

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

## PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

### 1.106 [Amended]

2. Section 1.106 is amended under the ''FAR Segment'' and ''OMB Control Number'' headings by removing ''52.215–1'' and ''9000–0034''.

## PART 4—ADMINISTRATIVE MATTERS

3. Section 4.702 is amended by revising paragraph (a) to read as follows:

### 4.702 Applicability.

(a) This subpart applies to records generated under contracts that contain one of the following clauses:

(1) Audit and Records—Sealed Bidding (52.214–26).

(2) Audit and Records—Negotiation (52.215–2).

* * * * *

4. Section 4.703 is amended as follows:

a. In paragraph (a) by removing the phrase ''books, records, documents,'' and inserting in its place ''records, which includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form,'';

b. In paragraph (b) introductory text and the first sentence of (b)(2) by removing the word ''documents'' and inserting in its place ''records'';

c. Revising paragraph (c); and

d. Removing paragraph (d) and redesignating paragraph ''(e)'' as paragraph ''(d)''. The revised text reads as follows:

### 4.703 Policy.

* * * * *

(c) Nothing in this section shall be construed to preclude a contractor from duplicating or storing original records in electronic form unless they contain significant information not shown on the record copy. Original records need not be maintained or produced in an audit if the contractor or subcontractor provides photographic or electronic images of the original records and meets the following requirements:

(1) The contractor or subcontractor has established procedures to ensure that the imaging process preserves accurate images of the original records, including signatures and other written or graphic images, and that the imaging process is reliable and secure so as to maintain the integrity of the records.

(2) The contractor or subcontractor maintains an effective indexing system to permit timely and convenient access to the imaged records.

(3) The contractor or subcontractor retains the original records for a minimum of one year after imaging to permit periodic validation of the imaging systems.

* * * * *

### 4.706 through 4.706–3 [Removed]

5. Section 4.706 is removed and reserved, and sections 4.706–1 through 4.706–3 are removed.

## PART 14—SEALED BIDDING

6. Section 14.201–7 is amended by revising paragraph (a) to read as follows:

### 14.201–7 Contract clauses.

(a) When contracting by sealed bidding, the contracting officer shall insert the clause at 52.214–26, Audit and Records—Sealed Bidding, in solicitations and contracts if the contract amount is expected to exceed the threshold at 15.804–2(a)(1) for submission of cost or pricing data.

* * * * *

## PART 15—CONTRACTING BY NEGOTIATION

7. Section 15.106–1 is removed and 15.106–2 is redesignated as 15.106–1 and revised to read as follows:

### 15.106–1 Audit and Records—Negotiation clause.

(a) This subsection implements 10 U.S.C. 2313, 41 U.S.C. 254d, and OMB Circular No. A–133.

(b) The contracting officer shall, if contracting by negotiation, insert the clause at 52.215–2, Audit and Records—Negotiation, in solicitations and contracts except those (1) not exceeding the simplified acquisition threshold in Part 13; or (2) for utility services at rates not exceeding those established to apply uniformly to the general public, plus any applicable reasonable connection charge.

(c) In facilities contracts, the contracting officer shall use the clause with its Alternate I. In cost-reimbursement contracts with educational institutions and other nonprofit organizations, the contracting officer shall use the clause with its Alternate II. If the examination of records by the Comptroller General is waived in accordance with 25.901, the contracting officer shall use the clause with its Alternate III.

8. Section 15.805–5 is amended in paragraph (a)(1) introductory text by inserting after the first sentence the following:

### 15.805–5 Field pricing support.

(a)(1) * * * The contracting officer should contact the cognizant audit office to determine the existence of audits addressing proposed indirect costs. In accordance with 41 U.S.C. 254d and 10 U.S.C. 2313, the contracting officer shall not request a preaward audit of such indirect costs unless the information available from any existing audit completed within the preceding 12 months is considered inadequate for determining the reasonableness of the proposed indirect costs. * * *

* * * * *

## PART 25—FOREIGN ACQUISITION

9. Section 25.000 is amended by revising the last sentence to read as follows:

### 25.000 Scope of part.

* * * This part also provides policies and procedures pertaining to international agreements, customs and duties, the clause at 52.215–2, Audit and Records—Negotiation, and use of local currency for payment.

10. Section 25.901 is amended by revising the section heading and paragraphs (b), (c), (d)(2), (d)(3), and (d)(5) to read as follows:

### 25.901 Omission of audit clause.

* * * * *

(b) *Policy.* As required by 10 U.S.C. 2313, 41 U.S.C. 254d, and 15.106–1(b), the contracting officer shall consider for use in negotiated contracts with foreign contractors, whenever possible, the basic clause at 52.215–2, Audit and Records—Negotiation, which authorizes examination of records by the Comptroller General. Use of the clause with Alternate III should be approved only after the contracting agency, having considered such factors as alternate sources of supply, additional cost, and time of delivery, has made all reasonable efforts to include the basic clause.

(c) *Conditions for use of Alternate III.* The contracting officer may use the clause at 52.215–2, Audit and Records—Negotiation, with its Alternate III in contracts with foreign contractors—

(1) If the agency head, or designee, determines, with the concurrence of the Comptroller General, that waiver of the right to examination of records by the Comptroller General will serve the public interest; or

(2) If the contractor is a foreign government or agency thereof or is precluded by the laws of the country involved from making its records, as defined at 4.703(a), available for examination, and the agency head, or designee, determines, after taking into account the price and availability of the property or services from United States sources, that waiver of the right to examination of records by the Comptroller General best serves the public interest.

(d) * * *

(2) Describe the efforts to include the basic clause;

(3) State the reasons for the contractor's refusal to include the basic clause;

* * * * *

(5) Determine that it will serve the interest of the United States to use the clause with its Alternate III.

## PART 50—EXTRAORDINARY CONTRACTUAL ACTIONS

### 50.307 [Amended]

11. Section 50.307 is amended in paragraph (b) by removing ''52.215–1, Examination of Records by Comptroller General'' and inserting in its place ''52.215–2, Audit and Records—Negotiation''.

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

12. Section 52.214–26 is revised to read as follows:

### 52.214–26 Audit and Records—Sealed Bidding.

As prescribed in 14.201–7(a), inserting the following clause:

**Audit and Records—Sealed Bidding (Oct 1995)**

(a) As used in this clause, *records* includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(b) *Cost or pricing data.* If the Contractor has been required to submit cost or pricing data in connection with the pricing of any modification to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to—

(1) The proposal for the modification;

(2) The discussions conducted on the proposal(s), including those related to negotiating;

(3) Pricing of the modification; or

(4) Performance of the modification.

(c) *Comptroller General.* In the case of pricing any modification, the Comptroller General of the United States, or an authorized representative, shall have the same rights as specified in paragraph (b) of this clause.

(d) *Availability.* The Contractor shall make available at its office at all reasonable times the materials described in reproduction, until 3 years after final payment under this contract, or for any other period specified in Subpart 4.7 of the Federal Acquisition Regulation (FAR). FAR Subpart 4.7, Contractor Records Retention, in effect on the data of this contract, is incorporated by reference in its entirety and made a part of this contract.

(1) If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement.

(2) Records pertaining to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to the performance of this contract shall be made available until disposition of such appeals, litigation, or claims.

(e) The Contractor shall insert a clause containing all the provisions of this clause, including this paragraph (e), in all subcontracts expected to exceed the threshold in FAR 15.804–2(a)(1) for submission of cost or pricing data.

(End of clause)

### 52.215–1 [Reserved]

13. Section 52.215–1 is removed and reserved.

14. Section 52.215–2 is revised to read as follows:

### 52.215–2 Audit and Records—Negotiation.

As prescribed in 15.106–1(b), insert the following clause:

**Audit and Records—Negotiation (Oct 1995)**

(a) As used in this clause, *records* includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(b) *Examination of costs.* If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contract, or any combination of these, the Contractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.

(c) *Cost or pricing data.* If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to—

(1) The proposal for the contract, subcontract, or modification;

(2) The discussions conducted on the proposal(s), including those related to negotiating;

(3) Pricing of the contract, subcontract, or modification; or

(4) Performance of the contract, subcontract or modification.

(d) *Comptroller General*—(1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder.

(2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) *Reports.* If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating (1) the effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.

(f) *Availability.* The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition—

(1) If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement; and

(2) Records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (a), in all subcontracts under this contract that exceed the simplified acquisition threshold in FAR Part 13, and—

(1) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;

(2) For which cost or pricing data are required; or

(3) That require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.

The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

(End of clause)

*Alternate I* (OCT 1995). As prescribed in 15.106–1(c), in facilities contracts, add the following sentence at the end of paragraph (b) of the basic clause:

The obligations and rights specified in this paragraph shall extend to the use of, and charges for the use of, the facilities under this contract.

*Alternate II* (OCT 1995). As prescribed in 15.106–1(c), in cost-reimbursement contracts with educational and other non-profit institutions, add the following paragraph (h) to the basic clause:

(h) The provisions of OMB Circular No. A–133, ''Audits of Institutions of Higher Learning and Other Nonprofit Institutions,'' apply to this contract.

*Alternate III* (OCT 1995). As prescribed in 15.106–1(c), delete paragraph (d) of the basic clause and redesignate the remaining paragraphs accordingly.

[FR Doc. 95–19858 Filed 8–15–95; 8:45 am]

BILLING CODE 6820–EP–M

## 48 CFR Parts 2, 4, 5, 6, 14, 15, 17, 19, 25, 36, 51 and 52

**[FAC 90–31; FAR Case 94–701; Item II]**

**RIN 9000–AG39**

## Federal Acquisition Regulation; Contract Award Implementation

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** This final rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994 to (1) identify new Federal Procurement Data System reporting requirements, (2) expand the reasons for establishing or maintaining alternative sources of supplies or services, (3) allow acquisition of expert services to support litigation by other than full and open competition and provide an exception to synopsis requirements, (4) clarify procedures for award to a source identified in a statute, (5) clarify approval authority for use of other than full and open competition, (6) revise procedures for use of source selection evaluation factors in solicitations, for conducting written or oral discussions, and for providing postaward notices and debriefing to offerors, (7) require a determination that an option is likely to be exercised before providing for evaluation of sealed bid options, (8) allow nonprofit agencies for the blind or severely disabled to use Government supply sources in performing certain Javits-Wagner-O'Day contracts, and (9) make procedures for award without discussion the same for Department of Defense and civilian agencies. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**EFFECTIVE DATE:** October 1, 1995.

**FOR FURTHER INFORMATION CONTACT:** Ms. Melissa Rider, Contract Award Team Leader, at (703) 614–1634 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–31, FAR case 94–701.

**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, the Truth in Negotiations Act, and introduction of the Federal Acquisition Computer Network.

This notice announces FAR revisions developed under FAR Case 94–701, Contract Award Implementation, which implements the following sections of the Act:

—Sections 1002 and 1052 amend 10 U.S.C. 2304(b) and 41 U.S.C. 253(b) to—(1) Ensure the continuous availability of a reliable source of supply; (2) satisfy projected needs based on a history of high demand; and (3) satisfy a critical need for medical, safety, or emergency supplies, as reasons for establishing or maintaining alternative sources. (Implementation at FAR 6.202.)

—Sections 1003 and 1053 amend 10 U.S.C. 2304(f)(1)(B)(i) and 41 U.S.C. 253(f)(1)(B)(i) to clarify the approval authority for use of other than full and open competition. (Implementation at FAR 6.304.)

—Sections 1005 and 1055 amend 10 U.S.C. 2304(c)(3) and 41 U.S.C. 253(c) to add the acquisition of expert services for use in any litigation or dispute involving the Federal Government as an exception to use of full and open competition. (Implementation at FAR 6.302–3.) Section 1055 also amended 41 U.S.C. 416(c) and 15 U.S.C. 637(c) to provide an exception to the publication of notices in the Commerce Business Daily for acquisition of expert services. (Implementation at FAR 5.201, 5.202, 5.301, and 6.302–3.)

—Sections 1011 and 1061 amend 10 U.S.C. 2305(a) and 41 U.S.C. 253a and 253b to (1) Make procedures for award of contracts without discussion comparable in Department of Defense and civilian agencies, (2) require solicitations for competitive proposals to include all significant factors and subfactors and whether they are more important, of equal importance or less important than cost or price, (3) permit agencies to disclose numerical weights assigned to evaluation factors at their discretion, and (4) allow award without discussion to other than the lowest overall cost offeror. (Implementation at FAR 15.406–5, 15.407, 15.605, 15.610, and 52.215–16.)

—Sections 1012 and 1062 amend 10 U.S.C. 2305(a) and 41 U.S.C. 253a to require a determination that it is likely that an option will be exercised before providing for evaluation of prices of options in solicitations for contracts awarded using sealed bid procedures. (Implementation at FAR 17.202 and 17.208.)

—Sections 1013 and 1063 amend 10 U.S.C. 2305(b) and 41 U.S.C. 253b to require, within three days of contract award, notification to unsuccessful offerors that a contract has been awarded and to allow electronic transmission of the notice. (Implementation at FAR 2.101, 14.408–1, 14.409–1, 15.1002, 15.1003, 25.405, and 36.304.)

—Sections 1014 and 1064 amend 10 U.S.C. 2305(b) and 41 U.S.C. 253b to (1) Allow offerors to request a debriefing within three days of receipt of notice of award and require agencies, to the maximum extent practicable, to conduct the debriefings within five days, and (2) specify minimum requirements for content of the debriefings. (Implementation at FAR 15.1001, 15.1004, 36.607, and 52.215–16.)

—Section 1555 amends 40 U.S.C. 481 to allow nonprofit agencies for the blind or severely disabled providing supplies or services under a Javitts-Wagner-O'Day Act contract to use Government supply sources in performing the contract. (Implementation at FAR 51.101 and

51.102.) Other parts of Section 1555 are being implemented separately by GSA (see proposed rule of April 7, 1995, 60 FR 17764).

—Section 7203 amends 10 U.S.C. 2304 and 41 U.S.C. 253 to state Congressional policy regarding legislative requirements for award of a new contract to a specific non-Federal Government entity. (Implementation at FAR 6.302–5.)

—Section 10004 requires the Federal Procurement Data System to collect from contracts in excess of $25,000 data on awards to small and disadvantaged businesses using either set asides or full and open competition, awards to businesses owned and controlled by women, the number of offers received in response to a solicitation, task or delivery order contracts and contracts for the acquisition of commercial items. (Implementation at FAR 4.601.)

**B. Regulatory Flexibility Act**

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the regulatory changes contained in the rule relate primarily to the content of solicitations, debriefings and notifications to offerors, internal Government procedures, and procedures which apply only to the acquisition of expert services for litigation or to decisions to maintain alternative sources of supply. The rule will increase the amount of pre-award and post-award information provided to the public, but will not have a significant economic impact.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**D. Public Comments**

Eighteen public comments were received in response to the proposed rule published in the **Federal Register** on January 9, 1995 (60 FR 2472). These comments were considered in formulation of this final rule.

**List of Subjects in 48 CFR Parts 2, 4, 5, 6, 14, 15, 17, 19, 25, 36, 51 and 52**

Government procurement.

Dated: August 7, 1995.

**Edward C. Loeb,**

*Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.*

Therefore, 48 CFR Chapter 1 is amended as set forth below:

1. The authority citation for 48 CFR Parts 2, 4, 5, 6, 14, 15, 17, 19, 25, 36, 51 and 52 continue to read as follows:

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

## PART 2—DEFINITIONS OF WORDS AND TERMS

2. Section 2.101 is amended by adding, in alphabetical order, the definition *Day* to read as follows:

**2.101 Definitions.**

* * * * *

*Day* means, unless otherwise specified, a calendar day.

* * * * *

## PART 4—ADMINISTRATIVE MATTERS

3. Section 4.601 is amended by redesignating existing paragraph (d) as (e); and adding a new paragraph (d) to read as follows:

**4.601 Record requirements.**

* * * * *

(d) In addition to the information described in paragraphs (b) and (c) of this section, for procurements in excess of $25,000, agencies shall be able to access information on the following from the computer file:

(1) Awards to small disadvantaged businesses using either set-asides or full and open competition.

(2) Awards to business concerns owned and controlled by women.

(3) The number of offers received in response to a solicitation.

(4) Task or delivery order contracts.

(5) Contracts for the acquisition of commercial items.

* * * * *

## PART 5—PUBLICIZING CONTRACT—ACTIONS

4. Section 5.201 is amended by revising paragraph (a) to read as follows:

**5.201 General.**

(a) As required by the Small Business Act (15 U.S.C. 637(e)) and the Office of Federal Procurement Policy Act (41 U.S.C. 416), agencies shall furnish for publication in the Commerce Business Daily (CBD) notices of proposed contract actions as specified in paragraph (b) of this section.

* * * * *

5. Section 5.202 is amended at the end of paragraph (a)(13) by removing the word ''or''; at the end of paragraph (a)(14) by removing the period and inserting ''; or'' in its place; and by adding paragraph (a)(15) to read as follows:

**5.202 Exceptions.**

* * * * *

(a) * * *

(15) The contract action is made under conditions described in 6.302–3 with respect to the services of an expert to support the Federal Government in any current or anticipated litigation or dispute.

* * * * *

6. Section 5.301 is amended at the end of paragraph (b)(6) by removing ''or''; at the end of paragraph (b)(7) by removing the period and inserting ''; or''; and by adding paragraph (b)(8) to read as follows:

**5.301 General.**

* * * * *

(b) * * *

(8) The award is for the services of an expert to support the Federal Government in any current or anticipated litigation or dispute pursuant to the exception to full and open competition authorized at 6.302–3.

* * * * *

**5.303 [Amended]**

7. Section 5.303 is amended in paragraph (b)(2) by removing the citation ''15.1001(c)'' and inserting ''15.1002(c)'' in its place.

## PART 6—COMPETITION REQUIREMENTS

8. Section 6.202 is amended by revising paragraph (a)(1); at the end of paragraph (a)(2) by removing ''or''; at the end of paragraph (a)(3) by removing the period and inserting a semicolon; and adding paragraphs (a)(4) through (a)(6) to read as follows:

**6.202 Establishing or maintaining alternative sources.**

(a) * * *

(1) Increase or maintain competition and likely result in reduced overall costs for the acquisition, or for any anticipated acquisition;

* * * * *

(4) Ensure the continuous availability of a reliable source of supplies or services;

(5) Satisfy projected needs based on a history of high demand; or

(6) Satisfy a critical need for medical, safety, or emergency supplies.

* * * * *

9. Section 6.302–3 is amended by revising the heading and paragraph (a)(2); and by adding paragraph (b)(3) to read as follows:

**6.302–3 Industrial mobilization; engineering, developmental, or research capability; or expert services.**

(a) * * *

(2) Full and open competition need not to be provided for when it is necessary to award the contract to a particular source or sources in order:

(i) to maintain a facility, producer, manufacturer, or other supplier available for furnishing supplies or services in case of a national emergency or to achieve industrial mobilization,

(ii) to establish or maintain an essential engineering, research, or other nonprofit institution or a federally funded research and development center, or

(iii) to acquire the services of an expert for any current or anticipated litigation or dispute.

(b) * * *

(3) Use of the authority in paragraph (a)(2)(iii) of this section may be appropriate when it is necessary to acquire the services of either—

(i) An expert to use, in any litigation or dispute (including any reasonably foreseeable litigation or dispute) involving the Government in any trial, hearing, or proceeding before any court, administrative tribunal, or agency, whether or not the expert is expected to testify. Examples of such services include, but are not limited to:

(A) Assisting the Government in the analysis, presentation, or defense of any claim or request for adjustment to contract terms and conditions, whether asserted by a contractor or the Government, which is in litigation or dispute, or is anticipated to result in dispute or litigation before any court, administrative tribunal, or agency, or

(B) Participating in any part of an alternative dispute resolution process, including but not limited to evaluators, fact finders, or witnesses, regardless of whether the expert is expected to testify; or

(ii) A neutral person, *e.g.*, mediators or arbitrators, to facilitate the resolution of issues in an alternative dispute resolution process.

* * * * *

10. Section 6.302–5 is amended by revising paragraph (c)(1) and adding paragraph (c)(3) to read as follows:

**6.302–5 Authorized or required by statute.**

* * * * *

(c) *Limitations.* (1) This authority shall not be used when a provision of law requires an agency to award a new contract to a specified non-Federal Government entity unless the provision of law specifically—

(i) Identifies the entity involved;

(ii) Refers to 10 U.S.C. 2304(j) for armed services acquisitions or section 303(h) of the Federal Property and Administrative Services Act of 1949 for civilian agency acquisitions; and

(iii) States that award to that entity shall be made in contravention of the merit-based selection procedures in 10 U.S.C. 2304(j) or section 303(h) of the Federal Property and Administrative Services Act, as appropriate. However, this limitation does not apply—

(A) When the work provided for in the contract is a continuation of the work performed by the specified entity under a preceding contract; or

(B) To any contract requiring the National Academy of Sciences to investigate, examine, or experiment upon any subject of science or art of significance to an executive agency and to report on those matters to the Congress or any agency of the Federal Government.

* * * * *

(3) The authority in (a)(2)(ii) of this subsection may be used only for purchases of brand-name commercial items for resale through commissaries or other similar facilities. Ordinarily, these purchases will involve articles desired or preferred by customers of the selling activities (but see 6.301(d)).

11. Section 6.304 is amended by revising paragraph (a)(2) to read as follows:

**6.304 Approval of the justification.**

(a) * * *

(2) For a proposed contract over $100,000 but not exceeding $1,000,000, by the competition advocate for the procuring activity designated pursuant to 6.501 or an official described in paragraph (a)(3) or (a)(4) of this section. This authority is not delegable.

* * * * *

## PART 14—SEALED BIDDING

12. Section 14.408–1 is amended by revising paragraphs (a)(1) and (d)(2) to read as follows:

**14.408–1 General.**

(a) * * *

(1) by written or electronic notice,* * *

* * * * *

(d) * * *

(2) Use of the Award portion of SF 33, SF 26, or SF 1447, does not preclude the additional use of informal documents, including telegrams or electronic transmissions, as notices of awards.

13. Section 14.409–1 is revised to read as follows:

**14.409–1 Award of unclassified contracts.**

(a)(1) The contracting officer shall as a minimum (subject to any restrictions in Subpart 9.4)—

(i) Notify each unsuccessful bidder in writing or electronically within three days after contract award, that its bid was not accepted. ''Day,'' for purposes of the notification process, means calendar day, except that the period will run until a day which is not a Saturday, Sunday, or legal holiday;

(ii) Extend appreciation for the interest the unsuccessful bidder has shown in submitting a bid; and

(iii) When award is made to other than a low bidder, state the reason for rejection in the notice to each of the unsuccessful low bidders.

(2) For acquisitions subject to the Trade Agreements Act or the North American Free Trade Agreement (NAFTA) Implementation Act (see 25.405(e)), agencies shall include in notices given unsuccessful bidders from designated or NAFTA countries—

(i) The dollar amount of the successful bid; and

(ii) The name and address of the successful bidder.

(b) Information included in paragraph (a)(2) of this subsection shall be provided to any unsuccessful bidder upon request except when multiple awards have been made and furnishing information on the successful bids would require so much work as to interfere with normal operations of the contracting office. In such circumstances, only information concerning location of the abstract of offers need be given.

(c) When a request is received concerning an unclassified invitation from an inquirer who is neither a bidder nor a representative of a bidder, the contracting officer should make every effort to furnish the names of successful bidders and, if requested, the prices at which awards were made. However, when such requests require so much work as to interfere with the normal operations of the contracting office, the inquirer will be advised where a copy of the abstract of offers may be seen.

(d) Requests for records shall be governed by agency regulations implementing Subpart 24.2.

**14.503–1 [Amended]**

14. Section 14.503–1 is amended at the end of paragraph (g) by removing the phrase ''(see 15.1003)'' and inserting ''(see 15.1004)'' in its place.

## PART 15—CONTRACTING BY NEGOTIATION

**15.406–5 [Amended]**

15. Section 15.406–5 is amended in paragraph (c) by inserting the word ''significant'' after the word ''all''; and by removing the phrase ''(see 15.605(e) and (f)'' and inserting in its place ''(see 15.605(d) and (e)''.

16. Section 15.407 is amended by revising paragraph (d)(4) to read as follows:

**15.407 Solicitation provisions.**

* * * * *

(d) * * *

(4) Insert in RFP's the provision at 52.215–16, Contract Award.

(i) If the RFP is for construction, the contracting officer shall use the provision with its Alternate I. If awards are to be made without discussions, also use Alternate II.

(ii) If the contracting officer intends to evaluate offers and make award without discussions, use the basic provision with its Alternate II.

* * * * *

**15.412 [Amended]**

17. Section 15.412 is amended in the second sentence of paragraph (d) by removing the citation ''15.1001(c)(1)'' and inserting ''15.1002(c)(1)'' in its place.

18. Section 15.605 is amended by revising the heading, and paragraphs (a), (b)(1) introductory text, (b)(1)(iii), (b)(2), and (d) to read as follows:

**15.605 Evaluation factors and subfactors.**

(a) The factors and subfactors that will be considered in evaluating proposals shall be tailored to each acquisition and shall include only those factors that will have an impact on the source selection decision.

(b)(1) The evaluation factors and subfactors that apply to an acquisition and the relative importance of those factors and subfactors are within the broad discretion of agency acquisition officials except that—

* * * * *

(iii) Quality shall be addressed in every source selection through inclusion in one or more of the non-cost evaluation factors or subfactors, such as past performance, technical excellence, management capability, personnel qualifications, prior experience, and schedule compliance.

* * * * *

(2) Any other relevant factors or subfactors, such as cost realism, may also be included.

* * * * *

(d)(1) The solicitation should be structured to provide for the selection of the source whose proposal offers the greatest value to the Government in terms of performance, risk management, cost or price, and other factors. At a minimum, the solicitation shall clearly state the significant evaluation factors, such as cost or price, cost or price-related factors, past performance and other non-cost or non-price-related factors, and any significant subfactors, that will be considered in making the source selection, and their relative importance (see 15.406–5(c)). The solicitation shall inform offerors of minimum requirements that apply to particular evaluation factors and significant subfactors. Further, the solicitation shall state whether all evaluation factors other than cost or price, when combined, are—

(i) Significantly more important than cost or price;

(ii) Approximately equal to cost or price; or

(iii) Significantly less important than cost or price.

(2) The solicitation may elaborate on the relative importance of factors and subfactors at the discretion of the contracting officer. Agencies may elect to assign numerical weights to evaluation factors and employ those weights when evaluating proposals. Numerical weights need not be disclosed in solicitations; however, nothing precludes an agency from disclosing the weights on a case-by-case basis. The solicitation may state that award will be made to the offeror that meets the solicitation's minimum criteria for acceptable award at the lowest cost or price.

* * * * *

**15.609 [Amended]**

19. Section 15.609 is amended in paragraph (c) by removing ''(see 15.1001(b))'' and inserting ''(see 15.1002(b))'' in its place.

20. Section 15.610 is amended by revising paragraphs (a) and (b) to read as follows:

**15.610 Written or oral discussion.**

(a) The requirement in paragraph (b) of this section for written or oral discussion need not be applied in acquisitions—

(1) In which prices are fixed by law or regulation;

(2) Of the set-aside portion of a partial set-aside; or

(3) In which the solicitation notified all offerors that the Government intends to evaluate proposals and make award without discussion, unless the contracting officer determines that discussions (other than communications conducted for the purpose of minor clarification) are considered necessary (see 15.407(d)(4)). Once the Government states its intent to award without discussion, the rationale for reversal of this decision shall be documented in the contract file.

(b) Except as provided in paragraph (a) of this section, the contracting officer shall conduct written or oral discussions with all responsible offerors who submit proposals within the competitive range. The content and extent of the discussions is a matter of the contracting officer's judgment, based on the particular facts of each acquisition (but see paragraphs (c) and (d) of this section).

* * * * *

21. Section 15.612 is amended by revising paragraph (f) to read as follows:

**15.612 Formal source selection.**

* * * * *

(f) *Postaward notices and debriefings.* See 15.1002(c) and 15.1004.

**15.1001 through 15.1005 [Redesignated as 15.1002 through 15.1006]**

22. Sections 15.1001 through 15.1005 are redesignated as 15.1002 through 15.1006, respectively; and a new 15.1001 is added to read as follows:

**15.1001 General.**

This subpart applies to the use of competitive proposals, as described in 6.102(b), and a combination of competitive procedures, as described in 6.102(c). To the extent practicable, however, the procedures and intent of this subpart, with reasonable modification, should be followed for acquisitions described in 6.102(d): broad agency announcements, small business innovation research contracts, and architect-engineer contracts. However, they do not apply to multiple award schedules, as described in 6.102(d)(3).

23. Newly designated section 15.1002 is amended by revising paragraph (a), and the introductory text of paragraph (b)(2); by removing paragraph (c)(2) and redesignating paragraph (c)(3) as (c)(2); and by amending the newly designated paragraph (c)(2) by removing ''15.1001(c)(1)(i)'' and inserting ''15.1002(c)(1)(i)''. The revised text reads as follows:

**15.1002 Notifications to unsuccessful offerors.**

(a) *General.* Within three days after the date of contract award, the contracting officer shall notify, in writing or electronically, each offeror whose proposal is determined to be

unacceptable or whose offer is not selected for award. ''Day,'' for purposes of the notification process, means calendar day, except that the period will run until a day which is not a Saturday, Sunday, or legal holiday.

(b) * * *

(2) In a small business set-aside (see Subpart 19.5), upon completion of negotiations and determinations of responsibility, but prior to award, the contracting officer shall notify each unsuccessful offeror in writing or electronically of the name and location of the apparent successful offeror. The notice shall also state that:

* * * * *

24. Newly designated section 15.1003 is amended by revising the first sentence to read as follows:

**15.1003 Notification to successful offeror.**

The contracting officer shall award a contract with reasonable promptness to the successful offeror (selected in accordance with 15.611(d)) by transmitting written or electronic notice of the award to that offeror (but see 15.608(b)). * * *

25. Newly designated section 15.1004 is revised to read as follows:

**15.1004 Debriefing of offerors.**

(a) When a contract is awarded on the basis of competitive proposals, an offeror, upon its written request received by the agency within three days after the date on which that offeror has received notice of contract award, shall be debriefed and furnished the basis for the selection decision and contract award. When practicable, debriefing requests received more than three days after the offeror receives notice of contract award shall be accommodated. However, accommodating such untimely debriefing requests does not extend the time within which suspension of performance can be required, as this accommodation is not a ''required debriefing'' as described in FAR Part 33. To the maximum extent practicable, the debriefing should occur within five days after receipt of the written request. ''Day,'' for purposes of the debriefing process, means calendar day, except that the period will run until a day which is not a Saturday, Sunday, or legal holiday.

(b) Debriefings of successful and unsuccessful offerors may be done orally, in writing, by electronic means, or any other method acceptable to the contracting officer.

(c) The contracting officer should normally chair any debriefing session held. Individuals actually responsible for the evaluations shall provide support. If the contracting officer is unavailable, another agency representative may be designated by the contracting officer on a case-by-case basis, with the approval of an individual a level above the contracting officer.

(d) At a minimum, the debriefing information shall include—

(1) The Government's evaluation of the significant weaknesses or deficiencies in the offeror's proposal, if applicable;

(2) The overall evaluated cost or price and technical rating, if applicable, of the successful offeror and the debriefed offeror;

(3) The overall ranking of all offerors when any ranking was developed by the agency during the source selection;

(4) A summary of the rationale for award;

(5) For acquisitions of commercial end items, the make and model of the item to be delivered by the successful offeror; and

(6) Reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed.

(e) The debriefing shall not include point-by-point comparisons of the debriefed offeror's proposal with those of other offerors. Moreover, debriefing shall not reveal any information exempt from release under the Freedom of Information Act including—

(1) Trade secrets;

(2) Privileged or confidential manufacturing processes and techniques;

(3) Commercial and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information; and

(4) The names of individuals providing reference information about an offeror's past performance.

(f) The contracting officer shall include an official summary of the debriefing in the contract file.

(g) If, within one year of contract award, a protest causes the agency to issue either a new solicitation or a new request for best and final offers on the protested contract award, the agency shall make available to all prospective offerors—

(1) Information provided in any debriefings conducted on the original award about the successful offeror's proposal; and

(2) Other nonproprietary information that would have been provided to the original offerors.

## PART 17—SPECIAL CONTRACTING METHODS

26. Section 17.202 is amended by revising paragraph (a); and at the end of paragraph (b)(1)(ii) by removing ''; or'' and inserting a period in its place. The revised text reads as follows:

**17.202 Use of options.**

(a) Subject to the limitations of paragraphs (b) and (c) of this section, for both sealed bidding and contracting by negotiation, the contracting officer may include options in contracts when it is in the Government's interest. When using sealed bidding, the contracting officer shall make a written determination that there is a reasonable likelihood that the options will be exercised before including the provision at 52.217–5, Evaluation of Options, in the solicitation. (See 17.207(f) with regard to the exercise of options.)

* * * * *

27. Section 17.208 is amended by revising paragraphs (b) and (c)(4) to read as follows:

**17.208 Solicitation provisions and contract clauses.**

* * * * *

(b) The contracting officer shall insert a provision substantially the same as the provision at 52.217–4, Evaluation of Options Exercised at Time of Contract Award, in solicitations when the solicitation includes an option clause, the contracting officer has determined that there is a reasonable likelihood that the option will be exercised, and the option may be exercised at the time of contract award.

(c) * * *

(4) The contracting officer has determined that there is a reasonable likelihood that the option will be exercised. For sealed bids, the determination shall be in writing.

* * * * *

## PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

**19.302 [Amended]**

28. Section 19.302 is amended in paragraph (d)(1) introductory text by removing the word ''below'' and inserting ''of this section'' in its place; and removing ''(see 15.1001(b)(2))'' and inserting ''(see 15.1002(b)(2))'' in its place.

**19.501 [Amended]**

29. Section 19.501 is amended in the second sentence of paragraphs (h)(1) and (h)(2) by removing the citation ''15.1001(b)(2)'' and inserting ''15.1002(b)(2) in their place.

## PART 25—FOREIGN ACQUISITION

30. Section 25.405 is amended by revising paragraph (e) to read as follows:

**25.405 Procedures.**

* * * * *

(e) Within three days after a contract award for an eligible product, agencies shall give unsuccessful offerors from designated or NAFTA countries notice in accordance with 14.409–1 and 15.1002. ''Day,'' for purposes of the notification process, means calendar day, except that the period will run until a day which is not a Saturday, Sunday, or legal holiday.

## PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

31. Section 36.304 is amended by revising the introductory text to read as follows:

**36.304 Notice of award.**

When a notice of award is issued, it shall be done in writing or electronically, shall contain information required by 14.408, and shall—

* * * * *

32. Section 36.607 is amended by designating the existing text as paragraph (a) and adding paragraph (b) to read as follows:

**36.607 Release of information on firm selection.**

* * * * *

(b) Debriefings of successful and unsuccessful firms will be held after final selection has taken place and will be conducted, to the extent practicable, in accordance with 15.1004 (b) through (g). Note that 15.1004 (d)(2) through (d)(5) does not apply to architect-engineer contracts.

## PART 51—USE OF GOVERNMENT SOURCES BY CONTRACTORS

33. Section 51.101 is amended at the end of paragraph (a)(1) by removing ''or'' and at the end of paragraph (a)(2) by removing the period and inserting ''; or'' and by adding paragraph (a)(3) to read as follows:

**51.101 Policy.**

(a) * * *

(3) A contract under the Javits-Wagner-O'Day Act (41 U.S.C. 46, *et seq.*) if:

(i) the nonprofit agency requesting use of the supplies and services is providing a commodity or service to the Federal Government, and

(ii) the supplies or services received are directly used in making or providing a commodity or service, approved by the Committee for Purchase From People Who Are Blind or Severely Disabled, to the Federal Government (See Subpart 8.7).

* * * * *

34. Section 51.102 is amended by revising the second sentence of paragraph (a) introductory text to read as follows:

**51.102 Authorization to use Government supply sources.**

(a) * * * Except for findings under 51.101(a)(3), the determination shall be based on, but not limited to, considerations of the following factors:

* * * * *

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

35. Section 52.215–16 is amended by revising the date in the provision heading and by revising paragraph (c); by adding paragraph (h); by removing Alternate II and redesignating Alternate III as Alternate II; and revising Alternates I and II to read as follows:

**52.215–16 Contract Award.**

* * * * *

**Contract Award (Oct 1995)**

* * * * *

(c) The Government intends to evaluate proposals and award a contract after conducting written or oral discussions with all responsible offerors whose proposals have been determined to be within the competitive range. However, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint.

* * * * *

(h) The Government may disclose the following information in post-award debriefings to other offerors: (1) the overall evaluated cost or price and technical rating of the successful offeror; (2) the overall ranking of all offerors, when any ranking was developed by the agency during source selection; (3) a summary of the rationale for award; and (4) for acquisitions of commercial end items, the make and model of the item to be delivered by the successful offeror.

(End of provision)

*Alternate I* (OCT 1995). As prescribed in 15.407(d)(4)(i), substitute the following paragraph (d) for paragraph (d) of the basic provision:

(d) The Government may accept any item or combination of items, unless doing so is precluded by a restrictive limitation in the solicitation or offer.

*Alternate II* (OCT 1995). As prescribed in 15.407(d)(4)(ii), substitute the following paragraph (c) for paragraph (c) of the basic provision:

(c) The Government intends to evaluate proposals and award a contract without discussions with offerors (except communications conducted for the purpose of minor clarification). Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint. However, the Government reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary.

[FR Doc. 95–19859 Filed 8–15–95; 8:45 am]

BILLING CODE 6820–EP–M

## 48 CFR Parts 31, 42, and 52

**[FAC 90–31; FAR Case 94–751; Item III]**

**RIN 9000–AG20**

## Federal Acquisition Regulation; Penalties on Unallowable Indirect Costs

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** This final rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994 to amend the Federal Acquisition Regulation (FAR) to implement the requirements for penalties for unallowable costs. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**EFFECTIVE DATE:** October 1, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mr. Clarence Belton, Cost Principles Team Leader, at (703) 602–2357 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–31, FAR case 94–751.

**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, the Truth in Negotiations Act, and introduction of the Federal Acquisition Computer Network (FACNET).

Sections 2101 and 2151 of the Federal Acquisition Streamlining Act of 1994 change the contract value threshold for assessment of penalties on unallowable costs from $100,000 to $500,000 and expand the coverage from the Department of Defense to all executive agencies. This final rule makes the required changes. With the exception of the threshold value, the penalty

provisions in the new law are the same as those implemented in the current Defense Federal Acquisition Regulation Supplement.

**B. Regulatory Flexibility Act**

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small businesses are awarded competitively on a firm-fixed-price basis and, therefore, are not subject to the FAR cost principles.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**D. Public Comments**

Twelve public comments were received in response to the proposed rule published in the **Federal Register** on December 19, 1994 (59 FR 65460). The comments were considered in the formulation of this final rule.

**List of Subjects in 48 CFR Parts 31, 42, and 52**

Government procurement.

Dated: August 7, 1995.

**Edward C. Loeb,**

*Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.*

Therefore, 48 CFR Parts 31, 42, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 31, 42, and 52 continues to read as follows:

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

## PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

2. Section 31.110 is added to read as follows:

**31.110 Indirect cost rate certification and penalties on unallowable costs.**

(a) Certain contracts require certification of the indirect cost rates proposed for progress, billing, or final payment purposes. See 42.703–2 for administrative procedures regarding the certification provisions and the related contract clause prescription.

(b) If unallowable costs are included in final indirect cost settlement proposals, penalties may be assessed. See 42.709 for administrative procedures regarding the penalty assessment provisions and the related contract clause prescription.

## PART 42—CONTRACT ADMINISTRATION

3. Sections 42.709 thru 42.709–6 are added to read as follows:

Sec.



**42.709 Scope.**

(a) This section implements 10 U.S.C. 2324 (a) through (d) and 41 U.S.C. 256 (a) through (d). It covers the assessment of penalties against contractors which include unallowable indirect costs in—

(1) Final indirect cost rate proposals; or

(2) The final statement of costs incurred or estimated to be incurred under a fixed-price incentive contract.

(b) This section applies to all contracts in excess of $500,000, except fixed-price contracts without cost incentives or any firm-fixed-price contracts for the purchase of commercial items.

**42.709–1 General.**

(a) The following penalties apply to contracts covered by this section:

(1) If the indirect cost is expressly unallowable under a cost principle in the FAR, or an executive agency supplement to the FAR, that defines the allowability of specific selected costs, the penalty is equal to—

(i) The amount of the disallowed costs allocated to contracts that are subject to this section for which an indirect cost proposal has been submitted; plus

(ii) Interest on the paid portion, if any, of the disallowance.

(2) If the indirect cost was determined to be unallowable for that contractor before proposal submission, the penalty is two times the amount in paragraph (a)(1)(i) of this section.

(b) These penalties are in addition to other administrative, civil, and criminal penalties provided by law.

(c) It is not necessary for unallowable costs to have been paid to the contractor in order to assess a penalty.

**42.709–2 Responsibilities.**

(a) The cognizant contracting officer is responsible for—

(1) Determining whether the penalties in 42.709–1(a) should be assessed;

(2) Determining whether such penalties should be waived pursuant to 42.709–5; and

(3) Referring the matter to the appropriate criminal investigative organization for review and for appropriate coordination of remedies, if there is evidence that the contractor knowingly submitted unallowable costs.

(b) The contract auditor, in the review and/or the determination of final indirect cost proposals for contracts subject to this section, is responsible for—

(1) Recommending to the contracting officer which costs may be unallowable and subject to the penalties in 42.709–1(a);

(2) Providing rationale and supporting documentation for any recommendation; and

(3) Referring the matter to the appropriate criminal investigative organization for review and for appropriate coordination of remedies, if there is evidence that the contractor knowingly submitted unallowable costs.

**42.709–3 Assessing the penalty.**

Unless a waiver is granted pursuant to 42.709–5, the cognizant contracting officer shall—

(a) Assess the penalty in 42.709–1(a)(1), when the submitted cost is expressly unallowable under a cost principle in the FAR or an executive agency supplement that defines the allowability of specific selected costs; or

(b) Assess the penalty in 42.709–1(a)(2), when the submitted cost was determined to be unallowable for that contractor prior to submission of the proposal. Prior determinations of unallowability may be evidenced by—

(1) A DCAA Form 1, Notice of Contract Costs Suspended and/or Disapproved (see 48 CFR 242.705–2), or any similar notice which the contractor elected not to appeal and was not withdrawn by the cognizant Government agency;

(2) A contracting officer final decision which was not appealed;

(3) A prior executive agency Board of Contract Appeals or court decision involving the contractor, which upheld the cost disallowance; or

(4) A determination or agreement of unallowability under 31.201–6.

(c) Issue a final decision (see 33.211) which includes a demand for payment of any penalty assessed under paragraph (a) or (b) of this section. The letter shall state that the determination is a final

decision under the Disputes clause of the contract. (Demanding payment of the penalty is separate from demanding repayment of any paid portion of the disallowed cost.)

**42.709–4 Computing interest.**

For 42.709–1(a)(1)(ii), compute interest on any paid portion of the disallowed cost as follows:

(a) Consider the overpayment to have occurred, and interest to have begun accumulating, from the midpoint of the contractor's fiscal year. Use an alternate equitable method if the cost was not paid evenly over the fiscal year.

(b) Use the interest rate specified by the Secretary of the Treasury pursuant to Pub. L. 92–41 (85 Stat. 97).

(c) Compute interest from the date of overpayment to the date of the demand letter for payment of the penalty.

(d) Determine the paid portion of the disallowed costs in consultation with the contract auditor.

**42.709–5 Waiver of the penalty.**

The cognizant contracting officer shall waive the penalties at 42.709–1(a) when—

(a) The contractor withdraws the proposal before the Government formally initiates an audit of the proposal and the contractor submits a revised proposal (an audit will be deemed to be formally initiated when the Government provides the contractor with written notice, or holds an entrance conference, indicating that audit work on a specific final indirect cost proposal has begun);

(b) The amount of the unallowable costs under the proposal which are subject to the penalty is $10,000 or less (*i.e.*, if the amount of expressly or previously determined unallowable costs which would be allocated to the contracts specified in 42.709(b) is $10,000 or less); or

(c) The contractor demonstrates, to the cognizant contracting officer's satisfaction, that—

(1) It has established policies and personnel training and an internal control and review system that provide assurance that unallowable costs subject to penalties are precluded from being included in the contractor's final indirect cost rate proposals (*e.g.*, the types of controls required for satisfactory participation in the Department of Defense sponsored self-governance programs, specific accounting controls over indirect costs, compliance tests which demonstrate that the controls are effective, and Government audits which have not disclosed recurring instances of expressly unallowable costs); and

(2) The unallowable costs subject to the penalty were inadvertently incorporated into the proposal; *i.e.*, their inclusion resulted from an unintentional error, notwithstanding the exercise of due care.

**42.709–6 Contract clause.**

Use the clause at 52.242–3, Penalties for Unallowable Costs, in all solicitations and contracts over $500,000 except fixed-price contracts without cost incentives or any firm-fixed-price contract for the purchase of commercial items. Generally, covered contracts are those which contain one of the clauses at 52.216–7, 52.216–13, 52.216–16, or 52.216–17, or a similar clause from an executive agency's supplement to the FAR.

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 52.242–3 is added to read as follows:

**52.242–3 Penalties for Unallowable Costs.**

As prescribed in 42.709–6, use the following clause:

**Penalties for Unallowable Costs (Oct 1995)**

(a) *Definition. Proposal,* as used in this clause, means either—

(1) A final indirect cost rate proposal submitted by the Contractor after the expiration of its fiscal year which—

(i) Relates to any payment made on the basis of billing rates; or

(ii) Will be used in negotiating the final contract price; or

(2) The final statement of costs incurred and estimated to be incurred under the Incentive Price Revision clause (if applicable), which is used to establish the final contract price.

(b) Contractors which include unallowable indirect costs in a proposal may be subject to penalties. The penalties are prescribed in 10 U.S.C. 2324 or 41 U.S.C. 256, as applicable, which is implemented in Section 42.709 of the Federal Acquisition Regulation (FAR).

(c) The Contractor shall not include in any proposal any cost which is unallowable, as defined in Part 31 of the FAR, or an executive agency supplement to Part 31 of the FAR.

(d) If the Contracting Officer determines that a cost submitted by the Contractor in its proposal is expressly unallowable under a cost principle in the FAR, or an executive agency supplement to the FAR, that defines the allowability of specific selected costs, the Contractor shall be assessed a penalty equal to—

(1) The amount of the disallowed cost allocated to this contract; plus

(2) Simple interest, to be computed—

(i) On the amount the Contractor was paid (whether as a progress or billing payment) in excess of the amount to which the Contractor was entitled; and

(ii) Using the applicable rate effective for each six-month interval prescribed by the Secretary of the Treasury pursuant to Pub. L. 92–41 (85 Stat. 97).

(e) If the Contracting Officer determines that a cost submitted by the Contractor in its proposal includes a cost previously determined to be unallowable for that Contractor, then the Contractor will be assessed a penalty in an amount equal to two times the amount of the disallowed cost allocated to this contract.

(f) Determinations under paragraphs (d) and (e) of this clause are final decisions within the meaning of the Contract Disputes Act of 1978 (41 U.S.C. 601, *et seq.*).

(g) Pursuant to the criteria in FAR 42.709–5, the Contracting Officer may waive the penalties in paragraph (d) or (e) of this clause.

(h) Payment by the Contractor of any penalty assessed under this clause does not constitute repayment to the Government of any unallowable cost which has been paid by the Government to the Contractor.

(End of clause)

[FR Doc. 95–19860 Filed 8–15–95; 8:45 am]

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## 48 CFR Parts 31, 37, 42 and 52

**[FAC 90–31; FAR Case 94–754; Item IV]**

**RIN 9000–AG21**

## Federal Acquisition Regulation; Implementation of Various Cost Principle Provisions

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** The Federal Acquisition Regulatory Council is amending the Federal Acquisition Regulation (FAR) to implement Section 2101 of the Federal Acquisition Streamlining Act of 1994. Section 2101 adds the costs of lobbying the legislative body of a political subdivision of a state to the list of unallowable costs; adds the cost of ''conventions'' to the list of costs to be clarified in the cost principles; and expands the coverage to the Coast Guard and NASA. The provisions are made generally applicable to all other executive agencies. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**EFFECTIVE DATE:** October 1, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mr. Clarence Belton, Cost Principles Team Leader, at (703)602–2357, in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755.

Please cite FAC 90–31, FAR case 94–754.

**SUPPLEMENTARY INFORMATION:**

## A. Background

The Federal Acquisition Streamlining Act of 1994 (the Act), Pub. L. 103–355, provides the authority to streamline the acquisition process and minimize burdensome requirements unique to the Federal Government. 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, the Truth in Negotiations Act, and introduction of the Federal Acquisition Computer Network.

This notice announces revisions developed under FAR case 94–754, based on Section 2101 of the Act that adds the costs of lobbying the legislative body of a political subdivision of a state to the list of unallowable costs; adds the cost of ''conventions'' to the costs to be clarified in the cost principles; and expands the coverage to the Coast Guard and the National Aeronautics and Space Administration. Section 2151 amends 41 U.S.C. 256 to include all the provisions of 10 U.S.C. 2324, as amended by Section 2101. Therefore, the provisions are made generally applicable to all other executive agencies. The new FAR language, with only minor variations, was transferred from the current coverage in the Defense Federal Acquisition Regulation Supplement.

## B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small businesses are awarded competitively on a firm-fixed-price basis and, therefore, are not subject to the FAR cost principles.

## C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

## D. Public Comments

Eight public comments were received in response to the proposed rule published in the **Federal Register** on December 13, 1994 (59 FR 64268). These comments were considered in the formulation of this final rule.

## List of Subjects in 48 CFR Parts 31, 37, 42 and 52

Government procurement.

Dated: August 7, 1995.

**Edward C. Loeb,**

*Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.*

Therefore, 48 CFR Parts 31, 37, 42 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 31, 37, 42 and 52 continues to read as follows:

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

## PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

### 31.205–1 [Amended]

2. Section 31.205–1(f)(3) is amended by adding ''conventions,'' after ''meetings,''.

3. Section 31.205–6 is amended in paragraph (g)(2) by adding a sentence at the end of the introductory text and adding paragraph (g)(3) to read as follows:

### 31.205–6 Compensation for personal services.

* * * * *

(g) * * *

(2) * * * In addition, paragraph (g)(3) of this subsection applies if the severance cost is for foreign nationals employed outside the United States.

* * * * *

(3) Notwithstanding the reference to geographical area in 31.205–6(b)(1), under 10 U.S.C. 2324(e)(1)(M) and 41 U.S.C. 256(e)(1)(M), the costs of severance payments to foreign nationals employed under a service contract performed outside the United States are unallowable to the extent that such payments exceed amounts typically paid to employees providing similar services in the same industry in the United States. Further, under 10 U.S.C. 2324(e)(1)(N) and 41 U.S.C. 256(e)(1)(N), all such costs of severance payments which are otherwise allowable are unallowable if the termination of employment of the foreign national is the result of the closing of, or the curtailment of activities at, a United States facility in that country at the request of the government of that country; this does not apply if the closing of a facility or curtailment of activities is made pursuant to a status-of-forces or other country-to-country agreement entered into with the government of that country before November 29, 1989. 10 U.S.C. 2324(e)(3) and 41 U.S.C. 256(e)(2) permit the head of the agency, or designee, to waive these cost allowability limitations under certain circumstances (see 37.113 and the solicitation provision at 52.237–8).

* * * * *

### 31.205–22 [Amended]

4. Section 31.205–22 is amended in paragraphs (a) (3) and (4) by revising the phrase ''Federal or state'' to read ''Federal, state, or local'' each time it appears.

### 31.205–43 [Amended]

5. Section 31.205–43 is amended in the introductory text of paragraph (c) and (c)(3)(ii) by inserting ''convention,'' after ''meeting,'' and in paragraph (c)(1) by inserting ''conventions,'' after ''meetings,''.

6. Section 31.603(b) is revised to read as follows:

### 31.603 Requirements.

* * * * *

(b) Agencies are not expected to place additional restrictions on individual items of cost. However, under 10 U.S.C. 2324(e) and 41 U.S.C. 256(e), the following costs are unallowable:

(1) Costs of entertainment, including amusement, diversion, and social activities, and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities).

(2) Costs incurred to influence (directly or indirectly) legislative action on any matter pending before Congress, a State legislature, or a legislative body of a political subdivision of a State.

(3) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of any false certification) brought by the United States where the contractor is found liable or has pleaded *nolo contendere* to a charge of fraud or similar proceeding (including filing of a false certification).

(4) Payments of fines and penalties resulting from violations of, or failure to comply with, Federal, state, local, or foreign laws and regulations, except when incurred as a result of compliance with specific terms and conditions of the contract or specific written instructions from the contracting officer authorizing in advance such payments in accordance with applicable regulations in the FAR or an executive agency supplement to the FAR.

(5) Costs of any membership in any social, dining, or country club or organization.

(6) Costs of alcoholic beverages.

(7) Contributions or donations, regardless of the recipient.

(8) Costs of advertising designed to promote the contractor or its products.

(9) Costs of promotional items and memorabilia, including models, gifts, and souvenirs.

(10) Costs for travel by commercial aircraft which exceed the amount of the standard commercial fare.

(11) Costs incurred in making any payment (commonly known as a ''golden parachute payment'') which is—

(i) In an amount in excess of the normal severance pay paid by the contractor to an employee upon termination of employment; and

(ii) Is paid to the employee contingent upon, and following, a change in management control over, or ownership of, the contractor or a substantial portion of the contractor's assets.

(12) Costs of commercial insurance that protects against the costs of the contractor for correction of the contractor's own defects in materials or workmanship.

(13) Costs of severance pay paid by the contractor to foreign nationals employed by the contractor under a service contract performed outside the United States, to the extent that the amount of the severance pay paid in any case exceeds the amount paid in the industry involved under the customary or prevailing practice for firms in that industry providing similar services in the United States, as determined by regulations in the FAR or in an executive agency supplement to the FAR.

(14) Costs of severance pay paid by the contractor to a foreign national employed by the contractor under a service contract performed in a foreign country if the termination of the employment of the foreign national is the result of the closing of, or curtailment of activities at, a United States facility in that country at the request of the government of that country.

(15) Costs incurred by a contractor in connection with any criminal, civil, or administrative proceedings commenced by the United States or a State, to the extent provided in 10 U.S.C. 2324(k) or 41 U.S.C. 256(k).

7. Section 31.703(b) is revised to read as follows:

**31.703 Requirements.**

* * * * *

(b) Agencies are not expected to place additional restrictions on individual items of cost. However, under 10 U.S.C. 2324(e) and 41 U.S.C. 256(e), the costs cited in 31.603(b) are unallowable.

## PART 37—SERVICE CONTRACTING

8. Sections 37.113, 37.113–1 and 37.113–2 are added to read as follows:

Sec.



**37.113 Severance payments to foreign nationals.**

**37.113–1 Waiver of cost allowability limitations.**

(a) The head of any agency, or designee, may waive the 31.205–6(g)(3) cost allowability limitations on severance payments to foreign nationals for contracts that—

(i) Provide significant support services for (i) members of the armed forces stationed or deployed outside the United States, or (ii) employees of an executive agency posted outside the United States; and

(2) Will be performed in whole or in part outside the United States.

(b) Waivers can be granted only before contract award.

(c) Waivers cannot be granted for—

(1) Military banking contracts, which are covered by 10 U.S.C. 2324(e)(2); or

(2) Severance payments made by a contractor to a foreign national employed by the contractor under a DOD service contract in the Republic of the Philippines, if the discontinuation of the foreign national is the result of the termination of basing rights of the United States military in the Republic of the Philippines (section 1351(b) of Public Law 102–484, 10 U.S.C. 1592, note).

**37.113–2 Solicitation provision and contract clause.**

(a) Use the provision at 52.237–8, Restriction on Severance Payments to Foreign Nationals, in all solicitations that meet the criteria in 37.113–1(a), except for those excluded by 37.113–1(c).

(b) When the head of an agency, or designee, has granted a waiver pursuant to 37.113–1, use the clause at 52.237–9, Waiver of Limitation on Severance Payments to Foreign Nationals.

## PART 42—CONTRACT ADMINISTRATION

9. Section 42.703(c)(2) is revised to read as follows:

**42.703 Policy**

* * * * *

(c) * * *

(2) To ensure compliance with 10 U.S.C. 2324(a) and 41 U.S.C. 256(a), use established final indirect cost rates in negotiating the final price of fixed-price incentive and fixed-price redeterminable contracts and in other situations requiring that indirect costs be settled before contract prices are established.

10. Section 42.705–1 is amended by revising paragraph (b)(4) and adding (b)(5)(v) to read as follows:

**42.705–1 Contracting officer determination procedure.**

* * * * *

(b) * * *

(4) The Government negotiating team shall develop a negotiation position. Pursuant to 10 U.S.C. 2324(f) and 41 U.S.C. 256(f), the contracting, officer shall—

(i) Not resolve any questioned costs until obtaining—

(A) Adequate documentation on the costs; and

(B) The contract auditor's opinion on the allowability of the costs.

(ii) Whenever possible, invite the contract auditor to serve as an advisor at any negotiation or meeting with the contractor on the determination of the contractor's final indirect cost rates.

(5) * * *

(v) Notify the contractor of the individual costs which were considered unallowable and the respective amounts of the disallowance.

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

11. Sections 52.237–8 and 52.237–9 are added to read as follows:

**52.237–8 Restriction on Severance Payments to Foreign Nationals.**

As prescribed in 37.113–2(a), use the following provision:

**Restriction on Severance Payments to Foreign Nationals (Oct 1995)**

(a) The Federal Acquisition Regulation (FAR), at 31.205–6(g)(3), limits the cost allowability of severance payments to foreign nationals employed under a service contract performed outside the United States unless the head of the agency, or designee, grants a waiver pursuant to FAR 37.113–1 before contract award.

(b) In making the determination concerning the granting of a waiver, the head of the agency, or designee, will determine that—

(1) The application of the severance pay limitations to the contract would adversely affect the continuation of a program, project, or activity that provides significant support services for (i) members of the armed forces stationed or deployed outside the United

States, or (ii) employees of an executive agency posted outside the United States;

(2) The Contractor has taken (or has established plans to take) appropriate actions within its control to minimize the amount and number of incidents of the payment of severance pay to employees under the contract who are foreign nationals; and

(3) The payment of severance pay is necessary in order to comply with a law that is generally applicable to a significant number of businesses in the country in which the foreign national receiving the payment performed services under the contract, or is necessary to comply with a collective bargaining agreement.

(End of provision)

**52.237–9 Waiver of Limitation on Severance Payments to Foreign Nationals.**

As prescribed in 37.113–2(b), use the following clause:

**Waiver of Limitation on Severance Payments to Foreign Nationals (Oct 1995)**

(a) Pursuant to 10 U.S.C. 2324(e)(3)(A) or 41 U.S.C. 256(e)(2)(A), as applicable, the cost allowability limitations in FAR 31.205–6(g)(3) are waived.

(b) This clause may be incorporated into subcontracts issued under this contract, if approved by the Contracting Officer.

(End of clause)

[FR Doc. 95–19861 Filed 8–15–95; 8:45 am]

BILLING CODE 6820–EP–M

## 48 CFR Part 31

**[FAC 90–31, FAR Case 94–750; Item V]**

**RIN 9000–AG33**

## Federal Acquisition Regulation; Entertainment, Gift, and Recreation Costs for Contractor Employees

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Federal Acquisition Regulation to revise the cost principles governing entertainment, gift and recreation costs for contractor employees. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**EFFECTIVE DATE:** October 1, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mr. Clarence M. Belton, Team Leader, Cost Principles Team, at (703) 602–2357, in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–31, FAR case 94–750.

**SUPPLEMENTARY INFORMATION:**

### A. Background

The Federal Acquisition Streamlining Act of 1994, Public Law 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, the Truth in Negotiations Act, and introduction of the Federal Acquisition Computer Network. This notice announces Federal Acquisition Regulation (FAR) revisions developed under FAR case 94–750 to implement Section 2192 of the Act.

The final rule revisions to the cost principles at FAR 31.205–13 and 31.205–14 are made as a result of Section 2192 of the Federal Acquisition Streamlining Act of 1994. An interim rule was promulgated to meet the 120-day and 90-day deadlines in Section 2192 for changes to FAR 31.205–13 and 31.205–14, respectively. The interim rule was published in the **Federal Register** on January 13, 1995, 60 FR 3314. This final rule replaces the interim rule in its entirety for any contracts containing the interim rule. Thus, the provisions of the interim rule will not apply to costs incurred under any contract under any circumstances.

To comply with the requirements of paragraph (a)(1) of Section 2192, the final rule provides that the costs of gifts are expressly unallowable (31.205–13(b)). To clarify that the rule does not disallow costs which meet the definition of and are properly accounted for as compensation or recognition awards, the final rule provides a reference to 31.205–6, which allows compensation awards recognizing performance but also allows for recognition awards pursuant to an established contractor plan or policy. Additionally, it makes the costs of recreation expressly unallowable with the exception of costs of company sponsored employee sports teams and employee organizations designed to improve company loyalty, team work, or physical fitness. The final rule retains the allowability of ''wellness/fitness centers'' found in the interim rule. The final rule eliminates the requirement that costs are only allowable to the extent that the net amount per employee must be reasonable for all categories of costs under this cost principle.

To comply with the requirements of paragraph (a)(2) of Section 2192, the final rule revises the cost principle at 31.205–14 to incorporate the statutory wording relating to the unallowability of entertainment costs and to delete the ''but see'' provision.

### B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small businesses are awarded competitively on a firm-fixed-price basis and, therefore, are not subject to the FAR cost principles.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

### D. Public Comments

Twenty-three public comments were received in response to the interim rule published in the **Federal Register** on January 13, 1995 (60 FR 3314). These comments were considered in the formulation of this final rule.

### List of Subjects in 48 CFR Part 31

Government procurement.

Dated: August 7, 1995

**Edward C. Loeb,**

*Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.*

Therefore, 48 CFR Part 31 is amended as set forth below:

## PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR Part 31 continues to read as follows:

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 31.205–13 is revised to read as follows:

**31.205–13 Employee morale, health, welfare, food service, and dormitory costs and credits.**

(a) Aggregate costs incurred on activities designed to improve working conditions, employer-employee relations, employee morale, and employee performance (less income generated by these activities) are allowable, except as limited by paragraphs (b), (c), and (d) of this subsection. Some examples of allowable

activities are house publications, health clinics, wellness/fitness centers, employee counseling services, and food and dormitory services, which include operating or furnishing facilities for cafeterias, dining rooms, canteens, lunch wagons, vending machines, living accommodations, or similar types of services for the contractor's employees at or near the contractor's facilities.

(b) Costs of gifts are unallowable. (Gifts do not include awards for performance made pursuant to 31.205–6(f) or awards made in recognition of employee achievements pursuant to an established contractor plan or policy.)

(c) Costs of recreation are unallowable, except for the costs of employees' participation in company sponsored sports teams or employee organizations designed to improve company loyalty, team work, or physical fitness.

(d) Losses from operating food and dormitory services may be included as costs only if the contractor's objective is to operate such services on a break-even basis. Losses sustained because food services or lodging accommodations are furnished without charge or at prices or rates which obviously would not be conducive to the accomplishment of the above objective are not allowable. A loss may be allowed, however, to the extent that the contractor can demonstrate that unusual circumstances exist (*e.g.,* where the contractor must provide food or dormitory services at remote locations where adequate commercial facilities are not reasonably available; or where charged but unproductive labor costs would be excessive but for the services provided or where cessation or reduction of food or dormitory operations will not otherwise yield net cost savings) such that even with efficient management, operating the services on a break-even basis would require charging inordinately high prices, or prices or rates higher than those charged by commercial establishments offering the same services in the same geographical areas. Costs of food and dormitory services shall include an allocable share of indirect expenses pertaining to these activities.

(e) When the contractor has an arrangement authorizing an employee association to provide or operate a service, such as vending machines in the contractor's plant, and retain the profits, such profits shall be treated in the same manner as if the contractor were providing the service (but see paragraph (f) of this subsection).

(f) Contributions by the contractor to an employee organization, including funds from vending machine receipts or similar sources, may be included as costs incurred under paragraph (a) of this subsection only to the extent that the contractor demonstrates that an equivalent amount of the costs incurred by the employee organization would be allowable if directly incurred by the contractor.

3. Section 31.205–14 is revised to read as follows:

**31.205–14 Entertainment costs.**

Costs of amusement, diversions, social activities, and any directly associated costs such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities are unallowable. Costs made specifically unallowable under this cost principle are not allowable under any other cost principle. Costs of membership in social, dining, or country clubs or other organizations having the same purposes are also unallowable, regardless of whether the cost is reported as taxable income to the employees.

[FR Doc. 95–19862 Filed 8–15–95; 8:45 am]
BILLING CODE 6820–EP–M

## 48 CFR Parts 42 and 52

**[FAC 90–31; FAR Case 94–752; Item VI]**

**RIN 9000–AG29**

## Federal Acquisition Regulation; Contractor Overhead Certification

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** This final rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994 (the Act) to implement the requirements for contractor certification of indirect costs (see proposed rule published at 59 FR 65464, December 19, 1994). Section 2151 of the Act amended Section 306 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 256). This provision extended to the civilian agencies the same certificate of indirect costs which is currently applicable to Department of Defense (DOD) contracts, pursuant to 10 U.S.C. 2324(h). This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**EFFECTIVE DATE:** October 1, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mr. Clarence Belton, Cost Principles Team Leader, at (703) 602–2357, in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–31, FAR case 94–752.

**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, the Truth in Negotiations Act, and introduction of the Federal Acquisition Computer Network (FACNET).

Section 2151 of the Act amends Section 306 of the Federal Property and Administrative Services of 1949 (41 U.S.C. 256). It extends requirements for contractor certification of indirect costs to the civilian agencies. Pursuant to 10 U.S.C. 2324(h), the Department of Defense already determines or negotiates contractor indirect cost rates on the basis of a certified proposal.

### B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small businesses are awarded competitively on a firm-fixed-price basis and, therefore, do not require submission of indirect cost rate proposals.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose additional recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et. seq.*

### D. Public Comments

Seven public comments were received in response to the proposed rule published in the **Federal Register** on December 19, 1994 (59 FR 65464). These comments were considered in the formulation of this final rule.

**List of Subjects in 48 CFR Parts 42 and 52**

Government procurement.

Dated: August 7, 1995.

**Edward C. Loeb,**

*Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.*

Therefore, 48 CFR Parts 42 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 42 and 52 continues to read as follows:

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

## PART 42—CONTRACT ADMINISTRATION

**42.703 General.**

2. Section 42.703 is redesignated as 42.703–1 and a new section 42.703 is added as a heading to read as set forth above.

3. Section 42.703–2 is added to read as follows:

**42.703–2 Certificate of indirect costs.**

(a) *General.* In accordance with 10 U.S.C. 2324(h) and 41 U.S.C. 256(h), a proposal shall not be accepted and no agreement shall be made to establish billing rates or final indirect cost rates unless the costs have been certified by the contractor.

(b) *Waiver of certification.* (1) The agency head, or designee, may waive the certification requirement when—

(i) It is determined to be in the interest of the United States; and

(ii) The reasons for the determination are put in writing and made available to the public.

(2) A waiver may be appropriate for a contract with—

(i) A foreign government or international organization, such as a subsidiary body of the North Atlantic Treaty Organization;

(ii) A state or local government subject to OMB Circular A–87;

(iii) An educational institution subject to OMB Circular A–21; and

(iv) A nonprofit organization subject to OMB Circular A–122.

(c) *Failure to certify.* (1) If the contractor has not certified its proposal for billing rates or indirect costs rates and a waiver is not appropriate, the contracting officer shall unilaterally establish the rates if they are necessary for continuation of the contract.

(2) Rates established unilaterally should be—

(i) Based on audited historical data or other available data as long as unallowable costs are excluded; and

(ii) Set low enough to ensure that potentially unallowable costs will not be reimbursed.

(d) *False certification.* The contracting officer should consult with legal counsel to determine appropriate action when a contractor certificate of indirect costs is thought to be false.

(e) *Penalties for unallowable costs.* 10 U.S.C. 2324(a) through (d) and 41 U.S.C. 256 (a) through (d) prescribe penalties for submission of unallowable costs in final indirect cost rate proposals (see 42.709 for penalties and contracting officer responsibilities).

(f) *Contract clause.* (1) Except as provided in paragraph (f)(2) of this subsection, the clause at 52.242–4, Certification of Indirect Costs, shall be incorporated into all solicitations and contracts which provide for—

(i) Interim reimbursement of indirect costs;

(ii) Establishment of final indirect costs rates; or

(iii) Contract financing that includes interim payment of indirect costs, *e.g.*, progress payments based on cost (Subpart 32.5) or progress payments based on percentage or stage of completion.

(2) The Department of Energy may provide an alternate clause in its agency supplement for its Management and Operating contracts.

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 52.242–4 is added to read as follows:

**52.242–4 Certification of Indirect Costs.**

As prescribed in 42.703–2(f), insert the following clause:

**Certification of Indirect Costs (Oct 1995)**

(a) The Contractor shall—

(1) Certify any proposal to establish or modify billing rates or to establish final indirect cost rates;

(2) Use the format in paragraph (c) of this clause to certify; and

(3) Have the certificate signed by an individual of the Contractor's organization at a level no lower than a vice president or chief financial officer of the business segment of the Contractor that submits the proposal.

(b) Failure by the Contractor to submit a signed certificate, as described in this clause, shall result in payment of indirect costs at rates unilaterally established by the Government.

(c) The certificate of indirect costs shall read as follows:

**Certificate of Indirect Costs**

This is to certify that to the best of my knowledge and belief:

1. I have reviewed this indirect cost proposal;

2. All costs included in this proposal (*identify proposal and date*) to establish billing or final indirect costs rates for (*identify period covered by rate*) are allowable in accordance with the requirements of contracts to which they apply and with the cost principles of the Federal Acquisition Regulation (FAR) and its supplements applicable to those contracts;

3. This proposal does not include any costs which are unallowable under applicable cost principles of the FAR or its supplements, including, but not limited to: advertising and public relations costs, contributions and donations, entertainment costs, fines and penalties, lobbying costs, defense of fraud proceedings, and goodwill; and

4. All costs included in this proposal are properly allocable to Government contracts on the basis of a beneficial or causal relationship between the expenses incurred and the contracts to which they are allocated in accordance with applicable acquisition regulations.

I declare under penalty of perjury that the foregoing is true and correct.

Firm: _____

Signature: _____

Name of Certifying Official: _____

Title: _____

Date of Execution: _____

(End of clause)

[FR Doc. 95–19863 Filed 8–15–95; 8:45 am]

BILLING CODE 6820–EP–M

## 48 CFR Parts 1 and 6

**[Federal Acquisition Circular 90–31; Item VII]**

## Federal Acquisition Regulation; Technical Amendments

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule; technical amendments.

**SUMMARY:** In Federal Acquisition Circular (FAC) 84–60 (55 FR 36782, September 6, 1990), section 52.237–9 was removed and reserved. This entry was inadvertently left in § 1.160. This document corrects § 1.106 by removing ''52.237–9'' from the List of approved OMB control numbers.

In FAC 84–56 (55 FR 3881, February 5, 1990), section 6.304(a)(1) was incorrectly revised. This document correctly revises section 6.304(a)(1) by removing subparagraphs (a)(1)(i) through (a)(1)(iv).

**DATES:** *Effective Date:* August 16, 1995.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAC 90–31, Technical Corrections.

**List of Subjects in 48 CFR Parts 1 and 6**

Government procurement.

Dated: August 7, 1995.

**C. Allen Olson,**

*Director, Office of Federal Acquisition Policy.*

Therefore, 48 CFR Parts 1 and 6 are amended as set forth in the technical amendments appearing below:

1. The authority citation for 48 CFR Parts 1 and 6 continued to read as follows:

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

## PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

### 1.106 [Amended]

2. Section 1.106 is amended under the ''FAR Segment'' and ''OMB Control Number'' headings by removing ''52.237–9'' and ''9000–0103'', respectively.

## PART 6—COMPETITION REQUIREMENTS

### 6.304 [Amended]

3. Section 6.304 is amended by removing paragraphs (a)(1)(i) through (a)(1)(iv).

[FR Doc. 95–19864 Filed 8–15–95; 8:45 am]

BILLING CODE 6820–EP–M

Federal Register

Wednesday
August 16, 1995

## Part III

# Department of the Interior

**Fish and Wildlife Service**

**50 CFR Part 32**

**Refuge-Specific Hunting and Fishing Regulations; Proposed Rule**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 32**

**RIN 1018–AC80**

## Refuge-Specific Hunting and Fishing Regulations

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Fish and Wildlife Service (Service) proposes to amend certain regulations that pertain to migratory game bird hunting, upland game hunting, big game hunting and sport fishing on individual national wildlife refuges. Refuge hunting and fishing programs are reviewed annually to determine whether the individual refuge regulations governing these programs should be modified, deleted or have additions made to them. Changing environmental conditions, State and Federal regulations, and other factors affecting wildlife populations and habitat may warrant modifications to ensure the continued compatibility of hunting and fishing with the purposes for which the individual refuges were established. Modifications are designed, to the extent practical, to make refuge hunting and fishing programs consistent with State regulations.

**DATES:** Comments on this proposed rule will be accepted on or before September 15, 1995.

**ADDRESSES:** Assistant Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1849 C Street NW., MS 670 ARLSQ, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Duncan L. Brown, Esq. at the above address; Telephone (703) 358–1744.

**SUPPLEMENTARY INFORMATION:** 50 CFR part 32 contains provisions governing hunting and fishing on national wildlife refuges. Hunting and fishing are regulated on refuges to (1) ensure compatibility with refuge purposes, (2) properly manage the wildlife resource, (3) protect other refuge values, and (4) ensure refuge user safety. On many refuges, the Service policy of adopting State hunting regulations is adequate in meeting these objectives. On other refuges, it is necessary to supplement State regulations with more restrictive Federal regulations to ensure that the Service meets its management responsibilities, as outlined under the section entitled ''Conformance with Statutory and Regulatory Authorities.'' Refuge-specific hunting and fishing regulations may be issued only after a wildlife refuge is opened to migratory game bird hunting, upland game hunting, big game hunting or sport fishing through publication in the **Federal Register**. These regulations may list the wildlife species that may be hunted or are subject to sport fishing, seasons, bag limits, methods of hunting or fishing, descriptions of open areas, and other provisions as appropriate. Previously issued refuge-specific regulations for hunting and fishing are contained in 50 CFR part 32. Many of the amendments to these sections are being promulgated to standardize and clarify the existing language of these regulations.

Cross Creeks National Wildlife Refuge in Tennessee was opened to migratory game bird hunting in 1984; however, this hunting was *suspended* for geese for several years. Now, in cooperation with the State of Tennessee, the resident Canada geese hunt is being restored. Text is being added to paragraph A. (*Hunting of Migratory Game Birds*) of that refuge listing to reflect this change. The Service has made a grammatical correction in paragraph C. (*Big Game Hunting*) of Wichita Mountains National Wildlife Refuge in Oklahoma in correcting the ''conditions'' language from *is* permitted to *are* permitted. The State of Alaska made no revisions to its regulations. The alphabetical listing of North Platte National Wildlife Refuge is added under the State of Nebraska. The refuge has been officially opened to sport fishing under State fishing regulations; however, it was inadvertently dropped from the listing when refuge hunting and fishing regulations were consolidated in 1993. [58 FR 5064, January 19, 1993].

### Request for Comments

Department of the Interior policy is, whenever practicable, to afford the public a meaningful opportunity to participate in the rulemaking process. A 30-day comment period is specified in order to facilitate public input prior to the opening of the 1995–1996 hunting season. Accordingly, interested persons may submit written comments concerning this proposed rule to the person listed above under the heading **ADDRESSES**. All substantive comments will be reviewed and considered.

### Statutory Authority

The National Wildlife Refuge System Administration Act (NWRSAA) of 1966, as amended (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (16 U.S.C. 460k) govern the administration and public use of national wildlife refuges. Specifically, Section 4(d)(1)(A) of the NWRSAA authorizes the Secretary of the Interior to permit the use of any area within the Refuge System for any purpose, including but not limited to, hunting, fishing and public recreation, accommodations and access, when he determines that such uses are compatible with the major purpose(s) for which the area was established.

The Refuge Recreation Act authorizes the Secretary to administer areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purpose(s) for which the areas were established. The Refuge Recreation Act also authorizes the Secretary to issue regulations to carry out the purposes of the Act. Hunting and sport fishing plans are developed for each refuge prior to opening it to hunting or fishing. In many cases, refuge-specific hunting and fishing regulations are included in the hunting and sport fishing plans to ensure the compatibility of the hunting and sport fishing programs with the purposes for which the refuge was established. Initial compliance with the NWRSAA and Refuge Recreation Act is ensured when hunting and sport fishing plans are developed, and the determinations required by these acts are made prior to the addition of refuges to the lists of areas open to hunting and fishing in 50 CFR part 32. Continued compliance is ensured by annual review of hunting and sport fishing programs and regulations.

### Paperwork Reduction Act

The information collection requirements for part 32 are found in 50 CFR part 25 and have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018–0014. The information is being collected to assist the Service in administering these programs in accordance with statutory authorities which require that recreational uses be compatible with the primary purposes for which the areas were established. The information requested in the application form is required to obtain a benefit.

The public reporting burden for the application form is estimated to average six (6) minutes per response, including time for reviewing instructions, gathering and maintaining data, and completing the form. Direct comments on the burden estimate or any other aspect of this form to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 1849 C Street NW., MS 224 ARLSQ, Washington, D.C. 20240; and the Office

of Management and Budget, Paperwork Reduction Project (1018–0014), Washington, D.C. 20530.

**Economic Effect**

This rulemaking was not subject to the Office of Management and Budget review under Executive Order 12866. In addition, a review under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) has been done to determine whether the proposed rulemaking would have a significant effect on a substantial number of small entities, which include businesses, organizations or governmental jurisdictions. This proposed rule would have minimal effect on such entities.

**Federalism**

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

**Environmental Considerations**

Compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)) is ensured when hunting and sport fishing plans are developed, and the determinations required by this act are made prior to the addition of refuges to the lists of areas open to hunting and fishing in 50 CFR part 32. The changes in hunting and fishing herein proposed have been reviewed with regard to Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and have been found to either have no affect on or are not likely to adversely affected listed species or critical habitat. The amendment of refuge-specific hunting and fishing regulations are subject to a categorical exclusion from the NEPA process if they do not significantly alter the existing use of a particular national wildlife refuge. The Service exclusion found at 516 DM 6, App. 1, 1.4B(5) is employed here as these amendments are considered ''[m]inor changes in the amounts or types of public use on FWS or State-managed lands, in accordance with regulations, management plans, and procedures.'' These refuge-specific hunting and fishing revisions to existing regulations simply qualify or otherwise define an existing hunting or fishing activity for purposes of resource management. Information regarding hunting and fishing permits and the conditions that apply to individual refuge hunts, sport fishing activities and maps of the respective areas are retained at refuge headquarters and can be obtained from the regional offices of the U.S. Fish and Wildlife Service at the addresses listed below:

Region 1—
California, Hawaii, Idaho, Nevada, Oregon, and Washington.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Eastside Federal Complex, Suite 1692, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; Telephone (503) 231–6214.

Region 2—
Arizona, New Mexico, Oklahoma and Texas.
Assistant Regional Director—Refuges and Wildlife U.S. Fish and Wildlife Service, Box 1306, Albuquerque, New Mexico 87103; Telephone (505) 766–1829.

Region 3—
Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; Telephone (612) 725–3507.

Region 4—
Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, South Carolina, Puerto Rico and the Virgin Islands.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Room 324, Atlanta, Georgia 30345; Telephone (404) 679–7152.

Region 5—
Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035; Telephone (413) 253–8550.

Region 6—
Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 25486, Denver Federal Center, Denver, Colorado 80225; Telephone (303) 236–8145.

Region 7—
Alaska.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, Alaska 99503; Telephone (907) 786–3545.

Duncan L. Brown, Esq., Division of Refuges, U.S. Fish and Wildlife Service, Washington, DC 20240, is the primary author of this rulemaking document.

**List of Subjects in 50 CFR Part 32**

Hunting, Fishing, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

Accordingly, Part 32 of Chapter I of Title 50 of the *Code of Federal Regulations* is proposed to be amended as follows:

## PART 32—[AMENDED]

1. The authority citation for Part 32 continues to read as follows:

**Authority:** 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i.

**§ 32.7 [Amended].**

2. Section 32.7 is amended by adding the alphabetical listing of ''North Platte National Wildlife Refuge'' under the State of Nebraska.

3. Section 32.22 *Arizona* is amended by revising paragraph A. of Bill Williams River National Wildlife Refuge; and by adding paragraphs A.8. through A.13. inclusive, revising paragraph B.4. and adding paragraphs B.5. and B.6. to Cibola National Wildlife Refuge to read as follows:

**§ 32.22 Arizona.**

* * * * *

**Bill Williams River National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* Hunting of mourning and white-winged doves is permitted on designated areas of the refuge subject to the following condition: Legal weapon is shotgun only.

* * * * *

**Cibola National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* * * *

* * * * *

8. Hunting is not permitted within 50 yards of any road or levee.

9. Decoys are required for waterfowl hunting and must be removed from the refuge daily.

10. Waterfowl hunters are limited to 10 shells per day in Farm Unit 2.

11. During the Arizona waterfowl season, Farm Unit 2 is closed to dove hunting until noon each day.

12. In Farm Unit 2, waterfowl hunters must remain within 50 feet of designated station while hunting except when actively retrieving downed birds.

13. During the goose season the Hart Mine Marsh Area is closed to hunting until 10 a.m. daily.

*B. Upland Game Hunting.* * * *

* * * * *

4. Hunting of cottontail rabbit is permitted from September 1 through the last day of the respective State's quail season.

5. During the Arizona waterfowl season, hunting of quail and rabbit is not permitted in Farm Unit 2 until noon.

6. Hunting is not permitted within 50 yards of any road or levee.

* * * * *

4. Section 32.23 *Arkansas* is amended by revising paragraphs B. and C. of Felsenthal National Wildlife Refuge; by revising paragraphs B. and C. of Overflow National Wildlife Refuge; and by revising paragraphs D.1. and D.4. of White River National Wildlife Refuge to read as follows:

**§ 32.23 Arkansas.**

* * * * *

**Felsenthal National Wildlife Refuge**

* * * * *

*B. Upland Game Hunting.* Hunting of quail, squirrel, rabbit, raccoon, opossum, beaver, nutria, and coyote is permitted on designated areas of the refuge subject to the following condition: Permits are required.

*C. Big Game Hunting.* Hunting of white-tailed deer, turkey and feral hogs is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

**Overflow National Wildlife Refuge**

* * * * *

*B. Upland Game Hunting.* Hunting of quail, squirrel, rabbit, raccoon, opossum, beaver, nutria, and coyote is permitted on designated areas of the refuge subject to the following condition: Permits are required.

*C. Big Game Hunting.* Hunting of white-tailed deer, turkey, and feral hogs is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

**White River National Wildlife Refuge**

* * * * *

*D. Sport Fishing.* * * *

1. Fishing is permitted from March 1 through November 30 except as posted and as follows: fishing is permitted year-round in LaGrueu, Essex, Prairie, and Brooks Bayous, Big Island Chute, Moon Lake and Belknap Lake next to Arkansas Highway 1, Indian Bay, the Arkansas Post Canal and adjacent drainage ditches, those borrow ditches located adjacent to the West bank of that portion of the White River Levee north of the Arkansas Power and Light Company power line right-of-way, and all refuge owned waters located North of Arkansas Highway 1.

* * * * *

4. Frogging is permitted on all refuge owned waters open for sport fishing as follows: South of Arkansas Highway 1, frogging is permitted from the beginning of the State season through November 30; North of Arkansas Highway 1, frogging is permitted for the entire State season. The use of bow and arrow for taking bullfrogs is prohibited.

5. Section 32.24 *California* is amended by revising paragraphs A.1., A.2., and A.3. of Delevan National Wildlife Refuge; by adding new paragraph A.5. to Kesterson National Wildlife Refuge; by revising paragraphs A.1. and A.2. of Modoc National Wildlife Refuge; by revising paragraphs A.1., A.2., and B.1. of Sacramento National Wildlife Refuge; and by adding new paragraph A.5. and revising paragraph B. of San Luis National Wildlife Refuge to read as follows:

**§ 32.24 California.**

* * * * *

**Delevan National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* * * *

1. Firearms must be unloaded while being transported between parking areas and spaced blind areas.

2. Snipe hunting is not permitted in the spaced blind area.

3. Hunters assigned to the spaced blind area are restricted to within 100 feet of their assigned hunt site except for retrieving downed birds, placing decoys, or traveling to and from the area.

* * * * *

**Kesterson National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* * * *

* * * * *

5. Access to Salt Slough is via boats only. Boats may only be launched at the Highway 140 (Fremont Ford State Recreational Area) and Highway 165 access points. The use of air-thrust and/or inboard water thrust boats is not permitted. The speed limit of 5 mph is in effect.

* * * * *

**Modoc National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* * * *

1. A permit issued by the refuge to hunters with advance reservations only is required for the first weekend.

2. After the first weekend of the open season, hunting is permitted only on Tuesdays, Thursdays and Saturdays. Hunters must check in and out of the refuge by use of self-service permits.

* * * * *

**Sacramento National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* * * *

1. Firearms must be unloaded while being transported between parking areas and spaced blind areas.

2. Snipe hunting is not permitted in the spaced blind area.

* * * * *

*B. Upland Game Hunting.* * * *

1. A special one-day only pheasant hunt is permitted in the spaced blind area on the first Monday after the opening of the State pheasant hunting season.

* * * * *

**San Luis National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* * * *

* * * * *

5. Vehicles may stop only at designated parking areas; the dropping of passengers or equipment, or stopping between designated parking areas is prohibited.

*B. Upland Game Hunting.* Hunting of pheasants is permitted on designated areas of the refuge subject to the following conditions:

1. Hunters shall possess and use, while in the field, only non-toxic shotshells.

2. Hunters may not possess more than 25 shotshells while in the field.

* * * * *

6. Section 32.25 *Colorado* is amended by revising paragraphs A. and B. of Arapaho National Wildlife Refuge to read as follows:

**§ 32.25 Colorado.**

* * * * *

*Arapaho National Wildlife Refuge*

*A. Hunting of Migratory Game Birds.* Hunting of migratory game birds is allowed on designated areas of the refuge pursuant to State law.

*B. Upland Game Hunting.* Upland game hunting is allowed on designated areas of the refuge pursuant to State law and subject, also, to the following condition: Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

7. Section 32.27 *Delaware* is amended by adding new paragraph B.4., revising introductory language of paragraph C., and adding new paragraph C.4. to Bombay Hook National Wildlife Refuge; and by adding new paragraph B.4. to Prime Hook National Wildlife Refuge to read as follows:

**§ 32.27 Delaware.**

* * * * *

**Bombay Hook National Wildlife Refuge**

* * * * *

*B. Upland Game Hunting.* * * *

* * * * *

4. Shotgun hunters will possess and use, while in the field, only non-toxic shot.

* * * * *

*C. Big Game Hunting.* Hunting of deer and turkey is permitted on designated areas of the refuge subject to the following conditions:

* * * * *

4. A valid State permit is required for turkey hunting.

* * * * *

**Prime Hook National Wildlife Refuge**

* * * * *

*B. Upland Game Hunting.* * * *

* * * * *

4. Shotgun hunters will possess and use, while in the field, only non-toxic shot.

* * * * *

8. Section 32.31 *Idaho* is amended by revising paragraph D. of Kootenai

National Wildlife Refuge to read as follows:

**§ 32.31 Idaho.**

* * * * *

**Kootenai National Wildlife Refuge**

* * * * *

*D. Sport Fishing.* Fishing is permitted only on Myrtle Creek subject to the following condition: Only bank fishing is permitted. Fishing from boats, float tubes, or other personal flotation devices is prohibited.

* * * * *

9. Section 32.32 *Illinois* is amended by revising paragraph D.1. and adding new paragraph D.5. to Chautauqua National Wildlife Refuge; by adding new paragraphs A.3., A.4. and B.3. to Crab Orchard National Wildlife Refuge; by adding new paragraph B.3., and revising paragraph C. of Cypress Creek National Wildlife Refuge; by adding new paragraph B.3. to Mark Twain National Wildlife Refuge; and by adding new paragraph B.4. to Upper Mississippi River National Wildlife Refuge to read as follows:

**§ 32.32 Illinois.**

* * * * *

**Chautauqua National Wildlife Refuge**

* * * * *

*D. Sport Fishing.* * * *

1. Sport fishing is allowed on Lake Chautauqua from February 15 through October 15. Sport fishing is not allowed in the Waterfowl Hunting Area during waterfowl hunting season.

* * * * *

5. Weis Lake on the Cameron Unit is closed to all public entry from October 16 through February 14.

**Crab Orchard National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* * * *

* * * * *

3. Waterfowl hunters may not possess more than 20 shells during the combined duck and goose seasons. Goose hunters may not possess more than 10 shells during the goose season.

4. Hunting in the Cambria Neck dove field is closed on Tuesdays and Thursdays. All Cambria Neck dove hunters are required to sign in and out and report their harvest.

*B. Upland Game Hunting.* * * *

* * * * *

3. Only non-toxic shot may be used or possessed while hunting all permitted birds, except wild turkeys. The possession and use of lead shot is still permitted for wild turkey hunting.

* * * * *

**Cypress Creek National Wildlife Refuge**

* * * * *

*B. Upland Game Hunting.* * * *

* * * * *

3. Only non-toxic shot may be used or possessed while hunting bobwhite quail.

*C. Big Game Hunting.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

1. Hunters must check in and out of the refuge each day of hunting.

2. Hunting blinds may not be left over night on the refuge.

* * * * *

**Mark Twain National Wildlife Refuge**

* * * * *

*B. Upland Game Hunting.* * * *

* * * * *

3. Only non-toxic shot may be used or possessed while hunting all permitted birds, except wild turkeys. The possession and use of lead shot is still permitted for wild turkey hunting.

* * * * *

**Upper Mississippi River National Wildlife and Fish Refuge**

* * * * *

*B. Upland Game Hunting.* * * *

* * * * *

4. Only non-toxic shot may be used or possessed while hunting squirrels, and all permitted birds, except wild turkeys. The possession and use of lead shot is still permitted for wild turkey hunting.

* * * * *

10. Section 32.33 *Indiana* is amended by adding new paragraph B.4. to Muscatatuck National Wildlife Refuge to read as follows:

**§ 32.33 Indiana.**

* * * * *

**Muscatatuck National Wildlife Refuge**

* * * * *

*B. Upland Game Hunting.* * * *

* * * * *

4. Only non-toxic shot may be used or possessed while hunting for bobwhite quail.

* * * * *

11. Section 32.34 *Iowa* is amended by revising paragraph B. of Union Slough National Wildlife Refuge; and by adding new paragraph B.3. to Walnut Creek National Wildlife Refuge to read as follows:

**§ 32.34 Iowa.**

* * * * *

**Union Slough National Wildlife Refuge**

* * * * *

*B. Upland Game Hunting.* Hunting of upland game is permitted in designated areas of the refuge subject to the following condition: Only non-toxic shot may be used or possessed while hunting all permitted birds, except wild turkeys. The possession and use of lead shot is still permitted for wild turkey hunting.

* * * * *

**Walnut Creek National Wildlife Refuge**

* * * * *

*B. Upland Game Hunting.* * * *

* * * * *

3. All hunters must wear one or more of the following articles of visible, external, solid blaze orange clothing: a vest, coat, jacket, sweatshirt, sweater, shirt or coveralls.

* * * * *

12. Section 32.35 *Kansas* is amended by revising paragraphs B. and C. of Flint Hills National Wildlife Refuge; and by revising paragraphs A. and B. of Quivira National Wildlife Refuge to read as follows:

**§ 32.35 Kansas.**

* * * * *

**Flint Hills National Wildlife Refuge**

* * * * *

*B. Upland Game Hunting.* Hunting of upland game is permitted on designated areas of the refuge subject to the following conditions:

1. Dogs may not be used for hunting furbearing animals or non-game animals.

2. Hunters shall possess and use, while in the field, only non-toxic shot or rimfire firearms.

*C. Big Game Hunting.* Hunting of big game is permitted on designated areas of the refuge subject to the following conditions:

1. Only shotguns, muzzleloading firearms, or bow and arrow are permitted except during controlled hunts.

2. Hunters shall possess and use, while in the field, only non-toxic shot while shotgun hunting for turkey.

* * * * *

**Quivira National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* Hunting of geese, ducks, coots, rails (Virginia and Sora only), mourning doves, and common snipe is permitted on designated areas of the refuge subject to the following condition: Non-toxic shot is required when hunting any game on the refuge. The possession of lead shot in the field is prohibited.

*B. Upland Game Hunting.* Hunting of pheasant, bobwhite quail, squirrel, and rabbit is permitted on designated areas of the refuge subject to the following conditions:

1. The refuge is closed to all hunting from March 1 through August 31.

2. Squirrels and rabbits may only be hunted during the portion of the Kansas seasons that fall outside the March 1 through August 31 closed period.

* * * * *

13. Section 32.36 *Kentucky* is amended by revising paragraph D.1. of Reelfoot National Wildlife Refuge to read as follows:

**§ 32.36 Kentucky.**

* * * * *

**Reelfoot National Wildlife Refuge**

* * * * *

*D. Sport Fishing.* * * *

1. Fishing is permitted on the Long Point Unit (north of Upper Blue Basin) from March 15 through November 15 and on the Grassy Island Unit (south of the Upper Blue Basin) from February 1 through November 15.

* * * * *

14. Section 32.37 *Louisiana* is amended by revising paragraphs B., D.1., D.4. and removing paragraph D.5. of Catahoula National Wildlife Refuge to read as follows:

**§ 32.37 Louisiana.**

* * * * *

**Catahoula National Wildlife Refuge**

* * * * *

*B. Upland Game Hunting.* Hunting of raccoon, squirrel, rabbit, and feral hogs is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

*D. Sport Fishing.* * * *

1. Fishing is permitted from one hour before sunrise until one-half hour after sunset. Only pole and line or rod and reel fishing is permitted. Snagging is prohibited.

* * * * *

4. All other refuge waters, including Duck Lake, Muddy Bayou, ditches, all outlet waters, and all flooded woodlands are open to fishing and boating from March 1 through October 31.

* * * * *

15. Section 32.38 *Maine* is amended by revising paragraph B.2. of Rachel Carson National Wildlife Refuge; and by revising paragraphs A. and B. of Sunkhaze Meadows National Wildlife Refuge to read as follows:

**§ 32.38 Maine.**

* * * * *

**Rachel Carson National Wildlife Refuge**

* * * * *

*B. Upland Game Hunting.* * * *

* * * * *

2. Hunters will possess and use, while in the field, only non-toxic shot.

**Sunkhaze Meadows National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* Hunting of migratory game birds is permitted on designated areas of the refuge pursuant to State law.

B. *Upland Game Hunting.* Hunting of upland game is permitted on designated areas of the refuge subject to the following condition: Shotgun hunters will and possess and use, while in the field, only non-toxic shot.

16. Section 32.39 *Maryland* is amended by adding new paragraph B.6. to Patuxent Wildlife Research Center to read as follows:

**§ 32.39 Maryland.**

* * * * *

**Patuxent Wildlife Research Center**

* * * * *

*B. Upland Game Hunting.* * * *

* * * * *

6. Shotgun hunters will possess and use, while in the field, only non-toxic shot.

* * * * *

17. Section 32.40 *Massachusetts* is amended by adding new paragraph B.3. to Oxbow National Wildlife Refuge to read as follows:

**§ 32.40 Massachusetts.**

* * * * *

**Oxbow National Wildlife Refuge**

* * * * *

*B. Upland Game Hunting.* * * *

* * * * *

3. Hunters will possess and use, while in the field, only non-toxic shot.

* * * * *

18. Section 32.42 *Minnesota* is amended by adding new paragraph B.1. to Big Stone National Wildlife Refuge; by adding new paragraph B.3. to Minnesota Valley National Wildlife Refuge; by revising paragraphs A., B., C., and D. of Morris Wetland Management District; by adding new paragraph B.1. and revising paragraph C.4. of Rice Lake National Wildlife Refuge; by adding new paragraph B.1. to Sherburne National Wildlife Refuge; and by revising introductory language of paragraph A. and revising paragraph B. of Tamarac National Wildlife Refuge to read as follows:

**§ 32.42 Minnesota.**

* * * * *

**Big Stone National Wildlife Refuge**

* * * * *

*B. Upland Game Hunting.* * * *

1. Only non-toxic shot may be used or possessed while hunting for partridge or ring-necked pheasant.

* * * * *

**Minnesota Valley National Wildlife Refuge**

* * * * *

*B. Upland Game Hunting.* * * *

* * * * *

3. Only non-toxic shot may be used or possessed while hunting for ring-necked pheasant.

* * * * *

**Morris Wetland Management District**

*A. Hunting of Migratory Game Birds.* Hunting of migratory game birds is permitted throughout the district.

*B. Upland Game Hunting.* Upland game hunting is permitted throughout the district.

*C. Big Game Hunting.* Big game hunting is permitted throughout the district.

*D. Sport Fishing.* Sport fishing is permitted throughout the district.

**Rice Lake National Wildlife Refuge**

* * * * *

*B. Upland Game Hunting.* * * *

1. Only non-toxic shot may be used or possessed while hunting for sharp-tailed grouse, ruffed grouse, or spruce grouse.

*C. Big Game Hunting.* * * *

* * * * *

4. Hunting of deer on the Rice Lake Unit is by firearm and archery; hunting on the Sandstone Unit is by archery only.

* * * * *

**Sherburne National Wildlife Refuge**

* * * * *

*B. Upland Game Hunting.* * * *

1. Only non-toxic shot may be used or possessed while hunting for ruffed grouse or ring-necked pheasant.

* * * * *

**Tamarac National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* Hunting of geese, ducks, coots, woodcock and snipe is permitted on designated areas of the refuge subject to the following conditions:

* * * * *

*B. Upland Game Hunting.* Hunting of ruffed grouse, gray and fox squirrel, cottontail rabbit, jackrabbit, snowshoe hare, red fox, raccoon, and striped skunk is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting by tribal members is in accordance with White Earth Indian Reservation regulations on those parts of the Reservation that are part of the refuge.

2. Red fox, raccoon, and striped skunk may be hunted only from one-half hour before sunrise until sunset during open seasons for other small game species. Dogs may not be used for fox or raccoon hunting.

* * * * *

19. Section 32.45 *Montana* is amended by revising paragraph B. of Black Coulee National Wildlife Refuge; by adding paragraph B.3. to Bowdoin National Wildlife Refuge; by revising paragraph B. of Lake Mason National Wildlife Refuge; by revising paragraphs A., C., and D. of Lee Metcalf National Wildlife Refuge; and by revising paragraph B. of Warhorse National Wildlife Refuge to read as follows:

**§ 32.45 Montana.**

* * * * *

**Black Coulee National Wildlife Refuge**

* * * * *

*B. Upland Game Hunting.* Hunting of upland game is permitted on designated areas of the refuge subject to the following

condition: Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

**Bowdoin National Wildlife Refuge**

* * * * *

*B. Upland Game Hunting.* * * *

* * * * *

3. Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

**Lake Mason National Wildlife Refuge**

* * * * *

*B. Upland Game Hunting.* Hunting of upland game is permitted on designated areas of the refuge subject to the following condition: Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

**Lee Metcalf National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* Hunting of geese, ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

1. Hunters may not use or possess more than 15 shells per day.

2. Shooting is permitted only from or within 10 feet of designated blinds.

3. Maximum of 5 hunters per blind.

4. Hunters are required to record hunt information at Hunter Access Points.

* * * * *

*C. Big Game Hunting.* Hunting of white-tailed deer and mule deer is permitted on designated areas of the refuge subject to the following conditions:

1. Only archery hunting is permitted.

2. Hunters are required to enter and exit and record hunt information at Hunter Access Points.

3. Deer stands left on the refuge must be identified with a name and address and be accessible to other hunters.

4. Deer may not be retrieved from closed areas without prior consent from refuge staff.

*D. Sport Fishing.* Fishing is permitted on designated areas of the refuge. All fishing is pursuant to State law.

* * * * *

**Warhorse National Wildlife Refuge**

* * * * *

*B. Upland Game Hunting.* Hunting of upland game birds is permitted on designated areas of the refuge subject to the following condition: Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

20. Section 32.46 *Nebraska* is amended by revising paragraph D. of North Platte National Wildlife Refuge to read as follows:

**§ 32.46 Nebraska.**

* * * * *

**North Platte National Wildlife Refuge**

* * * * *

*D. Sport Fishing.* Sport fishing is allowed on designated areas of the refuge pursuant to State law.

* * * * *

21. Section 32.47 *Nevada* is amended by revising paragraphs A. and B. of Ash Meadows National Wildlife Refuge; and by revising paragraph C. of Desert National Wildlife Refuge to read as follows:

**§ 32.47 Nevada.**

* * * * *

**Ash Meadows National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* Hunting of geese, ducks, coots, moorhens, snipe, and dove is permitted on designated areas of the refuge.

*B. Upland Game Hunting.* Hunting of quail, cottontail rabbits and jackrabbits is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting of cottontail rabbits and jackrabbits is permitted only during the State quail hunting season.

2. Only shotguns are permitted.

* * * * *

**Desert National Wildlife Refuge**

* * * * *

*C. Big Game Hunting.* Hunting of bighorn sheep is permitted on designated areas of the range subject to the following conditions:

1. Bighorn sheep guides are required to obtain a Special Use Permit prior to taking clients onto the range.

2. Natural bighorn sheep mortality (pick-up heads) found on the range are government property and possession or removal of them from the range is not permitted.

* * * * *

22. Section 32.50 *New Mexico* is amended by adding new paragraphs A.5. and A.6., and revising paragraphs B. and C. of Bitter Lake National Wildlife Refuge to read as follows:

**§ 32.50 New Mexico.**

* * * * *

**Bitter Lake National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* * * *

* * * * *

5. Hunting in Hunt Area B is permitted on all days within the State authorized season.

6. Hunting in Hunt Area C is permitted from mid-October through the end of January, on Tuesday, Thursday, and Saturday of each week from one-half hour before sunrise to 1 p.m. Dove hunting is prohibited in Hunt Area C.

*B. Upland Game Hunting.* Hunting of pheasant, quail, cottontail, and jack rabbits is permitted on designated areas of the refuge subject to the following conditions:

1. Hunters shall possess and use, while in the field, only nontoxic shot.

2. Hunting in Hunt Area B is permitted on all days within the State authorized seasons.

3. The hunting of rabbit and quail is prohibited in Hunt Area C.

*C. Big Game Hunting.* Hunting of mule deer and white-tailed deer is permitted on designated areas of the refuge.

* * * * *

23. Section 32.51 *New York* is amended by adding new paragraph B.4. to Iroquois National Wildlife Refuge to read as follows:

**§ 32.51 New York.**

* * * * *

**Iroquois National Wildlife Refuge**

* * * * *

*B. Upland Game Hunting.* * * *

* * * * *

4. Shotgun hunters will possess and use, while in the field, only non-toxic shot.

* * * * *

24. Section 32.52 *North Carolina* is amended by revising paragraph D.1. of Pee Dee National Wildlife Refuge; and by revising introductory language of paragraph B., revising paragraph C.2., and adding new paragraphs B.7., B.8., C.8. and C.9. to Pocosin Lakes National Wildlife Refuge to read as follows:

**§ 32.52 North Carolina.**

* * * * *

**Pee Dee National Wildlife Refuge**

* * * * *

*D. Sport Fishing.* * * *

1. Fishing is permitted from March 15 through October 15.

* * * * *

**Pocosin Lakes National Wildlife Refuge**

* * * * *

*B. Upland Game Hunting.* Hunting of quail, squirrel, raccoon, opossum, rabbit, and fox is permitted on designated areas of the refuge subject to the following conditions:

* * * * *

7. Hunters shall use only shotguns and/or 22 caliber rim-fire rifles for upland game hunts.

8. Hunters shall possess and use, while in the field, only nontoxic shot on designated areas of the refuge.

*C. Big Game Hunting.* * * *

* * * * *

2. Only shotguns, muzzle-loaders, and bow and arrow are allowed for big game hunts.

* * * * *

8. Archery hunting on the Pungo Unit is permitted during the regular State archery season and from November 1 through 30. State bag limits apply.

9. Shotgun, muzzle loaders, and bow and arrow are permitted on the Pungo Unit subject to the following condition: Permits are required.

* * * * *

25. Section 32.53 *North Dakota* is amended by revising paragraph B. of Arrowwood National Wildlife Refuge; by revising paragraphs B., C.1., C.2., and adding paragraphs C.3. through C.7. inclusive to Audubon National Wildlife

Refuge; by adding paragraph B.3. to J. Clark Salyer National Wildlife Refuge; by revising paragraph B. of Lake Alice National Wildlife Refuge; by revising paragraph C. of Lake Nettie National Wildlife Refuge; by revising paragraphs B., C., and D. of Long Lake National Wildlife Refuge; by adding paragraph B.3. to Lostwood National Wildlife Refuge; by revising paragraph C. of Slade National Wildlife Refuge; and by revising paragraphs B. and C. of Tewaukon National Wildlife Refuge to read as follows:

**§ 32.53 North Dakota.**

* * * * *

**Arrowwood National Wildlife Refuge**

* * * * *

*B. Upland Game Hunting.* Hunting of pheasant, sharp-tailed grouse, partridge, rabbit and fox is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting is permitted from December 1st through the end of the regular seasons.

2. Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

**Audubon National Wildlife Refuge**

* * * * *

*B. Upland Game Hunting.* Hunting of ring-necked pheasants, gray partridge and sharp-tailed grouse is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting is permitted from December 1 until the close of the State season.

2. Only non-toxic shot is permitted for upland game hunting.

3. All islands are closed to hunting.

4. Vehicle use is restricted to the tour route road only.

*C. Big Game Hunting.* * * *

1. Rifle and muzzleloader deer hunting opens according to State regulations.

2. Refuge and State permits are required for the first one and one-half days of the State rifle season.

3. Orange clothing is required for deer hunters as per State regulations.

4. Hunting with bow and arrow is permitted only the day following the close of the State deer firearms season through the close of the State archery season.

5. All islands are closed to hunting.

6. All refuge roads are closed for use by rifle deer hunters except for retrieval of deer.

7. Muzzleloader and archery deer hunters may use the auto tour route for access during the hunt and all roads for retrieval of deer.

* * * * *

**J. Clark Salyer National Wildlife Refuge**

* * * * *

B. Upland Game Hunting. * * *

* * * * *

3. Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

**Lake Alice National Wildlife Refuge**

* * * * *

*B. Upland Game Hunting.* Hunting of upland game and fox is permitted on designated areas of the refuge subject to the following condition: Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

**Lake Nettie National Wildlife Refuge**

* * * * *

*C. Big Game Hunting.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

1. Deer hunting with rifle and muzzleloader is subject to all State regulations and license units.

2. Deer archery hunting is open the day following the close of the rifle deer hunting season through the close of the State archery season.

* * * * *

**Long Lake National Wildlife Refuge**

* * * * *

*B. Upland Game Hunting.* Hunting of ring-necked pheasant, sharp-tailed grouse and gray partridge is permitted on designated areas of the refuge subject to the following conditions:

1. Only steel shot may be used.

2. Upland gamebird season is from December 1 through the end of the State season.

*C. Big Game Hunting.* Hunting of deer only is permitted on designated areas of the refuge subject to the following conditions:

1. Hunters must enter the refuge on foot only.

2. Archery hunting is not allowed during the firearm deer season.

*D. Sport Fishing.* Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. bank fishing is restricted to public use areas on Unit 1, Unit 2, and Long Lake Creek.

2. Boat fishing is restricted to Unit 1.

3. Boats are restricted to 25 HP maximum.

4. Boats are restricted to the period from May 1 through September 30.

5. Ice fishing is restricted to Unit 1.

6. Ice houses must be removed by March 1 annually.

* * * * *

**Lostwood National Wildlife Refuge**

* * * * *

*B. Upland Game Hunting.* * * *

* * * * *

3. Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

**Slade National Wildlife Refuge**

* * * * *

*C. Big Game Hunting.* Deer hunting is permitted on designated areas of the refuge subject to the following conditions:

1. Hunters may enter the refuge on foot only.

2. Archery hunting is not allowed during the firearm deer season.

* * * * *

**Tewaukon National Wildlife Refuge**

* * * * *

*B. Upland Game Hunting.* Hunting of ring-necked pheasant is permitted on designated areas of the refuge.

*C. Big Game Hunting.* Hunting of white-tailed deer is permitted on designated areas of the refuge.

* * * * *

26. Section 32.55 *Oklahoma* is amended by revising paragraphs C. and D.4. of Wichita Mountains Wildlife Refuge to read as follows:

**§ 32.55 Oklahoma.**

* * * * *

**Wichita Mountains National Wildlife Refuge**

* * * * *

*C. Big Game Hunting.* Hunting of elk and white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits and payment of a fee are required.

*D. Sport Fishing.* * * *

* * * * *

4. Lake Elmer Thomas is open to fishing. Bass fishing on Lake Elmer Thomas is restricted to catch and release.

27. Section 32.56 *Oregon* is amended by revising paragraphs A.1., A.2., A.5., B., D.1., D.3., and removing paragraphs A.6., A.7., B.5., and D.5. of Cold Springs National Wildlife Refuge; by revising paragraphs A.2. and B.1. of Malheur National Wildlife Refuge; by revising paragraphs A.1., A.2., A.4., A.5., A.6., B., D.1., and D.2., and adding new paragraph D.3., and removing paragraph A.7. of McKay Creek National Wildlife Refuge; and by revising paragraphs A.1., A.4., A.5., revising introductory language of paragraph B., revising paragraphs B.1., B.3., B.4., B.5., D.1. through D.4. inclusive, and removing paragraphs A.6. through A.8. inclusive of Umatilla National Wildlife Refuge to read as follows:

**§ 32.56 Oregon.**

* * * * *

**Cold Springs National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* * * *

1. The refuge is open from 5 a.m. to one and one-half hours after sunset. Decoys and other personal property may not be left on the refuge overnight.

2. Hunting is permitted only on Tuesdays, Thursdays, Saturdays, Thanksgiving Day, Christmas Day and New Year's Day.

* * * * *

5. Hunters may not possess more than 25 shells while in the field.

*B. Upland Game Hunting.* Hunting of pheasant and quail is permitted on

designated areas of the refuge subject to the following conditions:

1. The refuge is open from 5 a.m. to one and one-half hours after sunset.

2. Hunting is permitted only on Tuesdays, Thursdays, Saturdays, Thanksgiving Day, Christmas Day and New Year's Day.

3. Hunters shall possess and use, while in the field, only non-toxic shot.

4. Hunters may not possess more than 25 shells while in the field.

* * * * *

*D. Sport Fishing.* * * *

1. Use of non-motorized boats and boats with electric motors is permitted from March 1 through September 30.

* * * * *

3. Fishing is permitted only with hook and line.

* * * * *

**Malheur National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* * * *

* * * * *

2. Snipe and dove hunters shall possess and use, while in the field, only non-toxic shot.

*B. Upland Game Hunting.* * * *

1. Hunting of pheasant, quail, partridge, and rabbit is permitted from the third Saturday in November to the end of the State pheasant season in designated zones of the Blitzen Valley east of Highway 205. Hunting is also permitted on Malheur Lake during the waterfowl hunting season.

* * * * *

**McKay Creek National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* * * *

1. The refuge is open from 5 a.m. to one and one-half hours after sunset. Decoys and other personal property may not be left on the refuge overnight.

2. Hunting is permitted only on Tuesdays, Saturdays, Thanksgiving Day, Christmas Day and New Year's Day.

* * * * *

4. Hunters may not possess more than 25 shells while in the field.

5. Permits are required for the opening weekend of the season when it coincides with the season opening for upland game birds.

6. The use of boats is prohibited.

*B. Upland Game Hunting.* Hunting of pheasant and quail is permitted on designated areas of the refuge subject to the following conditions:

1. The refuge is open from 5 a.m. to one and one-half hours after sunset.

2. Hunting is permitted only on Tuesdays, Thursdays, Saturdays, Thanksgiving Day, Christmas Day and New Year's Day.

3. Hunters shall possess and use, while in the field, only non-toxic shot.

4. Hunters may not possess more than 25 shells while in the field.

5. Permits are required for the opening weekend of the season.

* * * * *

*D. Sport Fishing.* * * *

1. The refuge is open from 5 a.m. to one and one-half hours after sunset.

2. Fishing is permitted from March 1 through September 30.

3. Fishing is permitted only with hook and line.

* * * * *

**Umatilla National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* * * *

1. The refuge is open from 5 a.m. to one and one-half hours after sunset except for the Hunter Check Station parking lot at the McCormack Unit which is open each morning two hours prior to State shooting hours for waterfowl. Decoys, boats and other personal property must be removed from the refuge following each day's hunt.

* * * * *

4. Hunters may not possess more than 25 shells while in the field.

5. Permits are required for hunting on the McCormack Unit.

*B. Upland Game Hunting.* Hunting of pheasant and quail is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting of upland game birds is not allowed until noon of each hunt day.

* * * * *

3. Hunters shall possess and use, while in the field, only non-toxic shot.

4. Hunters may not possess more than 25 shells while in the field.

5. Permits are required for hunting on the McCormack Unit.

* * * * *

*D. Sport Fishing.* * * *

1. The refuge is open from 5 a.m. to one and one-half hours after sunset.

2. Fishing is permitted on refuge impoundments and ponds from February 1 through September 30. Other refuge waters (Columbia River and its backwaters) are open in accordance with State regulation.

3. Only non-motorized boats and boats with electric motors are permitted on refuge impoundments and ponds.

4. Fishing is permitted only with hook and line.

* * * * *

28. Section 32.57 *Pennsylvania* is amended by adding new paragraph B.4. to Erie National Wildlife Refuge to read as follows:

**§ 32.57 Pennsylvania.**

* * * * *

**Erie National Wildlife Refuge**

* * * * *

*B. Upland Game Hunting.* * * *

* * * * *

4. Shotgun hunters will possess and use, while in the field, only non-toxic shot.

* * * * *

29. Section 32.60 *South Carolina* is amended by revising paragraph A. of Santee National Wildlife Refuge to read as follows:

**§ 32.60 South Carolina.**

* * * * *

**Santee National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* Hunting of mourning doves, ducks, and coots is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

30. Section 32.61 *South Dakota* is amended by revising paragraph B. of Pocasse National Wildlife Refuge to read as follows:

**§ 32.61 South Dakota.**

* * * * *

**Pocasse National Wildlife Refuge**

* * * * *

*B. Upland Game Hunting.* Hunting of pheasant is permitted on designated areas of the refuge subject to the following condition: Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

31. Section 32.62 *Tennessee* is amended by revising paragraphs A. and D.1. of Cross Creeks National Wildlife Refuge; and by revising introductory language of paragraph D. and revising paragraph D.1. of Lake Isom National Wildlife Refuge to read as follows:

**§ 32.62 Tennessee.**

* * * * *

**Cross Creeks National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* Hunting of resident Canada geese during the Special State September season is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

*D. Sport Fishing.* * * *

* * * * *

1. Fishing is permitted on refuge pools and reservoirs from March 15 through October 31 from sunrise to sunset.

* * * * *

**Lake Isom National Wildlife Refuge**

* * * * *

*D. Sport Fishing.* Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted from March 15 through October 15 only from sunrise to sunset.

* * * * *

32. Section 32.64 *Utah* is amended by revising paragraph B. of Ouray National Wildlife Refuge to read as follows:

**§ 32.64 Utah.**

* * * * *

**Ouray National Wildlife Refuge**

* * * * *

*B. Upland Game Hunting.* Hunting of pheasant is permitted on designated areas of the refuge subject to the following condition:

Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

33. Section 32.65 *Vermont* is amended by revising paragraphs B.1., B.2., and adding new paragraphs B.3., B.4., C.3. and C.4. to Missisquoi National Wildlife Refuge to read as follows:

**§ 32.65 Vermont.**

* * * * *

**Missisquoi National Wildlife Refuge**

* * * * *

*B. Upland Game Hunting.* * * *

1. All hunters must register at Refuge Headquarters prior to hunting on the refuge.

2. The use of rifles is not permitted on that portion of the refuge lying east of the Missisquoi River.

3. Hunting is not permitted from January 1 through August 31.

4. Shotgun hunters will possess and use, while in the field, only non-toxic shot.

*C. Big Game Hunting.* * * *

* * * * *

3. All hunters must register at Refuge Headquarters prior to hunting on the refuge.

4. Only portable tree stands are allowed. Unattended tree stands are prohibited.

* * * * *

34. Section 32.67 *Washington* is amended by revising paragraphs A.2 through A.7. inclusive, removing paragraph A.8., revising introductory language of paragraph B., revising paragraphs B.1. and D., and adding paragraphs B.4., B.5, and B.6. to McNary National Wildlife Refuge; by revising paragraphs A.1., A.2., A.3., B., and adding new paragraph A.4. to Toppenish National Wildlife Refuge; and by revising paragraphs A.3., A.4., A.5., introductory language of paragraph B., B.1., B.3., and D., and removing paragraph A.6. of Umatilla National Wildlife Refuge to read as follows:

**§ 32.67 Washington.**

* * * * *

**McNary National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* * * *

* * * * *

2. The refuge is open from 5 a.m. to one and one-half hours after sunset. Decoys and other personal property may not be left on the refuge overnight.

3. Hunting is permitted only Wednesdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Year's Day.

4. Hunters in the marked hunt site area of the McNary Division must hunt within fifty (50) feet of designated blind sites except when shooting to retrieve crippled birds.

5. Hunters may not possess more than 25 shells while in the field.

6. On the first Saturday in December, only youth aged 10–17 and an accompanying adult aged 18 or over may hunt.

7. The furthest downstream island (Columbia River mile 341–343) in the Hanford Islands Division is closed to hunting.

*B. Upland Game Hunting.* Hunting of pheasant and quail is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting of upland game birds is not allowed until noon of each hunt day.

* * * * *

4. Hunters may not possess more than 25 shells while in the field.

5. On the first Saturday in December, only youth aged 10–17 and an accompanying adult aged 18 or over may hunt.

6. The furthest downstream island (Columbia River mile 341–343) in the Hanford Islands Division is closed to hunting.

* * * * *

*D. Sport Fishing.* Fishing is permitted on designated areas of the McNary Division subject to the following conditions:

1. The refuge is open from 5 a.m. to one and one-half hours after sunset.

2. Fishing is permitted from February 1 through September 30.

3. The use of boats and other floatation devices is not permitted.

4. Fishing is permitted only with hook and line.

* * * * *

**Toppenish National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* * * *

1. The refuge is open from 5 a.m. to one and one-half hours after sunset. Decoys and other personal property may not be left on the refuge overnight.

2. Hunters may not possess more than 25 shells while in the field.

3. Hunters in the marked hunt site areas must hunt within fifty (50) feet of designated blind sites except when shooting to retrieve crippled birds.

4. On the first Saturday in December, only youth aged 10–17 and an accompanying adult aged 18 or over may hunt.

*B. Upland Game Hunting.* Hunting of pheasant and quail is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting of upland game birds is not allowed until noon of each hunt day.

2. Hunters shall possess and use, while in the field, only non-toxic shot.

3. Hunters may not possess more than 25 shells while in the field.

4. On the first Saturday in December, only youth aged 10–17 and an accompanying adult aged 18 or over may hunt.

* * * * *

**Umatilla National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* * * *

* * * * *

3. The refuge is open from 5 a.m. to one and one-half hours after sunset. Decoys, boats, and other personal property may not be left on the refuge overnight.

4. Hunters may not possess more than 25 shells while in the field.

5. Digging or hunting from pit blinds is prohibited.

*B. Upland Game Hunting.* Hunting of pheasant and quail is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting of upland game birds is not allowed until noon of each hunt day.

* * * * *

3. Hunters may not possess more than 25 shells while in the field.

* * * * *

*D. Sport Fishing.* Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. The refuge is open from 5 a.m. to one and one-half hours after sunset.

2. Fishing is permitted on refuge impoundments and ponds from February 1 through September 30. Other refuge waters (Columbia River and its backwaters) are open in accordance with State regulations.

3. Fishing is permitted only with hook and line.

* * * * *

35. Section 32.68 *West Virginia* is amended by adding new paragraph B.4. to Ohio River Islands National Wildlife Refuge to read as follows:

**§ 32.68 West Virginia.**

* * * * *

**Ohio River Islands National Wildlife Refuge**

* * * * *

*B. Upland Game Hunting.* * * *

* * * * *

4. Hunters will possess and use, while in the field, only non-toxic shot.

* * * * *

36. Section 32.70 *Wyoming* is amended by revising paragraph B. of Pathfinder National Wildlife Refuge; and by revising paragraph B. of Seeskadee National Wildlife Refuge to read as follows:

**§ 32.70 Wyoming.**

* * * * *

**Pathfinder National Wildlife Refuge**

* * * * *

*B. Upland Game Hunting.* Hunting of sage grouse and cottontail rabbit is permitted on designated areas of the refuge subject to the following condition: Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

**Seedskadee National Wildlife Refuge**

* * * * *

*B. Upland Game Hunting.* Hunting of sage grouse and cottontail rabbit is permitted on designated areas of the refuge subject to the following condition: Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

37. Section 32.69 *Wisconsin* is amended by adding new paragraph B.1. to Horicon National Wildlife Refuge; and by adding new paragraph B.4. to

Necedah National Wildlife Refuge to read as follows:

**§ 32.69 Wisconsin.**

* * * * *

**Horicon National Wildlife Refuge**

* * * * *

*B. Upland Game Hunting.* * * *

1. Only non-toxic shot may be used or possessed while hunting for ring-necked pheasant or gray partridge.

* * * * *

**Necedah National Wildlife Refuge**

* * * * *

*B. Upland Game Hunting.* * * *

* * * * *

4. Only non-toxic shot may be used or possessed while hunting for ruffed grouse.

* * * * *

Dated: July 31, 1995.

**George T. Frampton, Jr.,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 95–20037 Filed 8–15–95; 8:45 am]

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Part IV

# Federal Deposit Insurance Corporation

12 CFR Part 327

**Assessments; Retention of Existent Assessment Rate Schedule for SAIF-Member Institutions; Final Rules**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 327

**RIN 3064–AB58**

### Assessments

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Final rule.

**SUMMARY:** The Board of Directors (Board) of the Federal Deposit Insurance Corporation (FDIC) is amending the FDIC's regulation on assessments to establish a new assessment rate schedule of 4 to 31 basis points for institutions whose deposits are subject to assessment by the Bank Insurance Fund (BIF). In addition, the Board is amending the assessment schedule to widen the existing assessment rate spread from 8 basis points to 27 basis points. The Board is further amending the assessments regulation to establish a procedure for adjusting the rate schedule semiannually as necessary to maintain the designated reserve ratio (DRR) at 1.25 percent.

The Board is adopting the new assessment schedule to satisfy the requirements of section 7(b) of the Federal Deposit Insurance Act that, once the reserve ratio of the BIF reaches the DRR of 1.25 percent of total estimated insured deposits, rates be set to maintain the DRR. The new schedule will apply to the semiannual period in which the DRR has been achieved (which is expected to occur in the second quarter of 1995) and to semiannual periods thereafter, subject to modification semiannually by the FDIC. Specifically, the new assessment schedule, which will reduce BIF assessment rates for all but the riskiest institutions, will become effective on the first day of the month after the month in which the DRR is achieved. Assessments collected at the previous assessment schedule that exceed the amount due under the new schedule will be refunded, with interest, from the effective date of the new schedule.

**EFFECTIVE DATE:** September 15, 1995.

**FOR FURTHER INFORMATION CONTACT:** Frederick S. Carns, Chief, Financial Markets Section, Division of Research and Statistics, (202) 898–3930; Christine Blair, Financial Economist, Division of Research and Statistics, (202) 898–3936; Connie Brindle, Chief, Assessment Operations Section, Division of Finance, (703) 516–5553; Claude A. Rollin, Senior Counsel, Legal Division (202) 898–3985; or Martha Coulter, Counsel, Legal Division (202) 898–7348, Federal Deposit Insurance Corporation, Washington, DC 20429.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On February 16, 1995, the Board published for public comment a proposal to lower the assessment rate schedule for BIF members to 4 to 31 basis points from the current schedule of 23 to 31 basis points. The Board further proposed to amend the assessment rate matrix to widen the existing rate spread from 8 basis points to 27 basis points. 60 FR 9270 (Feb. 16, 1995). The Board is now adopting the proposed amendments with minor modifications.

Under the assessment schedule currently in effect, BIF members have been assessed rates for FDIC insurance ranging from 23 basis points for institutions with the best assessment risk classification to 31 basis points for the riskiest institutions. This assessment schedule was based on the requirements of section 7(b)(2)(E) of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1817(b)(2)(E). That provision was enacted as part of section 302 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) (Pub. L. 102–242, 105 Stat. 2236, 2345) which completely revised the assessment provisions of the FDI Act by requiring the FDIC to: (1) Establish a system of risk-based assessments; (2) establish assessment rates sufficient to provide revenue at least equivalent to that generated by an annual 23 basis point rate until the BIF reserve ratio [1] achieves the DRR of 1.25 percent [2] of total estimated insured deposits; (3) when the reserve ratio remains below the DRR of 1.25 percent, set rates to achieve that ratio within one year or establish a recapitalization schedule to do so within 15 years; and (4) once the DRR is achieved, set rates to maintain the reserve ratio at the DRR.

Due to the health of the banking industry, current projections indicate that the BIF may have recapitalized sometime during the second quarter of 1995, although recapitalization has not yet been verified. The actual month of recapitalization cannot be confirmed until data from the June 30, 1995, Reports of Condition and Income (call reports) is processed, which the FDIC expects to occur early in September. Accordingly, to implement the statutory provisions which will apply once the DRR is reached, the Board is adopting an assessment rate schedule for BIF members of 4 to 31 basis points that will become effective the first day of the month after the month in which the DRR is achieved. Assessments collected at the previous rate schedule that exceed the amounts due under the new schedule after the DRR has been achieved will be refunded in one or more payments, with interest, from the effective date of the new schedule (or, in the case of June 30 overpayments, from June 30 or, if later, the actual payment date). As proposed, the Board is further adopting a process to adjust rates semiannually without a new notice-and-comment rulemaking proceeding, using an adjustment factor of 5 basis points.

At the request of Board Member Jonathan Fiechter and interested outside parties, the Board held a hearing at FDIC headquarters in Washington, D.C. on March 17, 1995, to provide the opportunity for interested parties to express orally their views on the proposals to decrease assessment rates for members of the BIF while retaining the existing 23 to 31 basis point assessment schedule for members of the Savings Association Insurance Fund (SAIF), on the competitive impact of the disparity between BIF and SAIF rates, and on possible solutions for recapitalizing the SAIF and paying the interest on Financing Corporation bonds. Every person or organization that requested an opportunity to testify was accommodated.

A total of twenty witnesses were heard by the full FDIC Board during the day-long hearing. They included the American Bankers Association (ABA), the Independent Bankers Association of America (IBAA), America's Community Bankers, the Savings Association Insurance Fund Industry Advisory Committee, the National Association of Home Builders, representatives of several bank and thrift state associations, individual bank and thrift executives, a private sector attorney, and an independent consultant. The written testimony of each witness as well as the hearing record are included in the FDIC's public comment file on the two proposals.

In total, the FDIC received over 3,200 comments on the BIF proposal (together with the comments received on the Board's proposal to retain the existing assessment rate schedule for members of the Savings Association Insurance Fund), including the testimony from the public hearing. After taking account of duplicates, 2,891 comments were tabulated representing 2,310 individual BIF member respondents, 454

[1] The reserve ratio is the dollar amount of the BIF fund balance divided by the estimated insured deposits of BIF members.

[2] The DRR of 1.25 percent is equivalent to $1.25 for each $100 of estimated insured deposits.

individual SAIF member respondents, 61 trade associations and 66 other individuals/organizations.

Following is a discussion of: (1) The statutory framework for setting assessment rates, (2) the new assessment rate spread, (3) the new assessment rate schedule, (4) the method for applying the schedule in the semiannual period during which the DRR is achieved, and (5) the process for limited adjustment of the new schedule in future semiannual periods. A summary of the comments received is included with the specific issue(s) addressed by the parties submitting comments.

## II. Statutory Framework for Setting Assessment Rates

### *A. Introduction*

Section 7(b) of the FDI Act governs the Board's authority for setting assessment rates for members of the BIF. 12 U.S.C. 1817(b). Section 7(b)(1) (A) and (C) require that the FDIC maintain a risk-based assessment system, setting assessments based on (1) the probable risk to the fund posed by each insured depository institution taking into account different categories and concentrations of assets and liabilities and any other relevant factors; (2) the likely amount of any such loss; and (3) the revenue needs of the fund. Section 7(b)(2)(A) of the FDI Act requires the Board to set semiannual assessments to maintain the BIF reserve ratio at the DRR once the BIF is recapitalized,[3] taking into consideration the fund's: (1) Expected operating expenses; (2) case resolution expenditures and income; (3) the effect of assessments on members' earnings and capital; and (4) any other factors that the Board may deem appropriate. Section 7(b)(2)(A)(iii) further directs the Board to impose on each institution a minimum assessment of not less than $1,000 semiannually. When the reserve ratio remains below the DRR, the statute explicitly directs the Board to set rates that will at a minimum generate revenue equivalent to the amount generated by an average assessment rate of 23 basis points. FDI Act, section 7(b)(2)(E).

For the first time since the current provisions of section 7(b) were enacted in 1991, the determination that the BIF has achieved the DRR is imminent and, therefore, the minimum 23 basis point average assessment requirement will no longer apply. Accordingly, the Board must now establish an assessment schedule that satisfies the directive of section 7(b)(1) to establish a risk-based assessment system, based on the statutory factors which must be considered in that determination; and the directive of section 7(b)(2) to maintain the BIF reserve ratio at 1.25 percent, considering the statutory factors which must inform that decision. As a practical matter, there is significant overlap between the factors to be considered under section 7(b)(1) and those to be considered under section 7(b)(2). For example, in determining risk-based assessments, the Board must consider the probability and likely amount of losses to the fund. When setting assessments to maintain the reserve ratio at the DRR, the Board must consider the same underlying data but denominated as ''case resolution expenditures''. Thus, these determinations are interdependent and any decision concerning an appropriate assessment schedule will consider and balance all of the statutory factors that underlie these two directives.

In the current favorable economic environment even with assessment rates as low as prudently possible consistent with the Board's fiduciary responsibilities to the insurance fund, the FDIC recognizes that the reserve ratio may grow beyond 1.25 percent as a result of the impact on the fund balance of revenues generated from risk-based assessments, the $1,000 semiannual minimum assessment, and investment income. Under these circumstances, any new assessment schedule adopted by the Board must be the result of balancing the directive to maintain a risk-based assessment system (and the statutory factors attendant thereto) and the directive to set rates to maintain the DRR (and the statutory factors attendant thereto). As discussed more fully below, the statute and the legislative history provide little guidance as to how to weigh the wide range of statutory factors that go into this decision. The following sections address the Board's interpretation of the interplay of the directives of section 7(b) and include a discussion of comments received on the related issues in the proposal.

### *B. Maintain ''At'' the DRR*

The Board is adopting the proposed interpretation of the statutory requirement to maintain the reserve ratio at the DRR in which the Board views the DRR as a target. Pursuant to section 7(b)(2)(A)(i) of the FDI Act, the Board must set semiannual assessments to maintain the reserve ratio of the BIF at the DRR taking into consideration the following factors: (1) Expected operating expenses; (2) case resolution expenditures and income; (3) the effect of assessments on members' earnings and capital; and (4) any other factors the Board may deem appropriate.[4] Section 7(b)(2)(A)(iii) limits the Board's discretion to set assessment rates by imposing a minimum semiannual assessment of $1,000 per BIF member.[5]

As stated in the proposal, the Board views the DRR as a target around which the actual reserve ratio would fluctuate, rather than as a rigid ceiling above which the reserve ratio could not rise even slightly.[6] The Board based this interpretation on (1) the impossibility of controlling the economic factors which affect the size of the BIF; (2) the legislative history of section 7(b); and (3) the other statutory directives of section 7(b) that the FDIC establish a system of risk-based assessments and impose a minimum semiannual assessment of $1,000 (either of which may cause the reserve ratio to exceed 1.25 percent in the current economic circumstances). The Board further stated that in the event the reserve ratio exceeds the DRR due to economic factors beyond its control (such as the level of investment income) or as a result of effectuating other statutory directives (such as the requirement to have a risk-based assessment system), the Board considers that it will have complied with the statute because the Board will have set rates to maintain the reserve ratio at 1.25 percent in

[3] The DRR of the BIF currently is 1.25 percent of estimated insured deposits. FDI Act, section 7(b)(2)(A)(iv). The Board may increase the DRR to such higher percentage as the Board determines to be justified for a particular year by circumstances raising a significant risk of substantial future losses to the fund. However, the Board is not authorized to decrease the DRR below 1.25 percent. *Id.*

[4] The directive to ''set rates to maintain the reserve ratio at the designated reserve ratio'' was enacted as part of the amendments to section 7 made by the FDIC Assessment Rate Act of 1990 (Assessment Rate Act). Pub. L. 101–508, 104 Stat. 1388, 1388–14. The Assessment Rate Act is Subtitle A of Title II of the Omnibus Budget Reconciliation Act of 1990. See, discussion of legislative history in the proposed regulation. 60 FR 9270 at 9272 (Feb. 16, 1995).

[5] As enacted in FDICIA, section 7(b)(2)(A)(iii) of the FDI Act provides that the semiannual assessment for each member of a deposit insurance fund shall be not less than $1,000. Accordingly, BIF members must pay the greater of their risk-based rate or $2000 each year.

[6] Treating the DRR as a target would necessarily include the concept of fluctuations above and below the target. If the reserve ratio falls below 1.25% in a semiannual period, the Board could adjust the assessment schedule in the next semiannual period to restore the ratio. Section 7(b)(3)(A) of the FDI Act contemplates precisely that. That section provides that, after the DRR is achieved, if the reserve ratio falls below the DRR, the Board is required to set semiannual assessments sufficient to increase the reserve ratio to the DRR within one year or in accordance with a recapitalization schedule promulgated to restore the reserve ratio to the DRR within 15 years. Conversely, when the reserve ratio rises above the DRR for any period, the Board could adjust the assessment schedule downward to reflect the increase.

accordance with statutory requirements for a risk-based assessment system and a minimum semiannual assessment. The Board is adopting this interpretation with added discussion to clarify the need to balance the directives of section 7(b) and the statutory factors which must be considered in that balancing decision.

1. Comments

The appropriate interpretation of the directive to ''maintain the reserve ratio at the designated reserve ratio'' was one of the issues that elicited the greatest response from commenters. Of the 864 respondents that addressed this issue, 851 (813 BIF members, 30 trade associations, 4 SAIF members and 4 other individuals or organizations) believed that the DRR of 1.25 percent should be interpreted as a precise number or a ceiling and that all assessment revenue (and in some cases investment income) in excess of 1.25 percent should be returned to BIF members. Thirteen respondents (8 BIF members, 2 trade associations, 2 SAIF members and 1 other individual) agreed with the Board that the DRR is necessarily a target about which the reserve ratio will fluctuate. As noted above, the concept of the DRR as a precise number above which the BIF may not rise necessarily requires a mechanism to return excess assessments. See Section II.D below for a discussion of comments addressing the FDIC's authority to provide rebates. By contrast, the Center for Study of Responsive Law/Essential Information interpreted the statutory DRR as a floor and urged the FDIC to establish a higher range for the DRR with a target average of 1.63 percent using 1.25 percent as the floor and 2.0 percent as the ceiling.

Numerous commenters stated that the Board may not intentionally set assessments at a level which, based on its own projections, will increase the reserve ratio above the DRR. Accordingly, many have asserted that by setting the proposed assessment schedule at 4 to 31 basis points, the Board will have, in effect, knowingly set the rates to increase the DRR above 1.25 percent without making the required statutory finding to increase the DRR. This assertion was based on a misreading of a chart publicly distributed at the Board meeting on the proposals indicating that under the proposed rate schedule, the reserve ratio would rise to 1.30 percent in 1995 and 1.33 percent in 1996 and remain above the DRR until the year 2001. The projections in the chart did not reflect the possibility of semiannual changes that the Board might make to the assessment schedule.

For example, the primary argument of the ABA is that the Board cannot intentionally set assessments to generate assessment income which its own predictions show will increase the reserve ratio above the DRR. According to the ABA, to do so would render meaningless the requirement that the Board must make a determination that circumstances raising a significant risk of substantial future losses to the fund justify an increase in the DRR. Similarly, the IBAA stated that in light of its own projections, FDIC appears to be managing the fund at a level higher than 1.25 percent.

2. The Board's Rationale for Interpreting the DRR as a Target

As described more fully below, the Board continues to believe that viewing the DRR as a target to be maintained over time is the correct position because: (1) It reflects the inconstancy of economic factors which make it impossible for the FDIC to maintain the reserve ratio precisely at 1.25 percent; (2) it better comports with Congress' view of the DRR as a target as indicated by the legislative history and the practical impact of Congress' elimination of the FDIC's rebate authority in section 7(d); and (3) it gives effect to other provisions of section 7(b), most importantly, the requirement for a risk-based assessment system. A discussion of each of these elements of the Board's rationale follows.

(a) *Management of Reserve is Imprecise.* The first element upon which the Board based its interpretation of the ''maintain at'' requirement is the FDIC's inability to control economic factors which affect the size of the reserve ratio, thereby making it impossible to manage the BIF precisely at 1.25 percent. Changes in the reserve ratio are a function of the amount of insured deposits, investment earnings, assessment revenue (which, in turn, is a function of the risk profile of the industry and revenue received from the statutory minimum assessment), and revenue from corporate-owned and other assets, none of which is in the complete control of the FDIC. In addition, operating expenses and insurance losses, including the provision for future losses, will vary. Even with regard to the elapsed time between the setting of rates for an upcoming semiannual assessment period and the end of that period, there is a potential for variations in all of these factors, thus making it impossible to manage the reserve ratio precisely at the DRR.

Moreover, Congress must have understood that the reserve ratio cannot be maintained precisely at 1.25 percent because such an interpretation would require that amounts in excess of 1.25 percent be returned to the industry. In the current economic environment, the fund will likely grow beyond the DRR as a result of investment income and revenue generated by the risk-based assessment system. Thus, an interpretation which requires the FDIC to maintain the reserve ratio precisely at 1.25 percent would necessarily require a mechanism for providing assessment credits (known as rebates) to BIF members for amounts in excess of 1.25 percent. However, as discussed more fully in Section II.D below, in FDICIA Congress deleted the FDIC's authority in section 7(d), 12 U.S.C. 1817(d), to provide rebates. In addition, Congress can be presumed to have been aware that at no time in its 62-year history has the FDIC rebated investment income to the industry, including the period from 1989–1990 which was the only time that the FDIC had the authority to rebate investment income. Indeed, even if the FDIC's last-existing rebate authority had not been removed on January 1, 1994, investment income could not be rebated and could cause the reserve ratio to rise even with minimal assessments.

(b) *Legislative History.* The second element upon which the Board based its interpretation of the ''maintain at'' requirement is the legislative history of section 7(b). Section 208 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) amended section 7(b) of the FDI Act to establish a DRR and set the level at 1.25 percent. Pub. L. 101–73, 103 Stat. 183, 206. Prior to FIRREA, beginning in 1980, the FDI Act required or authorized the Board to adjust the amount of assessment income transferred to the insurance fund, and thereby to increase or decrease the rebate amount, based on the actual reserve ratio of the fund within a range from 1.10 percent to 1.40 percent, with 1.25 percent as the target.[7]

FIRREA also prescribed minimum annual assessment rates which could be increased from the scheduled levels, ''if necessary to restore the fund's ratio of reserves to insured deposits to its *target level* within a reasonable period of time.'' [Emphasis added.] H.R. Conf. Rep. No. 222, 101st Cong., 1st Sess. 396 (1989).

The legislative history of Congressional hearings in the year prior

[7] Consumer Checking Account Equity Act of 1980, enacted as Title III of the Depository Institutions Deregulation and Monetary Control Act of 1980, Pub. L. 96–221, 94 Stat. 132, 148.

to enacting FIRREA is replete with references to the 1.25 percent reserve ratio as a target. Thus, when the DRR was established, Congress viewed the DRR as a target level.

The next year, in 1990, the Senate Banking Committee clearly considered the DRR a target as is demonstrated in the section-by-section analysis of S. 3045, the language of which was almost identical to the Administration bill, S.3093, which was ultimately enacted as the Assessment Rate Act of 1990. That analysis repeatedly referred to 1.25 percent as the ''target level''. Finally, FDICIA section 104, Recapitalizing the Bank Insurance Fund, amended the assessment rate provisions of section 7(b)(1)(C) (in effect December 19, 1991, through December 31, 1993) as follows:

> If the reserve ratio of the Bank Insurance Fund *equals or exceeds* the fund's designated reserve ratio under subparagraph (B), the Board of Directors shall set semiannual assessment rates for members of that fund as appropriate to maintain the reserve ratio at the designated reserve ratio. [Emphasis added.]

This language is particularly compelling because its genesis was in S. 543, the same bill which removed the FDIC's rebate authority and which was the source of FDICIA's amendments to section 7 of the FDI Act. Thus Congress appears to have recognized that the reserve ratio would not remain precisely at a target DRR and could exceed that level.

(c) *Other Statutory Directives of Section 7(b).* The third element upon which the Board has based its interpretation of the ''maintain at'' directive consists of the other mandates of section 7(b): to have an effective risk-based assessment system and to impose a minimum semiannual assessment of $1,000.

The Board believes that to be effective, the risk-based assessment system must incorporate a range of rates that provides an incentive for institutions to control risk-taking behavior while at the same time covering the long-term costs of the obligations undertaken by the deposit insurer.

Specifically, section 7(b)(1)(C) of the FDI Act required the FDIC to establish a risk-based assessment system for calculating an institution's assessments based on:

(i) The probability that the deposit insurance fund will incur a loss with respect to the institution, taking into consideration the risks attributable to—

(I) Different categories and concentrations of assets;

(II) Different categories and concentrations of liabilities, both insured and uninsured, contingent and noncontingent;

(III) Any other factors the Corporation determines are relevant to assessing such probability;

(ii) The likely amount of any such loss; and

(iii) The revenue needs of the deposit insurance fund.

Within the scope of these broad factors, the FDIC was granted complete discretion to design a risk-based assessment system.[8] See, *i.e.*, S. Rep. No. 167, 102d Cong., 1st Sess., 57 (1991).

It is clear from the legislative history of FDICIA that Congress viewed the flat-rate assessment system as providing perverse incentives for institutions to undertake risky activities funded by insured deposits because they were not being charged for that risk, in effect penalizing well-managed institutions. S. Rep. No. 167, 102d Cong., 1st Sess. 56 (1991). By contrast, risk-based assessments were intended to reduce risk to the BIF by encouraging banks to confine themselves to safe and sound activities and decreasing the subsidization of risky banks by more prudent institutions. *Id.*

The ABA has asserted that a risk-based assessment system is unnecessary when the BIF does not need assessment income and that the requirement for such a system applies only to determining the spread between the highest and lowest rates in the assessment schedule. Once the spread is determined, then the appropriate schedule is based solely on the revenue needs of the fund. The Board disagrees with this interpretation because it gives effect only to the statutory requirement that the revenue needs of the fund be taken into account when establishing or revising risk-based assessment rates. Such an interpretation would ignore the compelling legislative history indicating Congress' firm determination that banks be assessed on the basis of the risk that their activities pose to the BIF and that they be subject to appropriate economic disincentives to risky behavior.

In summary, the Board believes that to be effective, the risk-based assessment system must incorporate a range of rates that provides an incentive for banks to control risk-taking while at the same time taking into account the long-term costs of the risks borne by the deposit insurer. The Board is well aware that the assessment income generated by an effective risk-based assessment system and the minimum semiannual assessment may, in the current economic situation, cause the reserve ratio to rise above the target DRR of 1.25 percent. Even so, as discussed more fully below, this does not eliminate the necessity for the Board to balance the directives of section 7(b) to have an effective risk-based assessment system while at the same time setting rates that will maintain the reserve ratio at the target DRR by giving full consideration to the enumerated statutory factors that are the determinants of the assessment schedule.

*C. Balancing*

As discussed below, the main purpose of S. 543 (the bill that contained the language of current section 7(b)) was to assure that the BIF would be recapitalized so that taxpayer funds would not be at risk. Accordingly, while the statute is specific with respect to the actions the Board must take to set rates when the reserve ratio is below the DRR, neither the statute nor the legislative history provides guidance with respect to how the FDIC is to balance the various requirements of section 7(b) once the DRR is achieved. Nor does the legislative history provide guidance as to the appropriate timeframe for forecasting losses so that the reserve ratio can be maintained at 1.25 percent, thereby ultimately protecting the taxpayers.

It is clear from the legislative history that in enacting FDICIA, Congress was focused almost entirely on a future where the reserve ratio would be below the DRR, and that the main goal of S. 543 was to assure that the taxpayers would not be required to rescue the banking industry as they so recently had been called upon to do with the S&L industry. For example, on May 29, 1991, Robert Glauber, Under Secretary of the Treasury testified before the House Ways and Means Committee ''The Administration's projections are that the BIF will decline substantially over the next five years, reaching a negative net worth of over $22 billion by the end of 1996.'' S. Hrg. No. 30, 102d Cong., 1st Sess. 8 (1991). The report of the Senate Banking Committee on S. 543 cited Congressional Budget Office projections indicating that the BIF could be recapitalized within 15 years without imposing premiums as high as 30 basis

[8] One statutory restraint, however, is that the system must be designed so that as long as the BIF reserve ratio remains below the DRR, the total amount raised by semiannual assessments on members cannot be less than the total amount resulting from a flat rate of 23 basis points. FDI Act, section 7(b)(2)(E). Although this provision will cease to be effective when the BIF reaches the DRR, it may again become operative if the reserve ratio remains below the DRR at some future time. The Board interprets the minimum assessment provision of section 7(b)(2)(E), which requires weighted average assessments of 23 basis points, as applying only when the reserve ratio remains below the DRR for at least a year.

points or more. However, the Committee declined to cap premiums at 30 basis points in the event those projections proved too optimistic. S. Rep. No. 167, 102d Cong., 1st Sess. 30 (1991). Similarly, Senator John Kerry expressed concern at the requirement of the bill that the banking industry pay back any Treasury borrowings, stating that that funding approach could prove to be impossible. *Id.* at 230. S. 543 itself contained an elaborate scheme for expedited congressional authorization to extend the 15-year recapitalization schedule if necessary.

The following remarks of Congressman Gerald Kleczka during floor debate in the House reflect the skepticism that banks would be able to recapitalize the BIF:

> Mr. Chairman, one of the Members of the House a short time ago asked, Where are we going to look to bail out the banks? And he answered it himself by saying the banks.
>
> Well, I say to you, that is total nonsense. The bank bailout, whether or not this bill passes, has already started. The bank insurance fund, the FDIC, is broke. This legislation asks for a $70 billion Treasury loan, which in my estimation will never be repaid by the banks.
>
> In fact, with the pending bank failures on the line today, it is estimated that $70 billion will not last through the end of next year. At that point we are going to loan them more money, more money, and to say that this is not going to turn into another S&L crisis, I say, hold on, you are in for a rough ride, because I say that is what is going to happen.

137 Cong. Rec. H8939 (daily ed. Nov. 1, 1991).

Until now, the Board's discretion in setting risk-based assessments has been limited by the 23 basis-point minimum average assessment requirement and the concomitant need to moderate the detrimental impact of a very high rate on weak institutions which taken together were the most crucial determinants of the assessment schedule. Once the DRR is achieved, however, the 23 basis-point minimum requirement will become inapplicable. Therefore, the Board for the first time must decide as a prudent insurer what assessment schedule would achieve an effective risk-based assessment system based on long-term deposit insurance experience as well as short-term loss predictions consistent with its obligation to protect the BIF (and ultimately the taxpayers).

The statute is silent with respect to the appropriate timeframe the Board should use to project losses. Although section 7 requires the Board to set assessments semiannually to maintain the reserve ratio at the DRR, to assert—as did various commenters—that the Board is limited to reviewing the next six months when setting rates is without foundation in either the statute or the legislative history and disregards the recent past history of bank failures, the rapid deterioration and collapse of seemingly healthy institutions, and the increasing volatility of numerous economic factors affecting both the industry and the BIF. Moreover, such a position ignores Congress' primary goal in enacting FDICIA—that the fund not decrease to the point that taxpayer funds are needed to rescue the BIF.

In fact, the legislative history of FDICIA indicates that Congress intended the FDIC to set premiums in much the same manner as private insurance companies, where the insured's premium is a function of the risk posed to the insurer. For example, in his opening remarks at the Senate Banking Committee hearing on risk-based premiums on April 19, 1991, Senator Alan Dixon stated, ''I think it is fundamentally important for the Federal Deposit Insurance Corporation to price its product like every other insurance company—that is, according to risk of loss.'' S. Hrg. No. 355, 102d Cong., 1st Sess. 1197 (1991). Accordingly, the Board believes it appropriate as part of its process for setting assessments to look to the practices of private sector insurers to inform its decisionmaking. As manager/administrator of the deposit insurance fund, the Board has a fiduciary obligation to manage the fund in a prudent manner to preserve the fund on behalf of both the banking industry and the taxpayers, who are ultimately the insurers of last resort for the banking industry.

Standard private sector insurance involves one party, the insured, who seeks protection against a specific risk by paying a premium to another party, the insurer, who agrees to compensate the insured for any losses resulting from the risk specified in the contract.[9] However, federal deposit insurance differs from private insurance because deposit insurance is intended to be a pledge or guarantee meant to convey confidence to prevent the spread of bank runs and because it provides an unconditional guarantee to depositors that their insured funds are safe regardless of the risks undertaken by an insured depository institution.[10]

Private insurance companies typically operate through a self-sustaining fund by basing the level of capital needed in reserve on actuarial assessments of past and potential losses. The insurer charges different premium rates to different clients based upon an assessment of their risk of loss.[11] Private insurers uniformly underwrite specified risks that are similar in quality and variety by using historical data to set premium rates to cover long-term costs of any given risk category.[12] In banking, however, the difficulty for the deposit insurer is determining when the revenues of any particular category are sufficient to cover expected costs.[13] In casualty insurance, for example, the events insured against are independent of each other and are uncorrelated over time. By contrast, bank failures are not evenly distributed or uncorrelated but tend to be clustered as a function of economic conditions or shocks.[14] This makes it more difficult to set rates so that the long-run revenues are sufficient to cover the long-run costs of each risk category.

In the absence of legislative direction, the Board believes that it is compelled to give effect to the statutory directive to have a meaningful risk-based assessment system and the directive to set rates to maintain the reserve ratio at the DRR, by balancing the various statutory factors which underlie those directives and which, ultimately, are the determinants of an appropriate assessment schedule. Neither of these directives, nor any single statutory factor, may be given effect at the expense of the other. Thus, for example, in weighing the requirement to set assessments at a target DRR, the ''revenue needs of the fund'' factor may not be interpreted, as has been suggested by some commenters,[15] in such a way that the risk-based assessment system becomes meaningless when the fund attains the DRR.

*D. Rebates*

The Board is adopting its proposed interpretation that the Board lacks rebate authority because that authority was eliminated by Congress in FDICIA. As discussed below, this position is based on: (1) The statutory history of sections 7 (d) and (e); (2) the fact that Congress repealed the rebate authority in section 7(d); and (3) the legislative history indicating that Congress

[9] Congressional Budget Office, Reforming Federal Deposit Insurance, (1990) xv.

[10] *Id.* at xvi.

[11] *Id.* at 28.

[12] *Id.*

[13] FDIC, A Study of the Desirability and Feasibility of a Risk-Based Deposit Insurance Premium System, A report pursuant to Section 220(b)(1) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, submitted to the United States Congress by the Federal Deposit Insurance Corporation, at 11 (1990).

[14] *Id.*

[15] See, discussion of ABA comments at Section IV.A., *infra.*

intended that lower rates would be the substitute for rebates.

In the proposal, the Board reviewed the FDIC's authority to provide rebates of amounts by which the reserve ratio exceeds the DRR based on both former and current statutory provisions in FDI Act sections 7(d) and 7(e) respectively, and the legislative history of those provisions. Based on that review, the Board proposed a statutory interpretation that: (1) The FDIC's authority to provide rebates was eliminated by Congress in FDICIA effective with the adoption of the statutorily mandated risk-based assessment system on January 1, 1994; and (2) section 7(e) does not provide rebate authority, but rather pertains to the method of providing refunds of assessment overpayments.[16]

In FDICIA, Congress provided for establishment of a risk-based assessment system that, after the DRR was achieved, would provide the FDIC with the flexibility to set a broader range of assessment rates. In 1990, Congress had already provided the FDIC with the authority to adjust assessment rates upward to ensure that the BIF received sufficient revenue.[17] In FDICIA, Congress intended that same rate adjustment authority to operate in lieu of providing rebates in the event that the established rates resulted in collection of excess assessment revenue. Therefore, Congress eliminated the rebate provisions of section 7(d) in their entirety as being obsolete because the ability to adjust rates would take the place of a rebate mechanism. This is clear from the following discussion of section 212(e)(3) in the Senate Report on S. 543:

> Section 212(e)(3) replaced current section 7(d) with a new section 7(d) recodifying current section 7(b)(9). The deleted text, providing for assessment credits to insured institutions when deposit insurance fund reserve ratios exceed designated reserve ratios, is obsolete in light of the standards for establishing assessments set forth in new section 7(b)(2)(A)(i) [setting rates to maintain at the DRR]. Under section 7(b)(2)(A)(i), funds that, under current section 7(d), would have been rebated to insured depository institutions through assessment credits will now be *rebated through reduced assessments.*

[16] Section 7(e) provides that the FDIC:

(1) May refund to an insured depository institution any payment of assessments in excess of the amount due to the Corporation or (2) may credit such excess toward the payment of the assessment next becoming due from such depository institution and upon succeeding assessments until the credit is exhausted.

[17] See, discussion of Assessment Rate Act, *infra,* note 4.

138 Cong. Rec. S2073 (daily ed. Feb. 21, 1992). (Emphasis added.)

In response to the Board's proposed interpretation regarding the FDIC's rebate authority, a total of 482 respondents generally disagreed with the FDIC's position; one trade association appeared to accept the interpretation and it requested a legislative change to restore the rebate authority. Of those in disagreement, seven BIF members, four trade associations and one individual explicitly disagreed with that interpretation, asserting that the FDIC did, in fact, have authority to provide rebates. A total of 400 commenters (383 BIF members, 3 SAIF members, 12 trade associations and 2 other commenters) largely without any discussion of the FDIC's legal authority, indicated that when the BIF reserve ratio exceeds the DRR as a result of assessment income, the FDIC should return to BIF members all assessments above 1.25 percent because those funds could be better used servicing local communities. In addition, 48 commenters (46 BIF members and 2 trade associations) responded that assessment income in excess of 1.25 percent other than the $1,000 statutory semiannual minimum should be returned. Finally, 21 commenters (15 BIF members and 6 trade associations) asserted that when the reserve ratio exceeds the DRR, the FDIC should return both assessments and investment income above 1.25 percent.

Based on its interpretation of the DRR as a ceiling on the amount of funds that may lawfully be retained in the BIF, the ABA has asserted that all amounts (including investment income) in excess of a reserve ratio of 1.25 percent must be rebated to the industry. The ABA has argued that returning excess reserve amounts by means of lowering subsequent assessments is merely one method of accomplishing the statutory intent to return funds; where that method does not suffice to accomplish that goal, the statute should be interpreted to find an alternative method. Accordingly, notwithstanding the statutory history of section 7(e) and the repeal of section 7(d), it argued that the FDIC could rely on an interpretation of the plain meaning of section 7(e) to implement the statutory purpose.

The New York Clearing House (Clearing House) stated that the FDIC has rebate authority pursuant to the plain meaning of section 7(e) and that there is no legislative history to indicate that that section should be interpreted other than in accordance with a plain reading. Further, the rebate authority is particularly important because the Clearing House does not believe that the FDIC will be able to maintain the reserve ratio at 1.25 percent by semiannual rate adjustments only, without some form of rebate mechanism. Citicorp also criticized the FDIC's interpretation, indicating that the inability to provide rebates when the reserve ratio exceeds 1.25 percent makes the determination of the proper rate schedule all the more critical.

The IBAA similarly argues that, without such authority, the FDIC will be unable to manage the BIF at the DRR as required and that the FDIC's interpretation ignores the discretion to set rates given to it by Congress in connection with the risk-based assessments system. The IBAA and the Bankers Roundtable noted that although the authority of section 7(d) was removed, the statute does not expressly prohibit the FDIC from providing rebates pursuant to some other authority.

The Board is unconvinced by the alternative interpretation offered by commenters that rebate authority exists in section 7(e), which authorizes the FDIC to refund or credit to an insured institution any assessment payment in excess of the amount due to the FDIC. The Board does not believe it can ignore unequivocal action by the Congress to eliminate rebate authority by, in effect, re-creating that authority through a new interpretation of section 7(e) absent some indication in the legislative history that Congress intended section 7(e)[18] to serve as a substitute for section 7(d) of the FDI Act.

Moreover, the FDIC has not located any legislative history indicating that Congress intended section 7(e) to take the place of section 7(d). Therefore, for the reasons discussed above, the Board continues to believe that the better interpretation of the statute is that the FDIC has no authority to grant rebates and that to do so would be in violation of the statute and contrary to legislative history.

### III. New Rate Spread

The Board is adopting without modification the proposal to increase the rate spread from 8 basis points in the current assessment schedule to 27 basis points in the new schedule.

As discussed in Section II.B.2(c), the fundamental goals of risk-based assessment rates are to reflect the risks posed to the insurance fund by

[18] Section 7(e) has been consistently interpreted by the FDIC since 1950 to provide authority to refund erroneous overpayments of assessments. The FDIC has never interpreted that section as providing rebate authority.

individual insured institutions and to provide institutions with incentives to control risk taking. In the existing assessment schedule, the maximum rate spread is 8 basis points. See Table 1. Institutions rated 1A pay an annual rate of 23 basis points while institutions rated 3C pay 31 basis points. There is a substantial question as to whether 8 basis points represents a sufficient spread for achieving these goals.

BILLING CODE 6714–01–P

Table 1

# Assessment Rate Schedules
## Second Semiannual 1995 Assessment Period
## BIF-Insured Institutions

**New Rates (27 bp rate spread)**

| Capital Category | Supervisory Risk Subgroup Group A | Group B | Group C |
|---|---|---|---|
| 1. **Well** | 4 bp | 7 bp | 21 bp |
| 2. **Adequate** | 7 bp | 14 bp | 28 bp |
| 3. **Under** | 14 bp | 28 bp | 31 bp |

Estimated Assessment Revenue: $1.1 Billion
Average Assessment Rate: 4.4 bp

**Current Rates (8 bp rate spread)**

| Capital Category | Supervisory Risk Subgroup Group A | Group B | Group C |
|---|---|---|---|
| 1. **Well** | 23 bp | 26 bp | 29 bp |
| 2. **Adequate** | 26 bp | 29 bp | 30 bp |
| 3. **Under** | 29 bp | 30 bp | 31 bp |

Estimated Assessment Revenue: $5.46 Billion
Average Assessment Rate: 23.2 bp

### Adjustment Factor

Given the assessment base as of March 31, a 5 basis point adjustment factor will generate approximately $1.18 billion in additional revenue.

# Distribution Among Insurance Groups*
## BIF-Insured Institutions

| Capital Group | | Supervisory Risk Subgroup A | | B | | C | |
|---|---|---|---|---|---|---|---|
| 1. **Well** | NUMBER: | 9,766 | 91.8% | 557 | 5.2% | 142 | 1.3% |
| | BASE($B): | 2,220.3 | 94.8% | 59.6 | 2.5% | 16.8 | 0.7% |
| 2. **Adequate** | NUMBER: | 79 | 0.7% | 23 | 0.2% | 35 | 0.3% |
| | BASE($B): | 45.0 | 1.9% | 3.7 | 0.1% | 3.8 | 0.1% |
| 3. **Under** | NUMBER: | 5 | .04% | 5 | .04% | 26 | 0.2% |
| | BASE($B): | 1.2 | .05% | 1.0 | .05% | 2.6 | 0.1% |

*Based on 3-31-95 data.

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As discussed in the proposal, the current assessment rate spread for BIF institutions has been criticized widely by bankers, banking scholars and regulators as overly narrow, and there is considerable empirical support for this criticism. Using a variety of methodologies and different sample periods, the vast majority of relevant studies of deposit insurance pricing have produced results that are consistent with the conclusion that the rate spread between healthy and troubled institutions should exceed 8 basis points.[19] While the precise estimates vary, there is a clear consensus from this evidence that the rate spread should be widened.

FDIC research likewise suggests that a substantially larger spread would be necessary to establish an ''actuarially fair'' assessment rate system. Insurance premiums are actuarially fair when the discounted value of the premiums paid over the life of the insurance contract is expected to generate revenues that equal expected discounted costs to the insurer from claims made by the insured over the same period. A 1994 FDIC study used a ''proportional hazards'' model to estimate the expected lifetime of banks that were in existence as of January 1, 1993. The study estimated the actuarially fair premium that each bank must pay annually so that the cost of each bank failure to the FDIC would equal the revenue collected through insurance assessments. The estimates indicated a rate spread for 1A versus 3C institutions on the order of magnitude of 100 basis points.[20]

In the proposal, the Board expressed concern that rate differences between adjacent cells in the current matrix do not provide adequate incentives for institutions to reduce the risk they pose to BIF by improving their condition, which is a fundamental goal of risk-based assessments. Larger differences are consistent with historical variations in failure rates across cells of the matrix, viewed in connection with the preponderance of evidence regarding actuarially fair premiums.[21] The precise magnitude of the differences is open to debate, given the sensitivity of any estimates to small changes in assumptions and to selection of the sample period. However, the Board believes that larger rate differences between adjacent cells of the matrix are warranted. Accordingly, the Board proposed for comment an increase in the spread between the lowest and highest rates in the assessment schedule to 27 basis points from the current 8 basis point spread.

Of the 357 commenters (332 BIF members, 4 SAIF members, 16 trade associations and 5 other organizations/individuals) who addressed the issue of the increased spread, 298 respondents supported the proposal. Of those, 217 respondents (including 9 trade associations and 203 BIF members) expressly approved of the increase to 27 basis points; an additional 70 respondents (including 1 trade association and 69 BIF members) indicated support for increasing the spread but didn't specifically mention the proposed increase to 27 basis points. Forty commenters (including 4 trade associations and 35 BIF members) expressed the opinion that the proposed spread was too great; by contrast, 12 commenters, all of whom were BIF members, thought the spread should be wider than proposed. Finally, 18 commenters (including 2 trade associations and 12 BIF members) expressed reservations about the increased weight given to the subjective supervisory ratings in determining an institution's risk classification.

Among the commenters supporting the proposed increase, numerous respondents expressed the opinion that the proposal would provide BIF members with greater incentive to control risk while at the same time rewarding well-managed institutions for limiting risk. For example, Banc One Corporation noted, ''Prudent, healthy institutions should not have to pay for ill-advised activities and high-risk institutions.'' The New York Clearing House stated that ''the larger spread is more actuarially equitable, in that it reduces the burden that the strongest institutions must bear to support the weakest.'' The Bankers Roundtable indicated its support for incentive-based regulation coupled with a strong spread between the lower- and higher-risk institutions. The Roundtable noted that ''risk-based premiums should address all the strengths of an institution, not merely capital. As the schedules now contemplate and as other regulators who examine and evaluate institutions assess, strong management and strong internal risk control systems are important as well.''

Forty commenters opposed the proposed 27 basis-point spread. For example, the ABA asserted that the current spread should be retained because it provides a strong incentive for banks to move into the lower-risk categories as evidenced by the increase in 1A institutions between 1993 and 1995 from 60 percent to 90 percent of the industry. The ABA also indicated concern about the emphasis on the supervisory rating because of its subjectivity. America's Community Bankers expressed similar reservations and indicated that it would be better to give more weight to capital because it is both a more objective and more controllable factor. Orange National Bancorp commented that examiners have too much individual discretion in assigning risk classifications. It recommended that a standard model for such evaluations be implemented if one is not already in place. The California Bankers Association (CBA) opposed the increased spread because of the belief that it too closely correlates with local economic conditions that are beyond the control of the institution. Thus, adverse local economic conditions may result in higher risk classifications at a time when the institution can least afford it. The CBA further noted that ''[a] primary objective of deposit insurance should be to spread uncontrollable risk among similarly situated institutions. To impose *additional* premiums when that risk is actually realized is analogous to charging a person a universal health insurance rate, and then increasing that rate when the person actually becomes sick and requires care.'' (Emphasis in original.) The CBA proposed as an alternative a narrowing of the spread to mitigate the penalties imposed on a bank for falling into a higher risk category due to the effects of a local economic downturn.

By contrast, the twelve commenters who indicated that the spread should be wider indicated that the proposed assessment schedule did not adequately reflect the true risk to the BIF. Several commenters raised concerns about the insufficient distinction between the riskiness of low-risk banks. For example, Wells Fargo Bank stated that

[19] For a representative sampling of academic studies on this issue, see Estimating the Value of Federal Deposit Insurance, The Office of Economic Analysis, Securities and Exchange Commission (1991); Berry K. Wilson, and Gerald R. Hanweck, A Solvency Approach to Deposit Insurance Pricing, Georgetown University and George Mason University (1992); Sarah Kendall and Mark Levonian, A Simple Approach to Better Deposit Insurance Pricing, Proceedings, Conference on Bank Structure and Competition, Federal Reserve Bank of Chicago (1991); R. Avery, G. Hanweck and M. Kwast, An Analysis of Risk-Based Deposit Insurance for Commercial Banks, Proceedings, Conference on Bank Structure and Competition, Federal Reserve Bank of Chicago (1985).

[20] See, Gary S. Fissel Risk Measurement, Actuarially Fair Deposit Insurance Premiums and the FDIC's Risk-Related Premium System, FDIC Banking Review (1994), at 16–27, Table 5, Panel B. Single-copy subscriptions of this study are available to the public free of charge by writing to FDIC Banking Review, Office of Corporate Communications, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.

[21] *Id.*, at Tables 2 and 5.

''[n]inety percent of banks should not be included in the lowest risk category.''

A number of commenters indicated support for the proposal that the nine-cell matrix should remain in place pending an in-depth review of the risk classification system. Expressing its support for deposit insurance rates as an appropriate incentive for banks to control risky activities, the IBAA recommended that the FDIC implement the premium reduction before considering modifications to the nine-cell matrix. The ABA indicated that bankers support keeping the risk classification system simple, and it would not, therefore, support any revisions to the matrix involving the creation of more categories or a new, super-capitalized category. In Citicorp's view, ''any change in the number of cells will create disputes while producing very little additional equity'' without greater explanation of the underlying rationale for any increase. Citicorp called for frequent reviews an institution's risk so that the risk classification is based on current evaluations.

The Board is adopting the proposed increase in the spread from 8 to 27 basis points without modification. Having carefully considered the comments on the proposal, the Board nonetheless continues to believe that the assessment rate matrix should be adjusted in the direction of an actuarially fair rate structure, as described above. In addition, as in the proposal, the Board has decided not to adopt changes to the nine-cell assessment rate structure at this time. Accordingly, as proposed, the new rate matrix retains the existing nine cells.

While the Board appreciates the concern expressed in the comments regarding the additional weight placed on supervisory evaluations as a result of the increased rate spread, the use of such evaluations as a risk measure is well-established. Historically, deteriorations in supervisory ratings are associated with a substantially higher incidence of failure.

When the Board adopted the existing 8-point rate spread in 1992, it expressed the conviction that widening the spread was desirable but declined to do so because of the potential hardship for troubled institutions and possible additional losses for the insurance fund.[22] At that time, however, a wider rate spread would only have been accomplished through an increase in the assessment rate paid by weaker institutions. In contrast, under the new schedule the Board is now adopting, the rate spread will be widened by means of a reduction in the rates applicable to stronger institutions.

Under the new schedule, all BIF-insured institutions except those with assessment risk classification 3C will enjoy a reduction in their assessment rates, with a consequent beneficial impact on earnings and capital. The only adverse effect on earnings and capital conceivably could result from the increase in the rate spread from 8 basis points to 31 basis points. Under the current assessment schedule, weaker institutions are competing with institutions that pay an assessment rate of 23 basis points. Under the new schedule, where all but institutions in the 3C category will pay reduced rates, the weaker institutions will be competing with a large group of BIF members that will be paying a rate of only four basis points. In principle, if the BIF members classified as 1A pass along their reduced assessments to their customers, the weaker institutions may be forced to pay more for deposits or charge less for loans to stay competitive.

The FDIC performed an analysis simulating the effects of the wider rate spread on all insured institutions under the assumption that the weaker institutions would have to absorb the entire increase in spread in the form of a higher cost of funds. The result was that apart from institutions that have already been identified by the FDIC's supervisory staff as likely failures, the wider spread is expected to have a minimal impact in terms of additional failures.

A widening of the spread to 27 basis points is consistent with the implications of the best empirical evidence on this issue and with the Board's previously stated conviction. Moreover, the increased differences between adjacent cells in the matrix provides additional incentive for weaker institutions to improve their condition and for all institutions to avoid excessive risk-taking. This is consistent with the Board's desire to create adequate incentives through the assessment rate structure to encourage behavior that will protect the deposit insurance fund against excessive losses.

Nonetheless, the Board remains unwilling at this time to increase further the maximum rate other than by means of the adjustment factor discussed below, without further study regarding the overall insurance pricing structure for the industry.

## IV. New Assessment Schedule

In light of its interpretation of section 7(b) discussed above and based on its consideration of the required statutory factors, the Board is adopting in the final rule its proposed new assessment rate schedule ranging from a rate of 4 basis points for institutions with a risk classification of 1A to 31 basis points for institutions rated 3C (see Table 1) and, as noted above, a spread of 27 basis points. As discussed below, the adoption of this schedule reflects the Board's determination that the FDIC's insurance responsibilities require it to look beyond the immediate timeframe in estimating losses and the revenue needs of the fund, and to take account of the variability of the factors influencing the BIF reserve ratio, variability that can be substantial even within a single assessment period.

### *A. Comments*

The FDIC received 1401 comments (1364 BIF members, 11 SAIF members, 14 trade associations and 12 other organizations or individuals) that either expressed general support for the proposed decrease in rates or specifically mentioned support for the proposed schedule of 4 to 31 basis points. However, 347 commenters (320 BIF members, 3 SAIF members, 22 trade associations, 1 organization and 1 individual) expressed dissatisfaction with the rates specifically. As discussed in Section II.B.1, most of the commenters argued that the proposed rates are too high to comply with the FDIC's requirement to maintain the BIF at its DRR. Eleven commenters stated that the proposed schedule was too low. Finally, forty commenters (7 BIF members, 23 SAIF members, 1 trade association and 9 other organizations/individuals) urged the FDIC not to decrease BIF rates.

Those commenters who were satisfied with the proposed rate structure generally were pleased that they will enjoy the benefit of a very large decrease in assessments in the near future and expressed pride that the BIF will be recapitalized much earlier than expected and without taxpayer assistance.

[22] In the FDIC's 1993 proposal for the existing statutorily mandated risk-based premium system, the Board sought comment on whether the assessment rate spread embodied in the existing system, *i.e.*, 8 basis points, should be widened. Of the 96 commenters addressing this issue, 75 favored a wider rate spread. In adopting the existing 8 point rate spread in 1993, the Board expressed its conviction that widening the rate spread was desirable in principle, but chose to retain for the time being, the 8 point rate spread. The Board expressed concern that widening the rate spread while keeping assessment revenue constant, might unduly burden the weaker institutions which would be subject to greatly increased rates. However, the Board retained the right to revisit the issue at some future date. 58 FR 34357 (June 25, 1993).

Of the commenters who indicated that the proposed assessment schedule was too high, 115 (including 12 trade associations and 102 BIF members) stated specifically that the rate either for institutions with a 1A risk classification or for all institutions should be 0 basis points (the ABA position); 87 commenters (including 2 trade associations and 84 BIF members) asserted that the rate for 1A institutions should be decreased to 2 basis points (the IBAA position). Many cited the statements in the proposal indicating that it was likely that the BIF reserve ratio could be maintained at 1.25 percent in the second half of 1995 solely as a result of investment income as support for their position that the proposed rate schedule is too high, at least with respect to 1A institutions.

In fact, the ABA argued that when the BIF does not need assessment income to remain at 1.25 percent, the FDIC may not assess any BIF members, *i.e.*, assessing a zero rate on all such regardless of risk. The ABA's position is that the risk-based assessment spread is determined independently from the revenue needs of the fund; that spread is simply moved up or down in order to generate the required revenue to offset expenses, *i.e.*, the rate schedule itself is solely a function of the amount of revenue needed to maintain the BIF at 1.25 percent. Thus, where no income is needed, there is no need for the risk-based assessment system. However, the ABA argues that beneficial incentives for bank performance will still operate because riskier banks will not know in advance whether the revenue needs of the BIF will require imposition of an assessment, so unless they improve their performance, they will face the prospect of paying higher assessment rates than their peers. Moreover, they argue that a zero rate serves as an incentive to manage banks well.

Some commenters also criticized the historical basis on which expected losses are forecast by the FDIC. Several commenters asserted that the statute requires the Board to set assessments based on the revenue needs of the BIF for the succeeding six month period, not on a historical basis. Finally, many commenters indicated that the use of the historical average fails to take into account the fundamental changes that have occurred since FDICIA, *i.e.*, least-cost resolutions, prompt corrective action, cross-guaranty authority, and depositor preference statutes.

On the other hand, some of the commenters argued that the BIF rates should not be decreased at all. Among these was the Center for Study of Responsive Law/Essential Information, which thought the loss projections were completely inadequate for the potential risks facing the industry. They interpreted the statutory DRR as a floor, and urged the FDIC to establish a higher range for the DRR with a target average of 1.63 percent using 1.25 percent as the floor and 2.0 percent as the ceiling.

In view of the numerous comments on the propriety of the average rate implied by the proposal, the Board finds it appropriate to provide here a detailed summary of the analysis and reasoning that served as a basis for its decision to adopt the proposed rate schedule in the final rule. Accordingly, this section considers in depth the analysis supporting the approach adopted by the Board for satisfying the requirements to maintain the reserve ratio at 1.25 percent and to have a risk-based assessment system.

*B. Review and Balancing of Statutory Factors*

As discussed in Section II, pursuant to the directive of section 7(b)(1) to have a risk-based assessment system and the directive of section 7(b)(2)(A)(ii) to maintain the reserve ratio at the DRR, the Board is required to review and weigh the following factors when establishing an assessment schedule:

(1) The probability and likely amount of loss to the fund;

(2) Case resolution expenditures and income;

(3) Expected operating expenses;

(4) The effect of assessments on members' earnings and capital;

(5) The revenue needs of the fund; and

(6) Any other factors that the Board may deem appropriate.

1. Analytical Framework

(a) *Summary.* In principle, the requirements to maintain the reserve ratio at the DRR and to have assessments for individual institutions based on risk to the fund complement and reinforce each other. Maintenance of a particular reserve ratio requires the FDIC to attempt to match fund revenue and expense over time. An important element of that requirement comes from a risk-based assessment system that equates revenue with ''expected cost'' over a long period. The estimation of expected insurance losses is thus important both in the structuring of risk-based assessments and maintaining a given reserve ratio over a period of time.

The following subsections outline the FDIC's analysis and the use of that analysis for informing the decision of the Board regarding BIF assessment rates. Subsection (b) discusses in general terms the selection of a time period over which to estimate insurance losses, and the relation of this question to the statutory requirements to maintain the BIF at its target DRR and to have a system of risk-based assessments. Subsection (c) describes the increase in volatility of key economic variables characteristic of the post-1980 period and reviews the increase in banking-industry risk that also occurred during this period. The basic conclusion is that a return to the relative stability of the 1950–1980 period is unlikely and, thus, the FDIC is likely to experience continued volatility in insurance losses in the years ahead. Subsection (d) provides a brief discussion of the risks in banking today and a historical perspective on the risks associated with highly rated and well capitalized banks. The information presented indicates that a meaningful assessment of risks posed by insured institutions must look beyond the immediate timeframe. Subsection (e) discusses the average assessment rates that would have maintained the fund at a given reserve ratio at various times in the FDIC's history, and sets out how it would be destabilizing to the banking industry for the FDIC to attempt to maintain continuous equality of the BIF to its DRR by trying to equate revenues and expenses during every six-month period. The analysis indicates that an average effective assessment rate in the range of four to 13 basis points would have matched revenue and expense over most of the FDIC's history. It also indicates that recent changes in business conditions, including several statutory changes, strongly suggest that a rate at the low end of that range should be adopted. Subsection (f) discusses the implications of volatility in insured deposits for the rate-setting process.

(b) *The Planning Horizon for Rate Setting.* An important part of the rate-setting process is the desire to equate revenues with expenses over a period of time. The answer to the question ''over what period of time?'' has important ramifications for the way the FDIC sets assessments and manages its reserve ratio, as well as for the banking industry. This matching of revenue and expense encompasses most of the statutory factors required to be considered by the Board in that it seeks to determine the revenue needs of the fund in light of the probability and likely amount of losses, expected case resolution expenses and income, and the amount of operating expenses.

Purely for expositional purposes, it is useful to consider an extreme case where revenues and expenses are balanced over a very short horizon, say

one day. One could imagine that each morning banks would be billed electronically for the cost of any bank failures expected to occur that day. In this extreme case, the BIF could be managed to within very close to its DRR on a virtually continuous basis (ignoring uncertainties about the level of insured deposits).

In this example the FDIC's insurance function would be that of allocating current costs across banks through billings and collections on a pay-as-you-go basis. The word ''insurance'' is normally associated with the concept of spreading risk. This risk spreading can be over time, across the insured parties, or both, depending on the type of insurance. A pay-as-you-go system in which the cost of the insured event is borne entirely at the time the event occurs does not accomplish the spreading of risk over time.

Whether the spreading of risk over time is important in banking is an empirical question that is discussed below in subsection (e) of this section. If the FDIC had operated on a yearly pay-as-you-go basis during the post-1980 period, for example, assessments would have been as high as 62 basis points in 1991. Rates at that level would have adversely affected the earnings and capital of the industry and the soundness of the FDIC insurance fund.

In general, one can say that the shorter the planning horizon over which one tries to equate revenues and expenses, the more certainty there will be about loss estimates, and the easier it will be to manage the reserve ratio to any given level. On the other hand, the shorter this planning horizon, the less the FDIC's business would resemble the risk-spreading function of an insurer and the greater the risk that high and volatile insurance premiums would adversely affect the earnings and capital of the banking industry and the soundness of the insurance fund.

Attempting to equate revenues and expenses over a longer period has the risk-spreading advantages classically associated with insurance. Assessments are collected when times are good to pay for problems when times are bad, and there can be some measure of stability to the assessment rates, thereby avoiding the adverse effects on bank earnings and capital discussed above. Under this regime, the intent would be to maintain the insurance fund at the DRR on average over the planning horizon, rather than continuously.

The choice of a planning period for equating revenues and expenses is therefore a fundamental decision for the FDIC as manager and fiduciary of sound deposit insurance funds. Relevant to the judgment is whether it is consistent with the FDIC's mission that the entire cost of banking problems be paid by the banking industry during the assessment period in which they occur. As discussed below, the use of a pure pay-as-you-go approach is inconsistent with the FDIC's mandate to charge assessments that reflect the probability and like amount of loss to the insurance funds because this approach ignores the risks that exist beyond a six-month horizon. In addition, the pay-as-you-go approach, if adopted as a general rule, would result in adverse effects on bank earnings and capital during times of stress in banking.

(c) *Increased Economic Volatility and Bank Stability.* The economic environment affecting banks began to change during the 1970s and the pace of change accelerated during the 1980s. The result is that banking is a riskier and more demanding business today than ever before. This subsection documents some major changes in the banking environment that have occurred during the last 15 to 20 years. Part (i) contains a discussion of the increased volatility of certain key macroeconomic variables that directly and indirectly affect banking risk. Part (ii) contains a more specific discussion of developments in the financial services industry and in the characteristics of insured banks.

(i) *Key economic variables.* For about twenty years beginning in the early 1950s, the U.S. economy and the commercial banking industry enjoyed a period of relative stability. Key economic variables such as inflation, interest rates and exchange rates displayed remarkable stability, and in part as a result, bank failures were few. This period of stability began to end in the 1970s.

An important change in the nature of economic volatility resulted from the movement to a floating exchange rate system from a fixed rate system that occurred in 1973. As international trade expanded in the post World War II era, the maintenance of fixed exchange rates required adjustments to trading relationships and domestic economic policies of trading nations that were not optimal. Thus, the change substituted volatility in interest rates and commodities prices for increased volatility in exchange rates. However, as explained below, subsequent events have tended to increase the volatility in other financial and economic variables beyond the levels experienced in the fixed exchange rate environment.

With the Smithsonian Agreement (see Figure 1 for the German mark (DEM) and Japanese yen (JPY) in 1971 to 1973), exchange rates among all of the major currencies were realigned and permitted to float without upper and lower bounds. These developments predictably gave rise to considerably greater exchange rate volatility at a time when world trade was also expanding rapidly.

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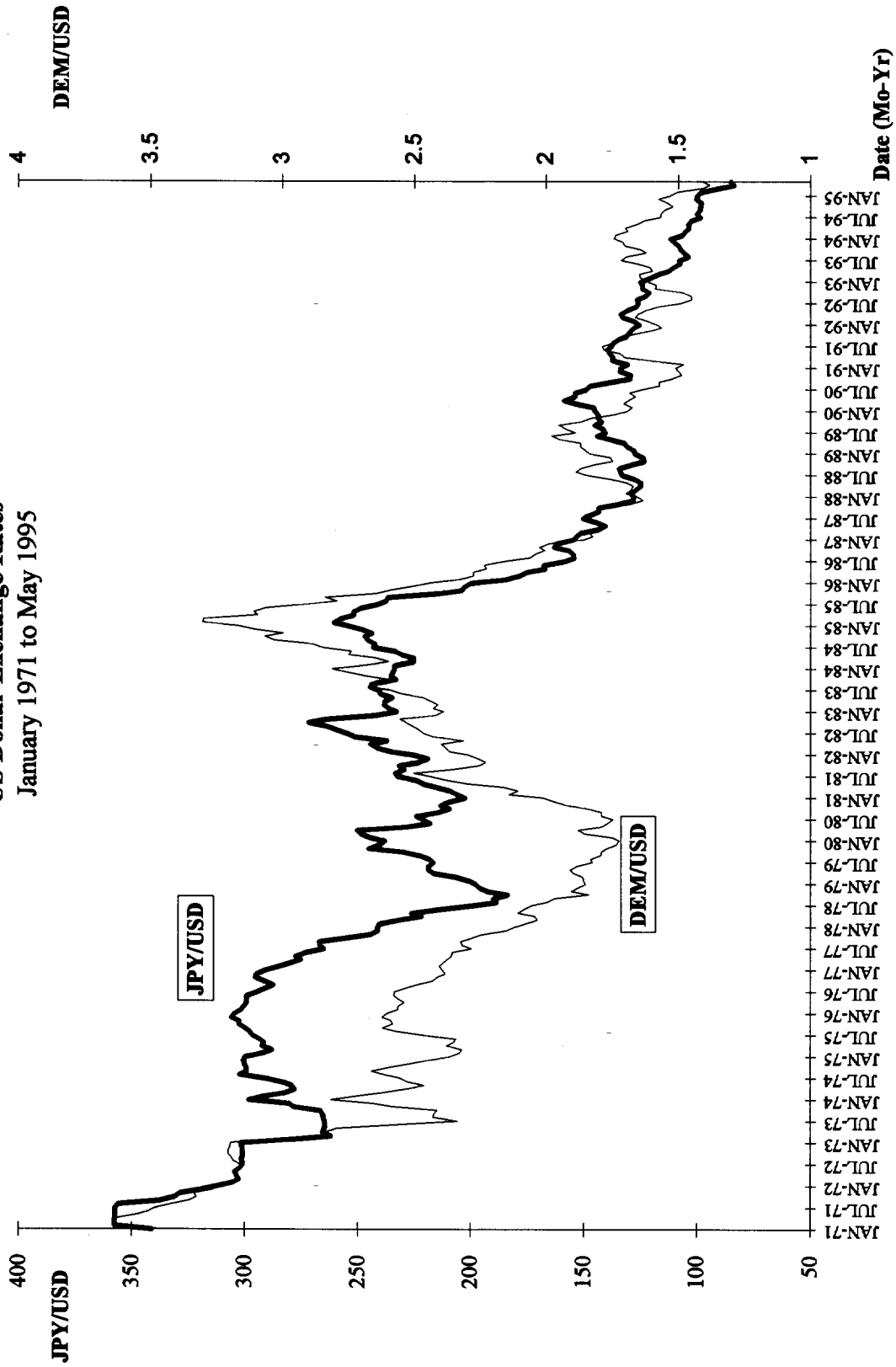


**Figure 1**
**German Mark and Japanese Yen**
**US Dollar Exchange Rates**
January 1971 to May 1995

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Markets for forward and futures exchange rate contracts developed in order for firms to manage more effectively exchange rate risks and markets for combined currency and interest rate swaps have followed this trend. The Chicago Mercantile Exchanged formed the International Money Market (IMM) and began offering the first foreign exchange futures contract on major currencies in 1972.[23] The volatility that gave rise to these contracts can be seen in Figure 2, comparing the volatility in the dollar exchange rate with the German mark and the Japanese yen.[24]

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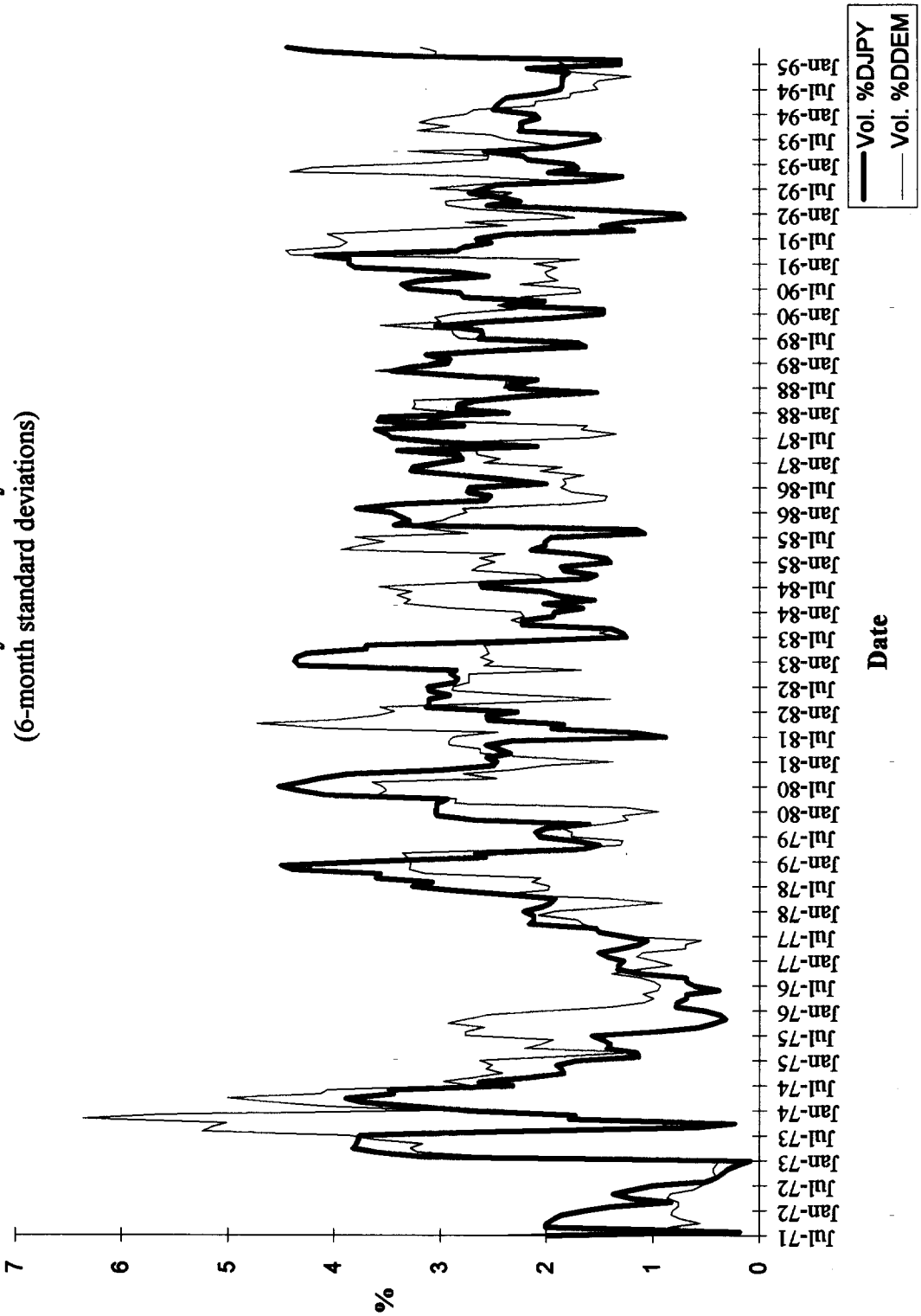
[23] These contracts were also the first financial futures contracts offered in the U.S.

[24] Volatility is measured in each period as the standard deviation of the monthly percentage change of each exchange rate. The standard deviation is measured using observations over the prior six months.

**Figure 2**
**Volatility of Exchange Rates**
**January 1971 to May 1995**
(6-month standard deviations)

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Since 1970, there have been periods of relative calm in exchange rates (*e.g.*, 1976–77) interspersed with periods of substantial volatility, some considerably extended, and periods with volatility varying among currencies. For example, the first oil embargo in 1973 resulted in increased volatility for the mark, but a decrease for the yen. In the European Monetary System currency crisis in late summer and early fall of 1992, the yen actually showed a decline in volatility, but the mark, the most appreciated European currency at the time, showed a sharp increase in volatility. More recently, the change in monetary policy by the Federal Reserve in February 1994 resulted in a depreciation of the dollar relative to the mark, increased volatility in exchange rates, and sharp increases in foreign and domestic interest rates (see Figure 2 for exchange rate volatility from January to May 1995). Without the well-developed markets for forwards and futures contracts for foreign exchange, such volatility would be less manageable and would significantly lessen foreign trade.

A second source of volatility, not unrelated to the adoption of a floating exchange rate system, is in the levels and term structure of interest rates. Foreign exchange rates and interest rates among countries are related through arbitrage opportunities to borrow and lend in different currencies. Banks are active participants in foreign markets and international deposit and loan markets for their own account and those of their customers. Banks that are lending and borrowing abroad face risks of exchange rate changes that affect the dollar value of their loans and liabilities denominated in foreign currencies. The interest rates banks and other investors are willing to accept for loans and pay on borrowings are affected by their expectations of future exchange rates. The more uncertain and volatile are exchange rates, the greater the opportunities for losses and the greater the need for hedging assets and liabilities from exchange rate risk. The greater volatility experienced in exchange rates is translated into greater interest rate volatility as banks and other investors attempt to hedge positions in loan and deposit markets and arbitrage among interest rate differentials that arise among debts denominated in various currencies. An example of the relationship of the link between exchange rate volatility and interest rate volatility was during the period of adjustment in 1973 to the new exchange rate regime and the rise in U.S. interest rate volatility during this same period (see Figure 1 for the rapid appreciation of the DEM and JPY during this period and interest rate volatility in Figure 3).

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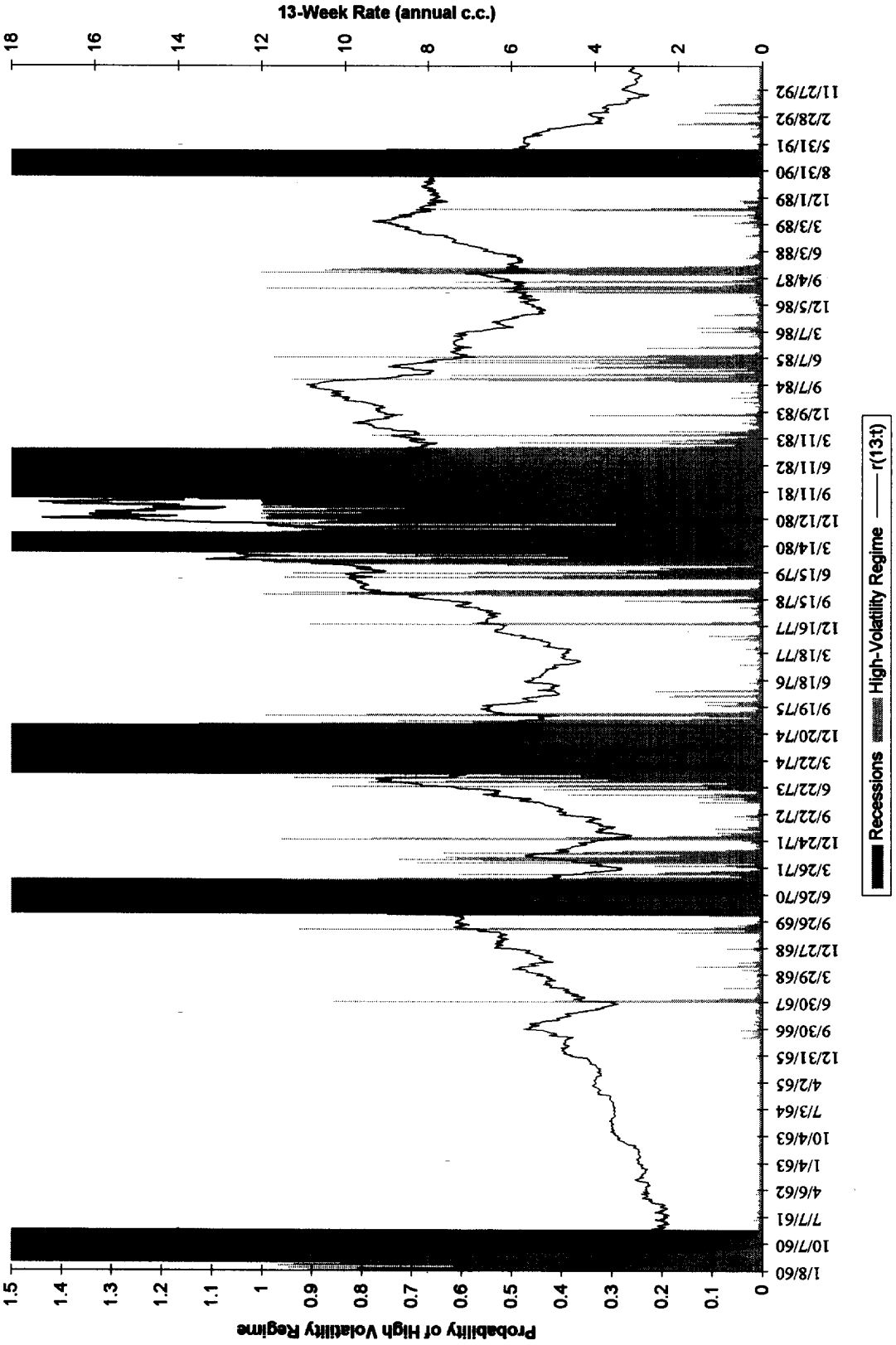


**Figure 3**
**Recessions, High-Volatility Regime Probabilities, and 13-Week Tbill Rates**

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Volatility in the level of interest rates can be seen in Figure 3 for the 3-month T-bill rate (the darker connected line). In this figure, the dark bars are periods of recession (peak to trough) as designated by the National Bureau of Economic Research. Volatility is presented in this figure as the computed likelihood of being in a high interest rate volatility regime (the light, spiked areas measured on the left axis); that is, a period where the standard deviation of daily interest rate changes is statistically expected to be higher than average. As can be seen, the period of the 1960s was relatively calm with the exception of the recession of 1969 to 1970. After this period, interest rates became more volatile, as did general economic activity. During the 1970s, several oil embargo shocks in 1973 and 1978 resulted in accelerating inflation and contributed considerably to interest rate volatility. The Federal Reserve dramatically changed monetary policy in October 1979 by switching from an interest rate target to a monetary aggregates target, such as nonborrowed reserves, with the objective of reducing inflation. The result of this policy was a highly volatile interest rate period from October 1979 until late 1982.[25]

Correspondingly, it was about this time when the volume of interest rate futures contracts was beginning to grow on the Chicago Mercantile Exchange and the Chicago Board of Trade.[26] Soon afterwards, over-the-counter interest rate forwards and swaps were introduced on a meaningful scale and their growth accelerated by 1986, coinciding only incidentally with the period of the collapse in world oil prices.

Another source of volatility is in the term structure of interest rates. The importance of the volatility in the term structure stems from the need to have accurate estimates of future short-term interest rates. Expected future short-term interest rates form the basis for the valuation of interest rate swaps, forward, futures, and options on future interest rates, and options on futures contracts. Volatility in the term structure can also give rise to volatility of bank earnings to the extent that banks face gaps between interest sensitive assets and interest sensitive liabilities. The causes of this volatility in interest rates have been linked to expectations of changes in future short-term interest rates fed by the volatility in the rate of inflation and inflation expectations. Figure 4 shows the 3-month T-bill rate and the difference between the 10-year T-bond rate and the 1-year T-bond rate as a proxy for the steepness in the yield curve. It is clear that the yield curve has been volatile and at times has become inverted (periods such as 1972 through late 1974, and early 1978 through 1982 when the 1-year T-bond yield was higher than the 10-year yield), requiring considerable caution in funding long positions in long-term assets or fixed rate assets with short-term, variable rate liabilities. In periods of substantial volatility in the term structure, simple methods of interest rate risk management, such as duration gap management, become incomplete methods of managing interest rate risk.

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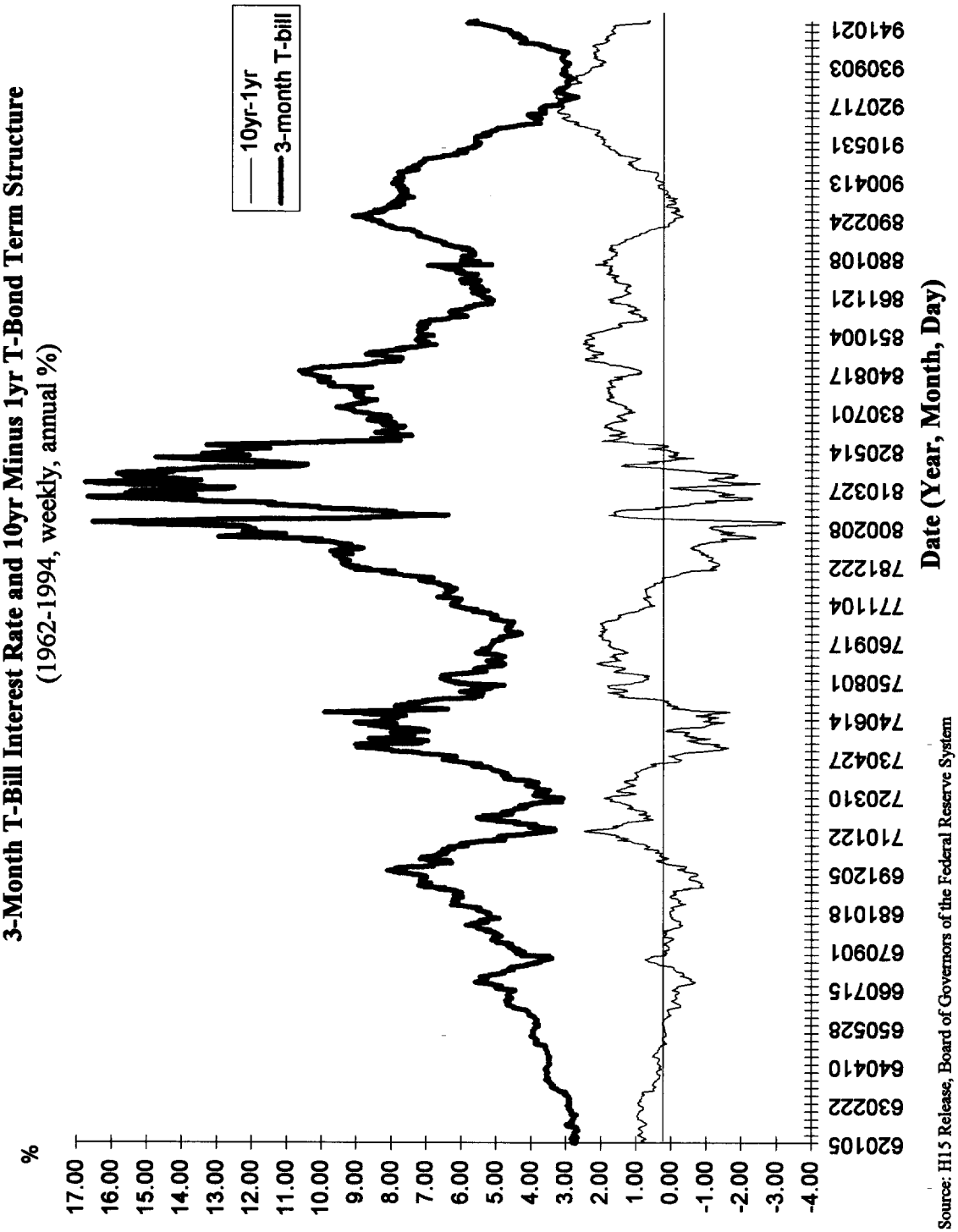
[25] The stock market crash in October 1987 is also clearly evident in Figure 3 with a period of high volatility occurring at this time. What is also interesting is that a period of high interest rate volatility occurred in early 1987 coinciding with an apparent change in monetary policy. It is important to note that changes in monetary policy tend to evoke periods of greater interest rate volatility and possible adverse effects on bank earnings.

[26] The development of interest rate futures contracts was given a boost in 1974 with the creation of the Commodity Futures Trading Commission. The CFTC was given exclusive responsibility over futures markets. As a by-product of this legislation, cash settlement of futures contracts was permitted. The provision of federal law superseded state laws that prohibited contracts settled in cash because they were considered wagers and were treated as illegal gambling.

**Figure 4**
**3-Month T-Bill Interest Rate and 10yr Minus 1yr T-Bond Term Structure**
(1962-1994, weekly, annual %)




Source: H15 Release, Board of Governors of the Federal Reserve System

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A final source of increased volatility is that arising from general economic activity. To a considerable extent, the volatility in general economic activity can be traced to real shocks, such as the oil embargoes of the 1970s, wars, dissolution of the Soviet Union, and the fiscal and monetary policies of the major industrialized nations. These shocks have caused considerable volatility in commodity prices and real output. The record inflation of the 1970s was followed by a period of slower inflation, but greater commodity price volatility. Figure 5 presents commodity prices (CRB Raw Materials Spot Prices) compared with the Consumer Price Index (All Urban Areas). Although the oil shocks of the 1970s resulted in considerable inflation in commodities and consumer prices, the volatility that also resulted in commodity prices has not abated during the 1980s or early 1990s.

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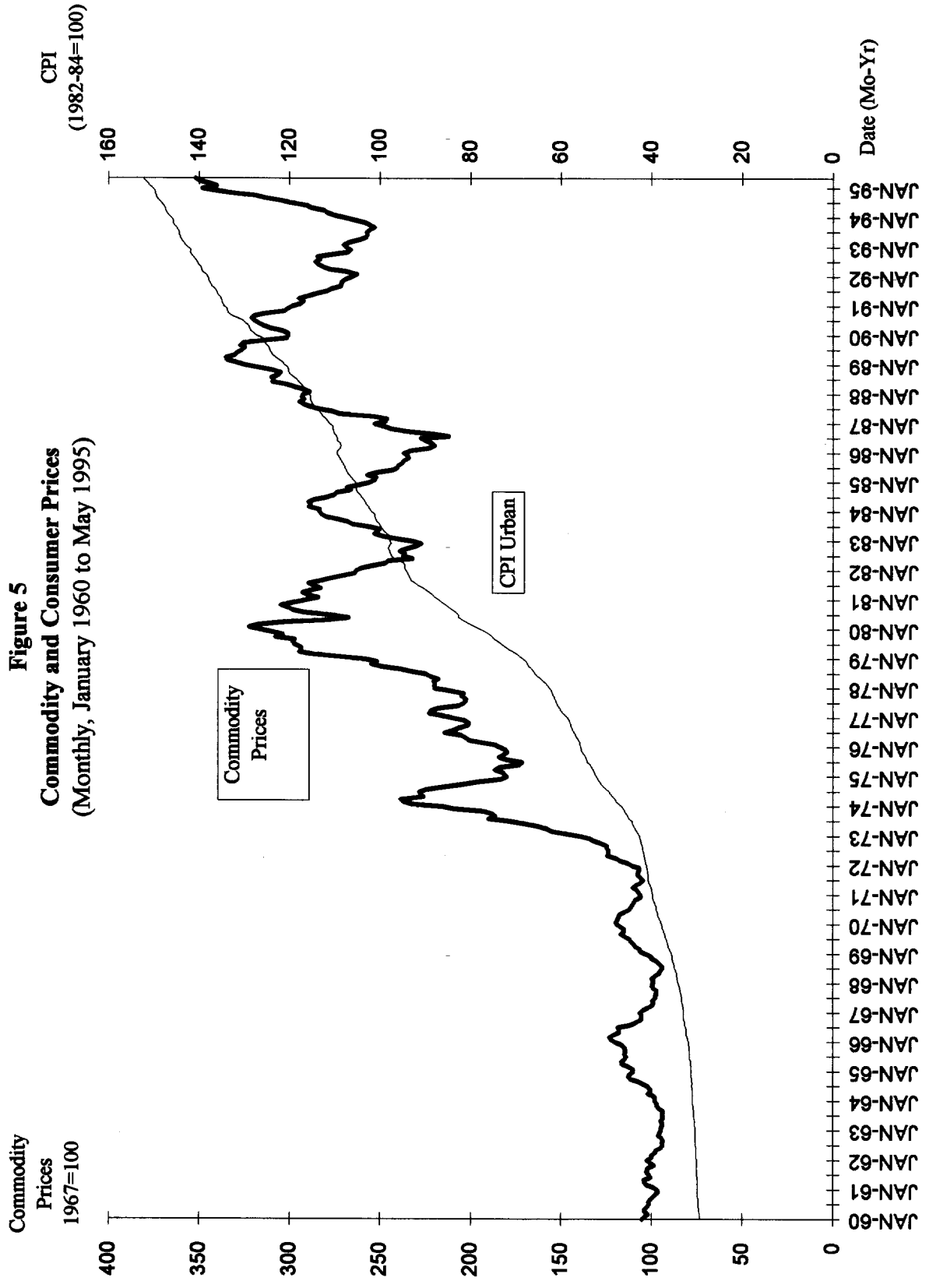


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The volatility of prices and general economic activity can have a substantial impact on banking performance, as the experience of the 1980s makes clear. The sectoral inflation and subsequent deflation of agricultural prices in the late 1970s and early- to mid-1980s was a major contributor to the failure of hundreds of agricultural banks. Similarly, the boom and subsequent collapse of oil prices caused significant problems for banks in states whose economies had important energy sectors. The real-estate problems of the 1980s and early 1990s caused major problems for many banks. These problems can be traced in part to unanticipated changes in regional economic conditions, as the behavior of real estate prices departed sharply from past patterns (Figure 6).

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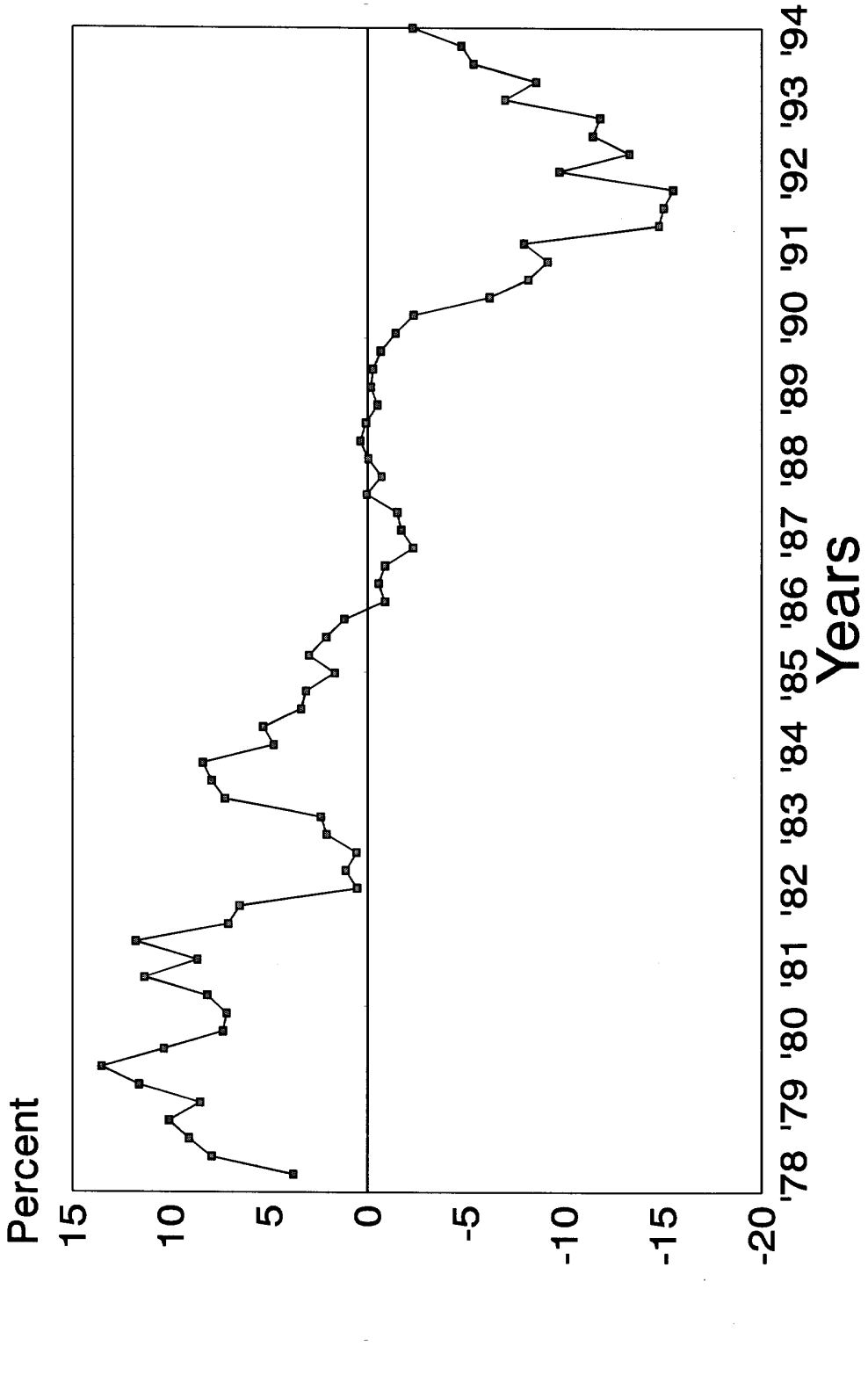
Figure 6

RUSSELL-NECREIF PROPERTY INDEX

Appreciation Component

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(ii) *Trends in the banking industry since 1980.* Since 1980, the business of banking has changed considerably. As noted above, risks have increased as interest rates, exchange rates and commodity prices have become more volatile and as economic shocks have been transmitted more widely *via* the globalization of markets. Meanwhile, competition in the financial marketplace has greatly intensified. The traditional intermediation function of banks has assumed a smaller role in aggregate economic activity, largely because financial and technological innovations have increased the funding options for firms that formerly were restricted to bank loans. Banks have been forced to seek new sources of income and to implement untested business strategies, and such experimentation carries inherent risks.

The major trends affecting the banking industry since 1980 are summarized in an accompanying series of charts. The charts emphasize the substantial increase in banking risk as compared to earlier periods, and the role of competition and innovation as forces driving this development.

Dramatic evidence that banking has become riskier is observable in the annual rates of bank failure (Figure 7). While annual bank failures exceeded single digits only rarely between 1940 and 1980, failure rates rose rapidly thereafter to a record high of 200 in 1988 (221 including assistance transactions). A similar picture emerges from the data on FDIC insurance losses relative to insured deposits (Figure 8). Annual insurance losses were extremely low on average prior to 1980, less than half a basis point of insured deposits, and were quite stable; losses for the 1980–94 period exceeded 14 basis points on average and were highly variable.

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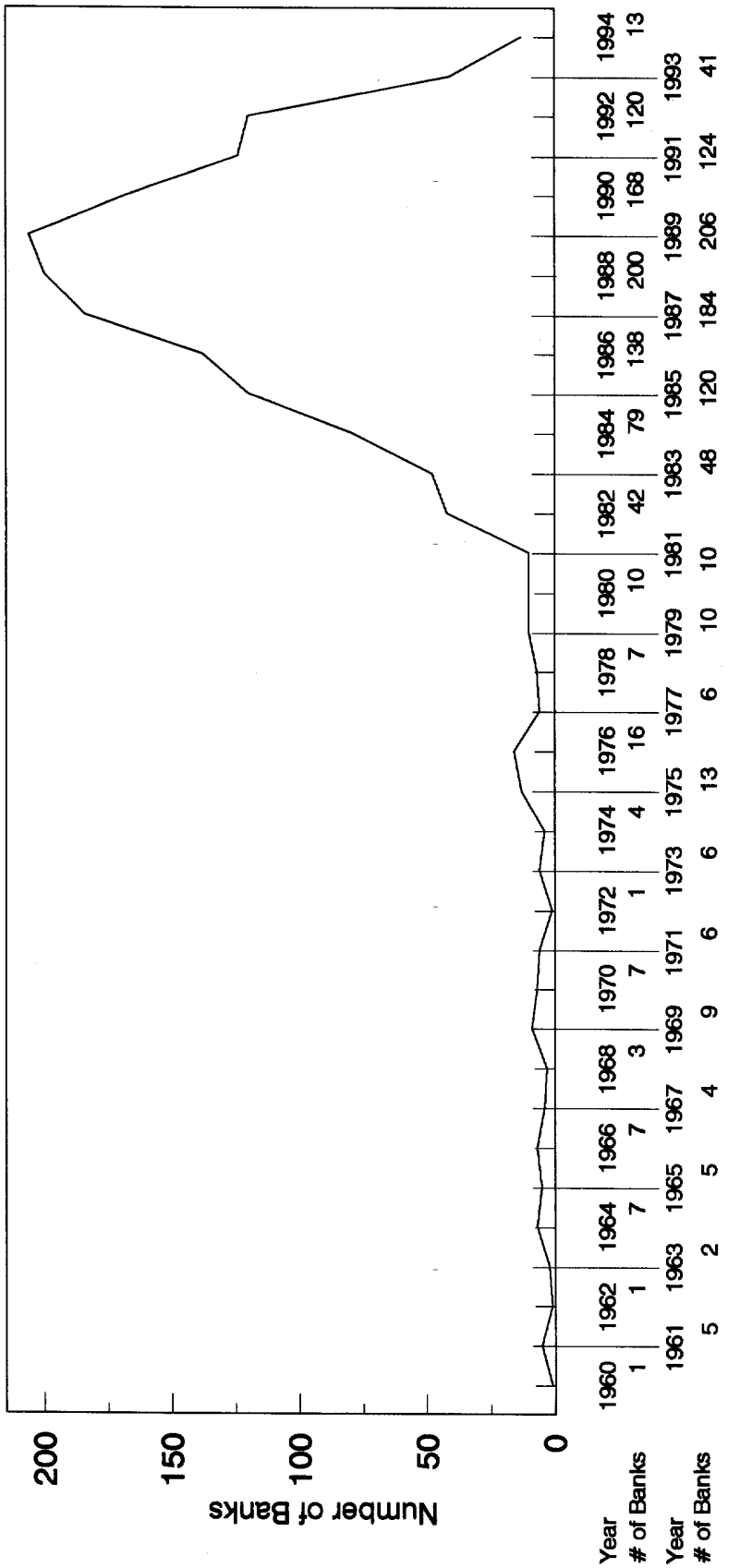
**Figure 7**

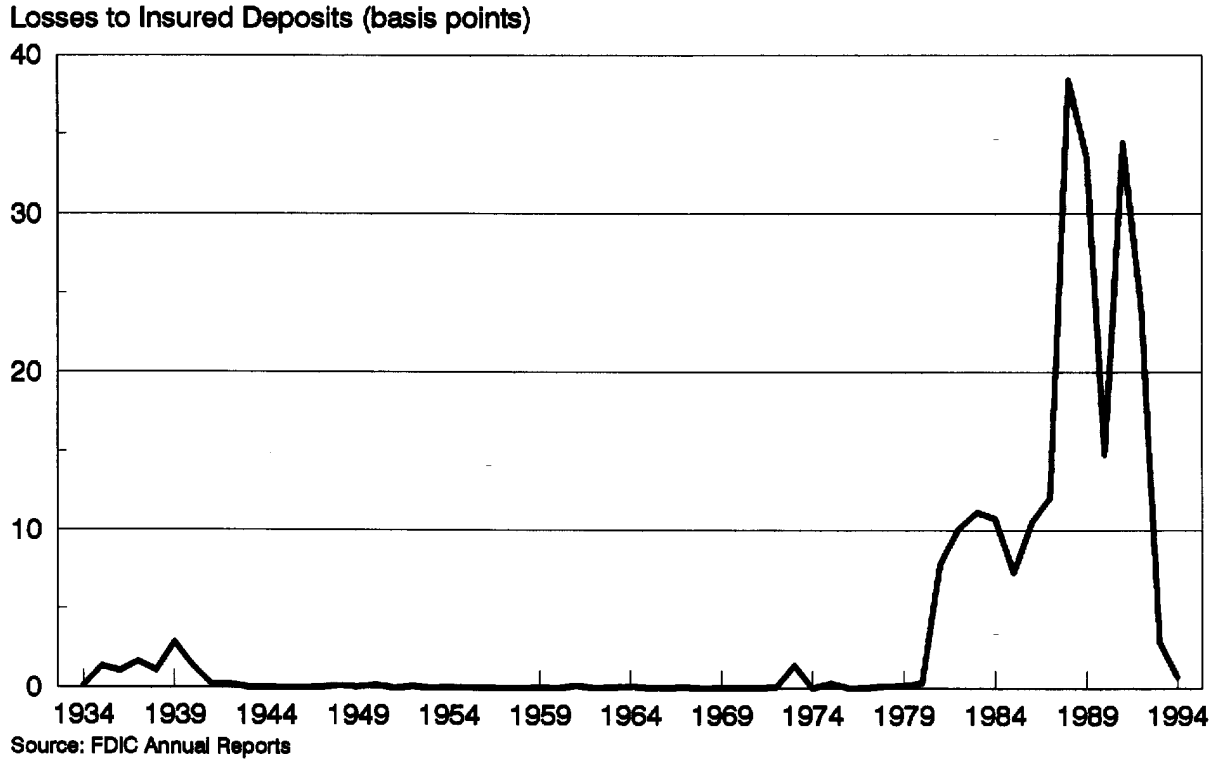
**Number of Failures of Insured Banks**

**1960 - 1994**



## Figure 8

### Insurance Losses to Insured Deposits
### 1934 to 1994




Source: FDIC Annual Reports

### Summary Statistics (basis points)

| | 1934-1994 | 1934-1979 | 1980-1994 |
|---|---|---|---|
| Mean | 3.80 | 0.28 | 14.61 |
| Median | 0.09 | 0.03 | 10.77 |
| Standard Deviation | 8.54 | 0.59 | 11.85 |

| Losses/ Insured Deposits | Year |
|---|---|
| 38.4 | 1988 |
| 34.4 | 1991 |
| 33.5 | 1989 |
| 24.1 | 1992 |
| 14.8 | 1990 |

BILLING CODE 6714–01–C

Net loan charge-offs as a percent of average total loans have trended upward since the early 1970s, accelerating rapidly beginning in 1980 and reaching a peak of 1.57 percent in 1991 (Figure 9). Over the same period, bank stocks substantially underperformed the S&P 500 (Figure 10).

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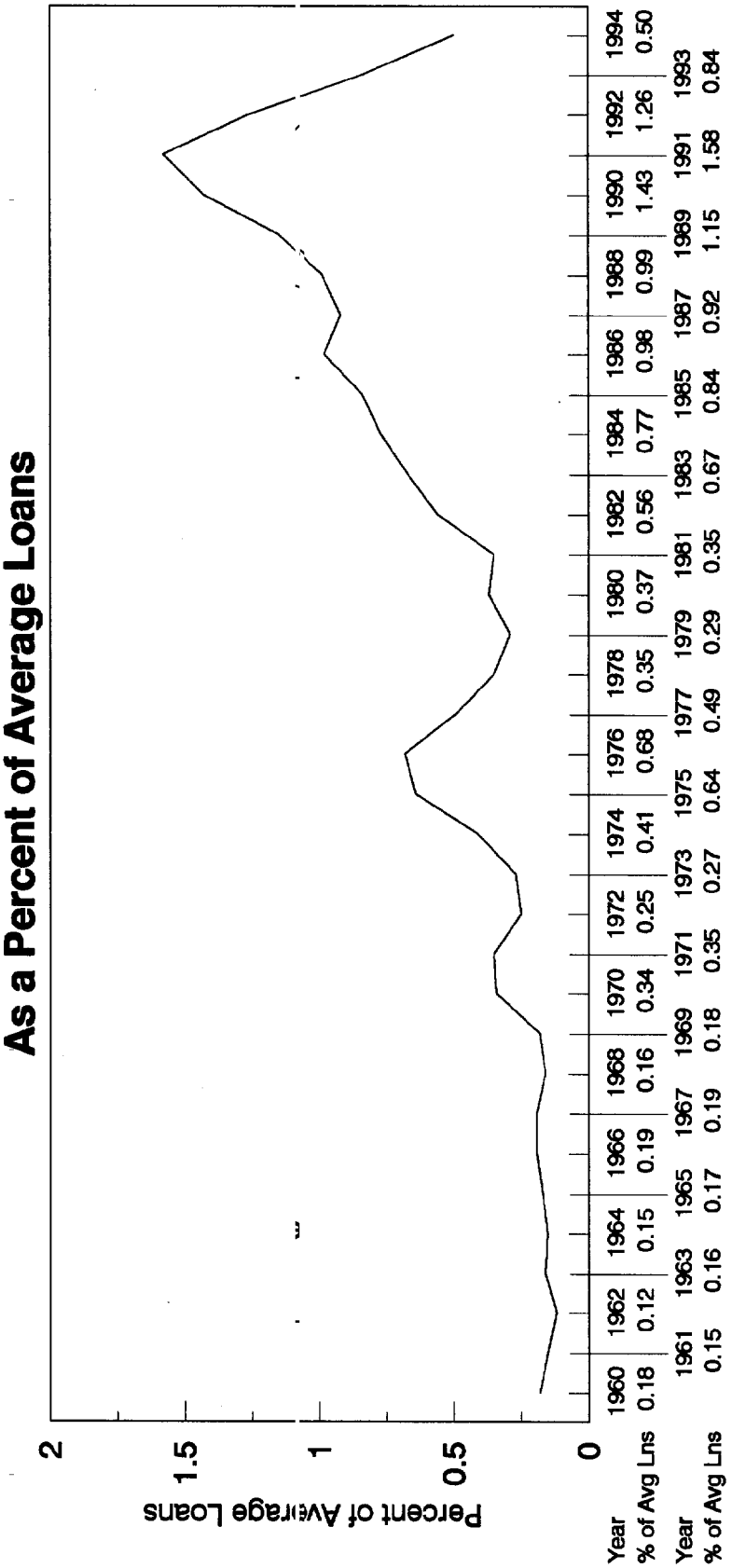
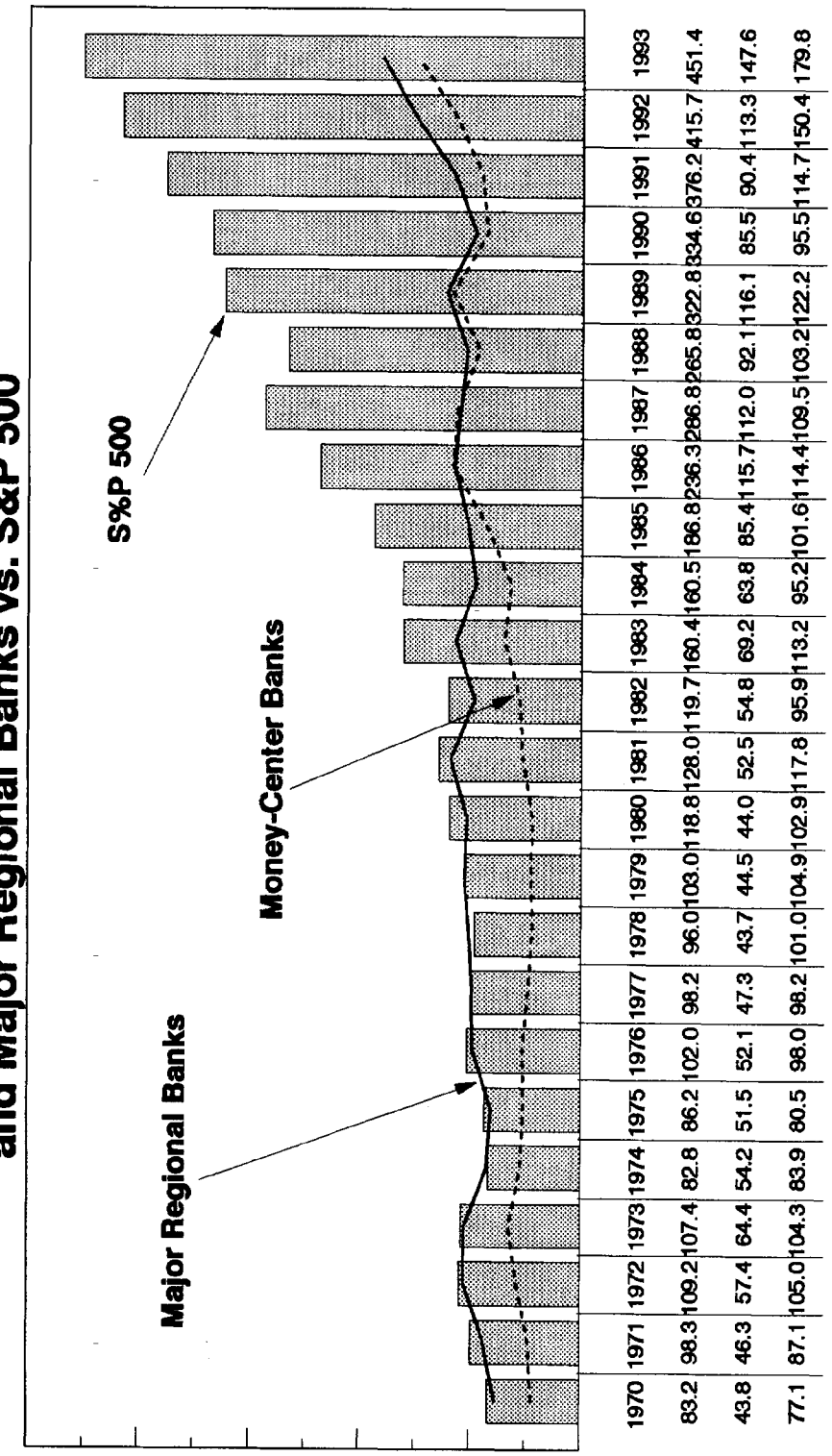
## Figure 9
## Net Charge-offs
## As a Percent of Average Loans




| Year | 1960 | 1961 | 1962 | 1963 | 1964 | 1965 | 1966 | 1967 | 1968 | 1969 | 1970 | 1971 | 1972 | 1973 | 1974 | 1975 | 1976 | 1977 | 1978 | 1979 | 1980 | 1981 | 1982 | 1983 | 1984 | 1985 | 1986 | 1987 | 1988 | 1989 | 1990 | 1991 | 1992 | 1993 | 1994 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| % of Avg Lns | 0.18 | 0.15 | 0.12 | 0.16 | 0.15 | 0.17 | 0.19 | 0.19 | 0.16 | 0.18 | 0.34 | 0.35 | 0.25 | 0.27 | 0.41 | 0.64 | 0.68 | 0.49 | 0.35 | 0.29 | 0.37 | 0.35 | 0.56 | 0.67 | 0.77 | 0.84 | 0.98 | 0.92 | 0.99 | 1.15 | 1.43 | 1.58 | 1.26 | 0.84 | 0.50 |

**Figure 10**

**Stock Market Indexes of Money-Center Banks and Major Regional Banks vs. S&P 500**




| Year | 1970 | 1971 | 1972 | 1973 | 1974 | 1975 | 1976 | 1977 | 1978 | 1979 | 1980 | 1981 | 1982 | 1983 | 1984 | 1985 | 1986 | 1987 | 1988 | 1989 | 1990 | 1991 | 1992 | 1993 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| S&P 500 | 83.2 | 98.3 | 109.2 | 107.4 | 82.8 | 86.2 | 102.0 | 98.2 | 96.0 | 103.0 | 118.8 | 128.0 | 119.7 | 160.4 | 160.5 | 186.8 | 236.3 | 286.8 | 265.8 | 322.8 | 334.6 | 376.2 | 415.7 | 451.4 |
| Money-Center | 43.8 | 46.3 | 57.4 | 64.4 | 54.2 | 51.5 | 52.1 | 47.3 | 43.7 | 44.5 | 44.0 | 52.5 | 54.8 | 69.2 | 63.8 | 85.4 | 115.7 | 112.0 | 92.1 | 116.1 | 85.5 | 90.4 | 113.3 | 147.6 |
| Regional Bnks | 77.1 | 87.1 | 105.0 | 104.3 | 83.9 | 80.5 | 98.0 | 98.2 | 101.0 | 104.9 | 102.9 | 117.8 | 95.9 | 113.2 | 95.2 | 101.6 | 114.4 | 109.5 | 103.2 | 122.2 | 95.5 | 114.7 | 150.4 | 179.8 |

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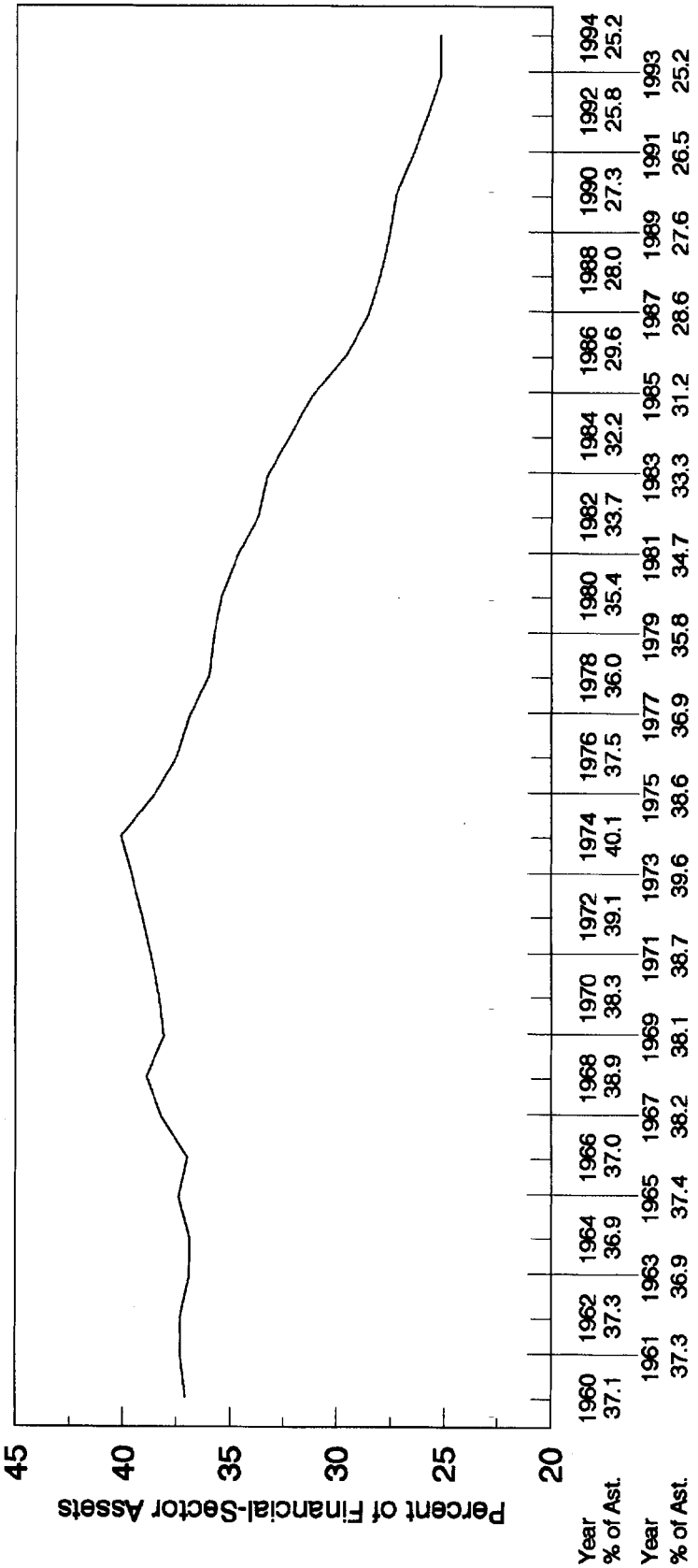
The effects of increased competition and innovation are inextricably intertwined. Both have played a role in the banking industry's declining share of financial-sector assets since 1980 (Figure 11). Innovation has transformed the commercial paper market into a formidable competitor for banks. Figure 12 shows that the ratio of commercial paper outstanding to bank commercial and industrial loans (C&I loans) has increased four-fold since 1980. Meanwhile, the ratio of finance-company business loans to bank C&I loans has more than doubled over the same period, and most of this growth has occurred since 1982 (Figure 13).

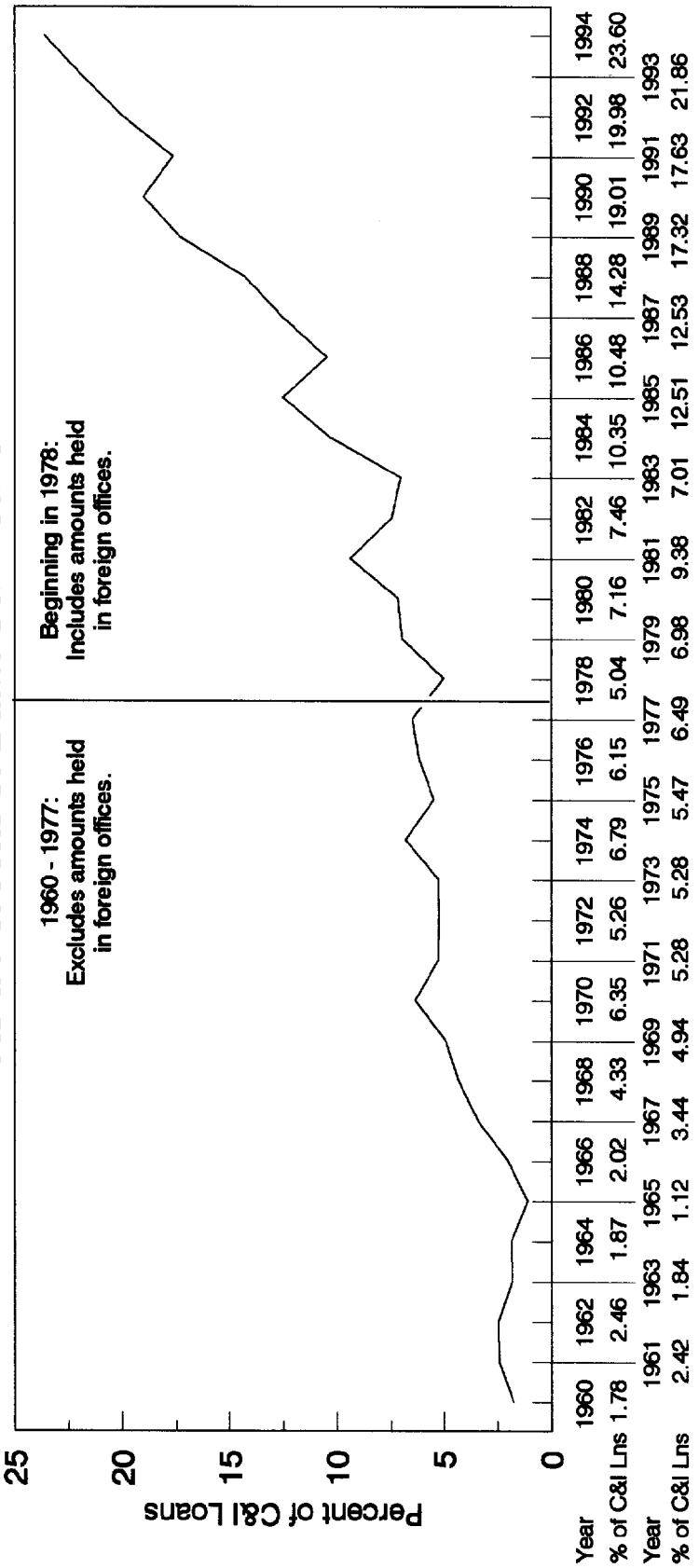
BILLING CODE 6714–01–P

**Figure 11**
**Commercial Banks' Share of Financial-Sector Assets**

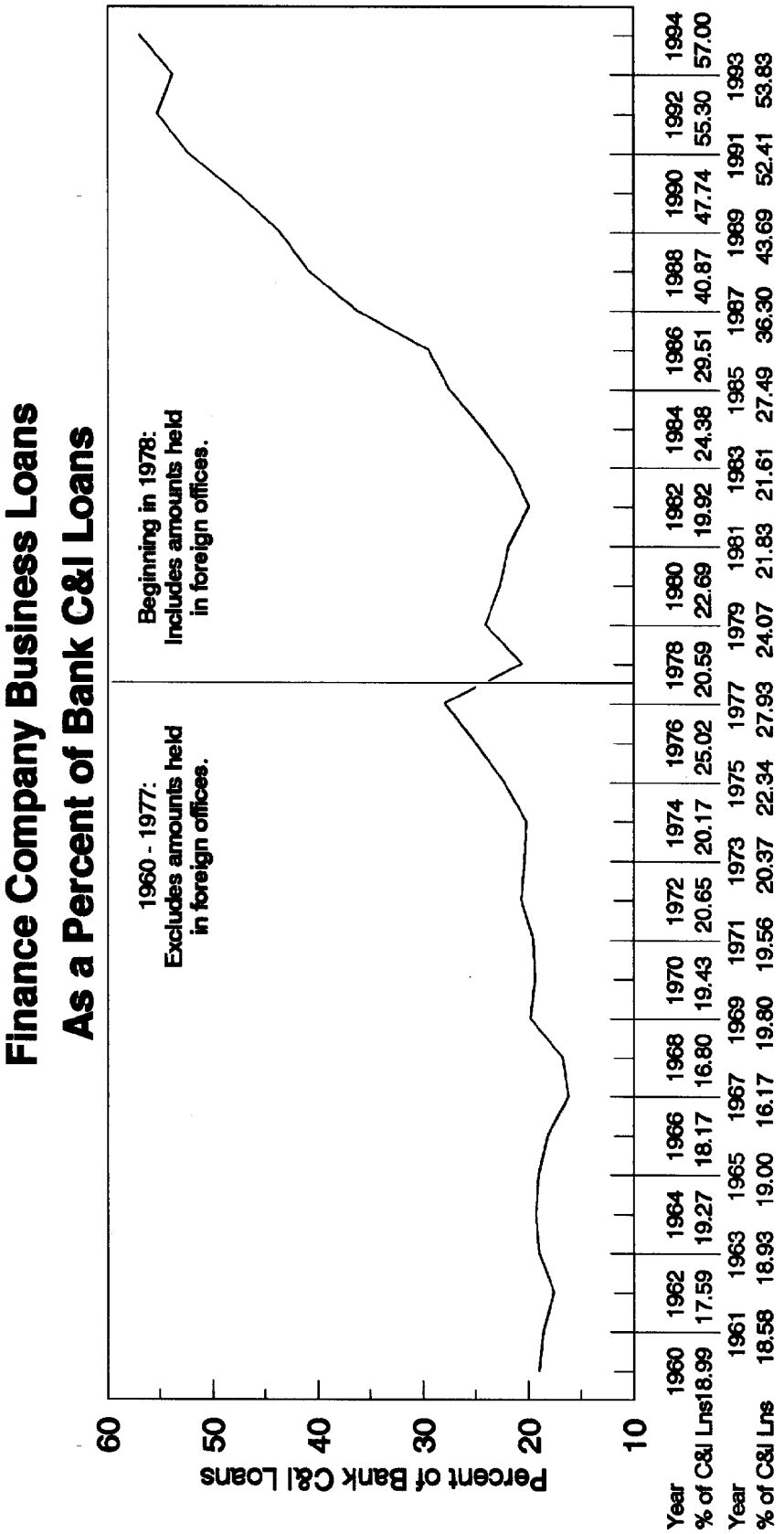


## Figure 12

## Commercial Paper of Nonfinancial Firms As a Percent of Bank C&I Loans




| Year | 1960 | 1961 | 1962 | 1963 | 1964 | 1965 | 1966 | 1967 | 1968 | 1969 | 1970 | 1971 | 1972 | 1973 | 1974 | 1975 | 1976 | 1977 | 1978 | 1979 | 1980 | 1981 | 1982 | 1983 | 1984 | 1985 | 1986 | 1987 | 1988 | 1989 | 1990 | 1991 | 1992 | 1993 | 1994 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| % of C&I Lns | 1.78 | 2.42 | 2.46 | 1.84 | 1.87 | 1.12 | 2.02 | 3.44 | 4.33 | 4.94 | 6.35 | 5.28 | 5.26 | 5.28 | 6.79 | 5.47 | 6.15 | 6.49 | 5.04 | 6.98 | 7.16 | 9.38 | 7.46 | 7.01 | 10.35 | 12.51 | 10.48 | 12.53 | 14.28 | 17.32 | 19.01 | 17.63 | 19.98 | 21.86 | 23.60 |

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The growth in securitization of loans represents another dimension of the competitive pressures faced by banks. By increasing the liquidity and efficiency of the credit markets, securitization produces a narrowing of the spreads available to traditional lenders such as banks and thrifts. The outstanding example of this process occurs in the mortgage market, where the proportion of consumer mortgages pooled for resale (or ''securitized'') has grown from about 10 percent in 1980 to more than 40 percent as of year-end 1993 (Figure 14).

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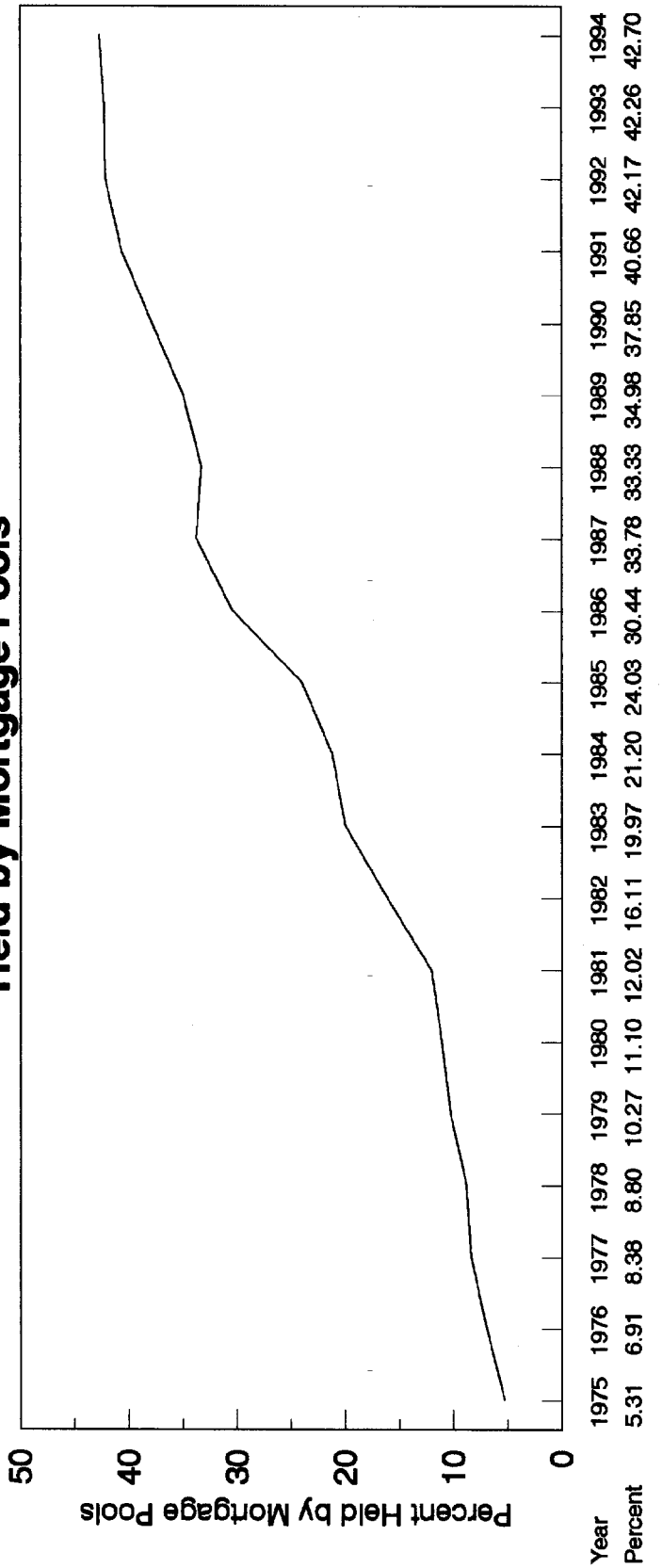
## Figure 14

## Percent of 1-4 Family Mortgages Held by Mortgage Pools*




| Year | 1975 | 1976 | 1977 | 1978 | 1979 | 1980 | 1981 | 1982 | 1983 | 1984 | 1985 | 1986 | 1987 | 1988 | 1989 | 1990 | 1991 | 1992 | 1993 | 1994 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Percent | 5.31 | 6.91 | 8.38 | 8.80 | 10.27 | 11.10 | 12.02 | 16.11 | 19.97 | 21.20 | 24.03 | 30.44 | 33.78 | 33.33 | 34.98 | 37.85 | 40.66 | 42.17 | 42.26 | 42.70 |

* Includes GNMA, FNMA, and FmHA.

BILLING CODE 6714–01–C

On the liability side, banks have faced increasing competition from many nonbank financial institutions. Foremost among these have been the money-market mutual funds (MMMFs), which rose from obscurity in 1975 to prominence by 1981: the ratio of MMMF balances to comparable commercial bank deposits (small time and savings deposits) was virtually zero during the mid-1970s, but reached nearly 35 percent by 1981 (Figure 15). After declining briefly to 25 percent in the early 1980s, this ratio grew steadily thereafter, exceeding 40 percent by the end of 1993.

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## Figure 15
## Money-Market Mutual Funds
## As a Percent of Bank Small Time & Savings


| Year | 1975 | 1976 | 1977 | 1978 | 1979 | 1980 | 1981 | 1982 | 1983 | 1984 | 1985 | 1986 | 1987 | 1988 | 1989 | 1990 | 1991 | 1992 | 1993 | 1994 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Percent | 1.22 | 1.03 | 1.01 | 2.70 | 10.54 | 16.13 | 36.25 | 35.95 | 24.17 | 28.60 | 27.17 | 30.15 | 31.73 | 31.61 | 36.72 | 38.71 | 39.46 | 39.69 | 41.13 | 44.57 |

BILLING CODE 6714–01–P

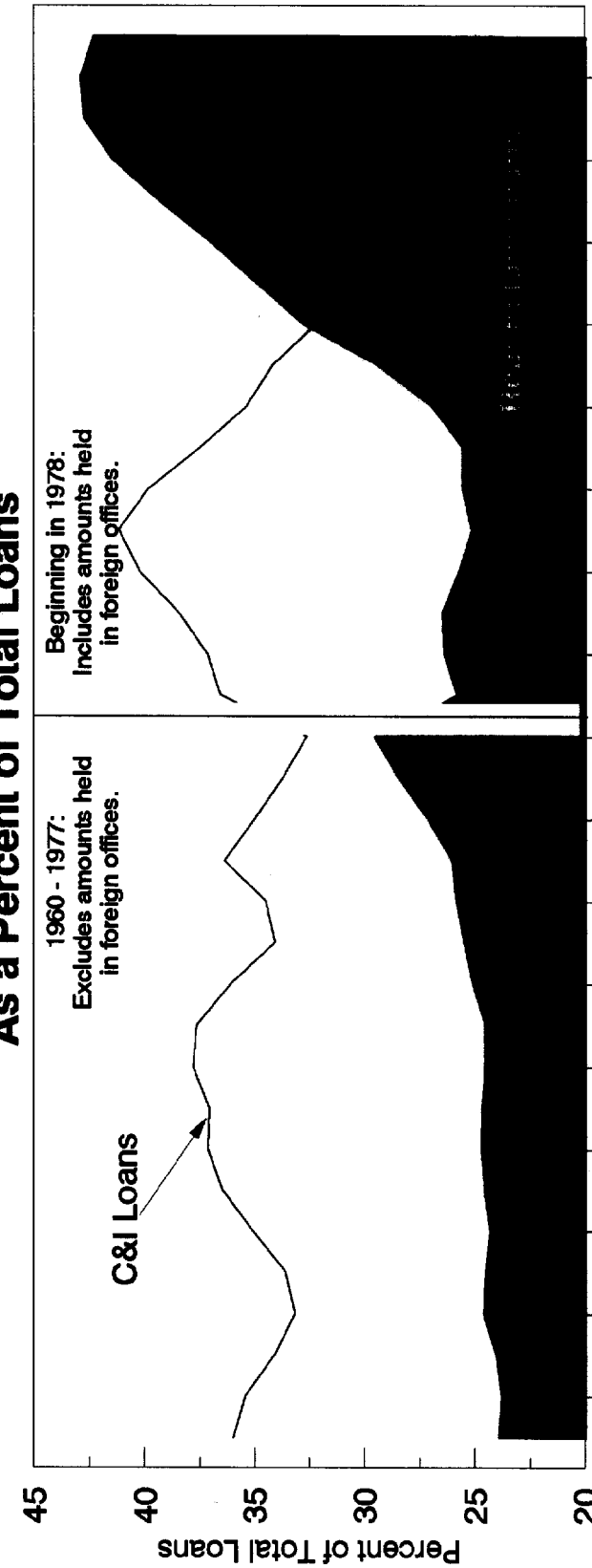
These developments have forced changes in the business strategies of commercial bankers. Faced with diminished opportunities for C&I lending, banks have shifted into real-estate lending in recent years (Figure 16). This new portfolio composition has exacerbated the adverse effects on banks of downturns in regional real estate markets. Noninterest income also has become more important for bankers (Figure 17), and off balance-sheet activities have grown substantially in recent years. The dollar amount of these activities was roughly 60 percent of the comparable amount for on balance-sheet activities in 1984, but this figure grew to 120 percent by the end of the decade. Taken together with the periodic, large-scale movements in and out of particular lending markets (LDC, HLT, commercial real-estate development, and the like), these portfolio shifts suggest that many banks have embarked on a widening search for new profit opportunities in response to the competitive pressures undermining their traditional niche in the financial marketplace.

BILLING CODE 6714–01–P

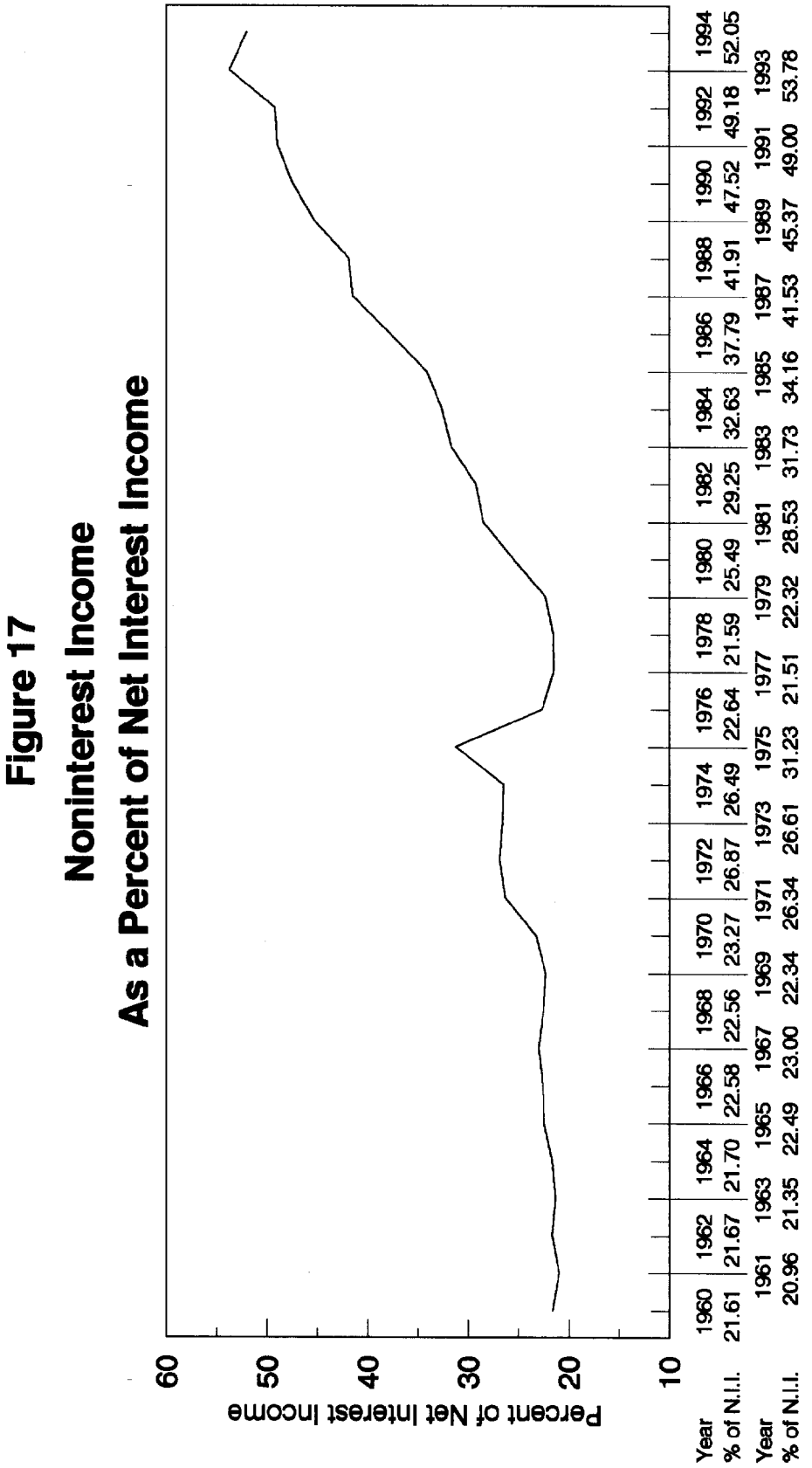
**Figure 16**

**C&I Loans and Real-Estate Loans**

**As a Percent of Total Loans**




| Year | 1960 | 1961 | 1962 | 1963 | 1964 | 1965 | 1966 | 1967 | 1968 | 1969 | 1970 | 1971 | 1972 | 1973 | 1974 | 1975 | 1976 | 1977 | 1978 | 1979 | 1980 | 1981 | 1982 | 1983 | 1984 | 1985 | 1986 | 1987 | 1988 | 1989 | 1990 | 1991 | 1992 | 1993 | 1994 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| C&I Lns | 35.98 | 35.44 | 34.10 | 33.16 | 33.61 | 35.08 | 36.49 | 37.13 | 37.09 | 37.80 | 37.65 | 36.07 | 34.07 | 34.52 | 36.38 | 35.02 | 33.72 | 32.64 | 36.58 | 37.16 | 38.46 | 40.23 | 41.18 | 39.85 | 37.47 | 35.40 | 34.19 | 32.20 | 31.06 | 30.05 | 29.14 | 27.23 | 26.39 | 25.07 | 24.98 |
| RE Lns | 23.94 | 23.80 | 24.04 | 24.59 | 24.48 | 24.32 | 24.56 | 24.71 | 24.69 | 24.52 | 24.51 | 25.08 | 25.48 | 25.84 | 26.02 | 27.11 | 28.47 | 29.58 | 25.81 | 26.39 | 26.48 | 25.74 | 25.14 | 25.57 | 25.57 | 26.90 | 29.35 | 32.81 | 34.94 | 37.01 | 39.32 | 41.47 | 42.74 | 42.92 | 42.31 |

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Innovations in information systems technology have effectively integrated network development, telecommunication technology and computing into a tool for expansion in twenty-four hour global trading, market monitoring and sophisticated risk management. These developments have permitted a global markets presence for major banking companies and have expanded the opportunities for global market developments in exchange-traded products and dealing in over-the-counter bilateral contracts. Advances in telecommunications, in particular, have permitted the rapid and inexpensive transmission of market information and the globalization of markets. The result may be a banking environment that is more complex and less transparent than at any time since the 1920s.

At present, there is no indication that the forces discussed above are abating. Nor are there reasons to expect that the degree of competition or the pace of innovation will reverse course in the foreseeable future. To the contrary, the relentless decline of information costs in recent years augurs, if anything, stronger competition for banks, occurring on new fronts and originating from new sources. In view of these realities, it is reasonable to assume that the FDIC will continue to experience a substantial amount of volatility in insurance losses in the coming years.

(d) *Risks in Banking Today.* The banking industry at present is in good health, with high earnings, high capitalization, and few problem institutions. The risks that currently confront the industry do not pose an imminent threat, but several general concerns can be identified.

Market participants continue to anticipate significant volatility in interest rates and exchange rates, as evidenced by the explosive growth of derivative instruments expressly designed to hedge against this volatility. Competition from nonbank sources remains intense and likely will increase for the reasons cited above, putting pressure on banks' interest-rate margins. The industry is restructuring through mergers and is adjusting to the changing rules with respect to interstate banking and branching. While these developments in general bode well for the deposit insurance funds, major structural changes in an industry usually are accompanied by some costly mistakes by individual firms. Finally, the possibility of an economic slowdown later in 1995 and 1996,[27] reports of potential problems in the agricultural sector, and continuing economic weakness in California must be considered.

Some historical perspective is also useful for assessing current banking risks. Information problems are inherent in evaluating the condition of banking institutions, and the uncertainty is compounded in attempting to identify emerging problems. History shows that a substantial percentage of bank failures have been unanticipated as early as two years prior to failure. The FDIC examined 1,286 bank-failure cases from 1982–1994 in order to determine the CAMEL ratings of the institutions prior to failure. Table 2 displays the relevant results. Two years prior to failure, almost 47 percent of the institutions had composite CAMEL ratings of 1 or 2.[28] Of the 1,189 cases for which CAMEL ratings could be obtained 3 years prior to failure, over 60 percent of the institutions (which accounted for almost 75 percent of failed-bank assets in the sample) were rated 1 or 2.

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[27] The consensus forecast reported by Blue Chip Economic Indicators as of July 1995 was for slower GDP growth in late 1995 and 1996 than prevailed in 1994.

[28] Not all institutions were examined precisely two years prior to failure. The results reflect the ratings in the examination database as of two years prior, but the date of examination varies across institutions. Nonetheless, these data represent the current rating of the institution as of two years prior to failure, based upon the latest examination.

Table 2

## Rating of Failed Banks Prior to Failure

1980–1994

($ billions)

| | 2 years prior | | 3 years prior | |
|---|---|---|---|---|
| Rating | No. (%) | Assets (%) | No. (%) | Assets (%) |
| 1 or 2 | 598 (47%) | $137 (50%) | 743 (62%) | $196 (74%) |
| 3 | 240 (19%) | $ 66 (24%) | 218 (18%) | $ 35 (13%) |
| 4 or 5 | 448 (34%) | $ 69 (26%) | 228 (20%) | $ 33 (13%) |
| ALL | 1286 (100%) | $272 (100%) | 1189 (100%) | $264 (100%) |

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Similarly, Figure 18 indicates that the vast majority of banks that failed between 1987 and 1994 were well capitalized three years prior to failure. Moreover, 80 percent of failed-bank assets over this period originated from institutions that were well or adequately capitalized three years before failure.

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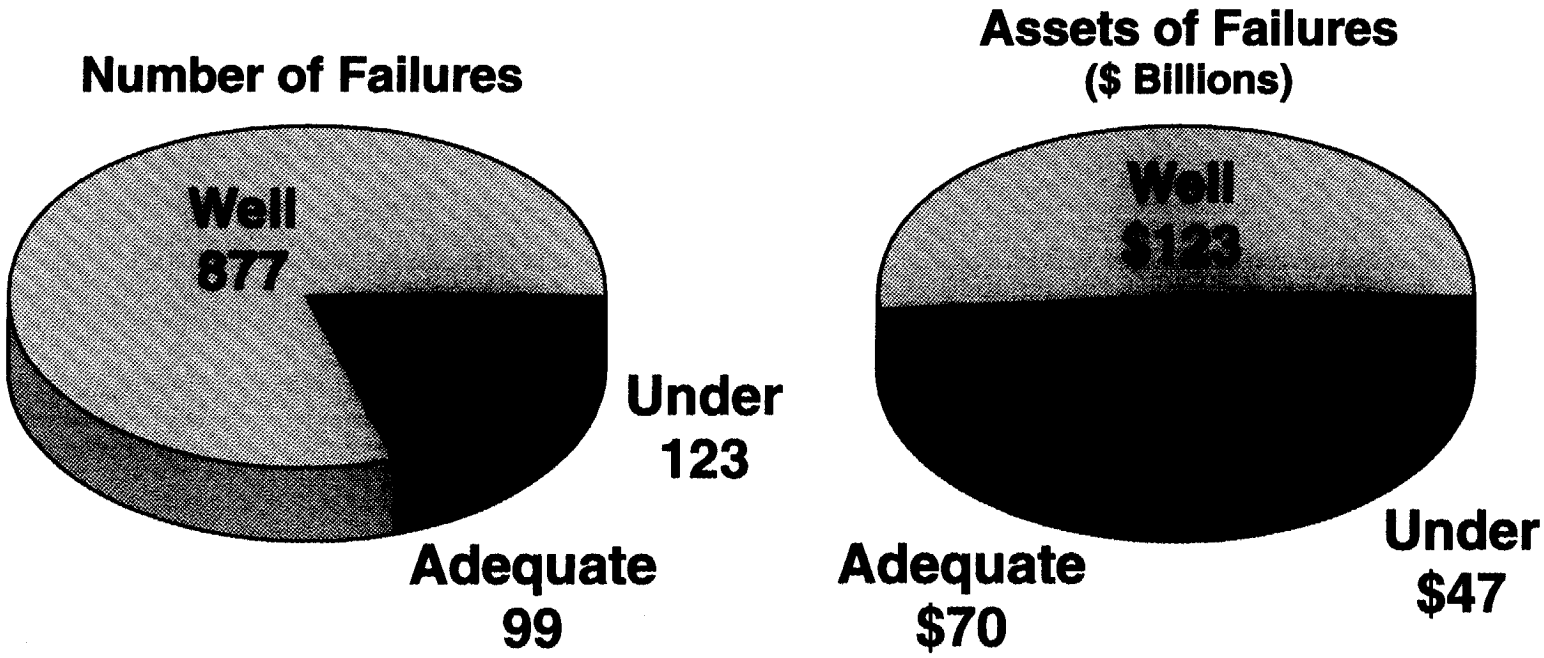
BILLING CODE 6714-01-C

Figure 18

# Failed BIF Members, 1987-1994: 3-Year Lagged Capital Category




Note: For purposes of this chart, "adequately-capitalized" institutions are those with equity-to-assets ratios of four percent or more. For "well-capitalized" the cutoff is five percent.

The track record of models developed to project bank failures illustrates the same issue: these models exhibit a high degree of imprecision. Table 3 presents annual forecast errors from two types of failure projection models employed by the FDIC. The ''actuarial'' model groups banks into 25 cells of a matrix based on current performance characteristics. Failures are projected for each cell according to the three-year historical failure experience of banks with characteristics matching the criteria for the cell. Projections for a one-year horizon are based on the one-year failure experience of banks that would have qualified for the cell at any time during the previous three years, those for a two-year horizon are based on the two-year historical experience, and so on. The one- and two-year projection errors for failed-bank assets from this model over the past 7 years have been large by any reasonable standard, regularly exceeding 50 percent and occasionally approaching 100 percent. The ''pro forma'' model has fared no better. This model assumes that an institution's current portfolio composition will be maintained in the future and that the recent relationship between nonperforming loans and subsequent charge-offs will prevail as well. The one-and two-year projection errors from this model have never been lower than 80 percent.

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Table 3

# Failure Forecasts

## Actuarial Model

**(Failed Bank Assets in Millions)**

| Forecast Based on Year–End | First Year Forecast | First Year Actual | First Year Percentage Difference | Second Year Forecast | Second Year Actual | Second Year Percentage Difference |
|---|---|---|---|---|---|---|
| 1987 | 22,459 | 35,698 | 58.9% | 60,589 | 29,168 | −51.9% |
| 1988 | 18,822 | 29,168 | 55.0% | 34,263 | 15,660 | −54.3% |
| 1989 | 26,306 | 15,660 | −40.5% | 42,908 | 63,119 | 47.1% |
| 1990 | 56,650 | 63,119 | 11.4% | 73,712 | 44,197 | −40.0% |
| 1991 | 69,412 | 44,197 | −36.3% | 102,171 | 3,539 | −96.5% |
| 1992 | 24,952 | 3,539 | −85.8% | 33,806 | 1,395 | −95.9% |
| 1993 | 4,805 | 1,395 | −71.0% | 1,826 | N/A | N/A |
| Total/Avg. | 223,406 | 192,776 | −13.7% | 349,275 | 157,078 | −55.0% |

# Pro–Forma Model

**(Failed Bank Assets in Millions)**

| Forecast Base on Year–End | First Year Pessimistic Forecast | First Year Actual | First Year Percentage Difference | First Year Optimistic Forecast | First Year Actual | First Year Percentage Difference |
|---|---|---|---|---|---|---|
| 1992 | 19,534 | 3,539 | −81.9% | 18,905 | 3,539 | −81.3% |
| 1993 | 8,331 | 1,395 | −83.3% | 7,613 | 1,395 | −81.7% |
| Total/Avg. | 27,865 | 4,934 | −82.3% | 26,518 | 4,934 | −81.4% |

| Forecast Based on Year–End | Second Year Pessimistic Forecast | Second Year Actual | Second Year Percentage Difference | Second Year Optimistic Forecast | Second Year Actual | Second Year Percentage Difference |
|---|---|---|---|---|---|---|
| 1992 | 3,985 | 1,395 | −65.0% | 2,747 | 1,395 | −49.2% |
| 1993 | 10,497 | N/A | N/A | 3,336 | N/A | N/A |
| Total/Avg. | 14,482 | 1,395 | −90.4% | 6,083 | 1,395 | −77.1% |

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Similar conclusions emerge from an analysis of the failure projections made by the FDIC's supervisory staff. These projections list, on an individual bank basis, the banks with over $100 million in assets that are deemed to have a greater than 50 percent probability of failing during each of the next eight quarters. Since 1992, assets in failing institutions have ranged from 18 percent to 80 percent of those listed as being likely to fail within one year under this approach. The forecast errors are substantially higher when a two-year horizon is used. This illustrates that predicting the identity and timing of the failures of specific institutions is even more difficult than predicting the total volume of assets in failed banks.

In short, indicators such as CAMEL ratings, capital categories, and failure projections appear to be driven largely by the current condition of insured institutions and not by underlying risks that are difficult to identify and predict. The record shows that these risks cannot be ignored even for institutions that currently appear healthy. These findings serve to emphasize that any meaningful assessment of the risks posed to the deposit insurance funds by insured institutions must look beyond a six-month period.

Another important point that emerges from Table 3 relates to the volatility of forecasting errors in predicting bank failures. While the total volume of assets in banks failing from 1988 through 1994 was just 13.7 percent shy of the total amounts projected over that period using a one-year forecast horizon, the errors in any given year were much larger, ranging from an 86 percent overprediction for 1992 to a 59 percent underprediction in 1987. Thus, while it may be possible to discern trends in bank failures over a reasonably long period, there is considerable uncertainty regarding the timing of these failures.

(e) *Rate Setting—Historical Context and Current Conditions.* The considerations described in the subsection (c) suggest that financial services and banking experienced a fundamental increase in risk during the 1980s, and that the pressures that brought about this increase in risk have not abated. Banking today remains a highly competitive and demanding business. Opportunities for geographic expansion and diversification will most likely increase the safety-and-soundness of the banking system but, like other fundamental changes in the ''rules of the game'' governing depositories, could result in costly mistakes by some institutions.

This section provides information on the FDIC's loss experience since 1935. Information on hypothetical ''breakeven assessments'' is provided for two scenarios: Pay-as-you-go versus a long-run average cost assessment structure. Information on the pay-as-you-go approach is used to evaluate the desirability of that approach, with the result being an unfavorable evaluation.

Table 4 shows assessments that would have been needed to maintain the BIF at 1.25 percent of insured deposits on an annual basis since 1949. These account for the effects of investment income, operating expenses and changes in the amount of insured deposits in the banking system. Figure 19 shows that these ''pay-as-you-go'' assessments are much more volatile than the actual assessments that were charged by the FDIC, because of the tendency of bank failures to be ''bunched'' as a function of economic shocks, rather than being evenly distributed over time.

TABLE 4.—BIF PREMIUM RATES AND RATIOS: EFFECTIVE, PAY-AS-YOU-GO, AND FIXED RATE SCENARIOS

| Year | Effective | | Pay-as-you-go | | Fixed assessments | | |
|---|---|---|---|---|---|---|---|
| | Assessment rate | BIF ratio | Assessment rate | BIF ratio | 4.5 bp ratio | 7 bp ratio | 13 bp ratio |
| 1994 | 23.60 | 1.15 | −16.7 | 1.25 | −0.42 | 1.42 | 1.16 |
| 1993 | 24.40 | 0.69 | −37.3 | 1.25 | −0.56 | 1.11 | 0.80 |
| 1992 | 23.00 | −0.01 | −10.8 | 1.25 | −0.92 | 0.60 | 0.23 |
| 1991 | 21.25 | −0.36 | 62.8 | 1.25 | −0.93 | 0.44 | 0.04 |
| 1990 | 12.00 | 0.21 | 49.0 | 1.25 | −0.05 | 1.20 | 0.76 |
| 1989 | 8.33 | 0.70 | 17.7 | 1.25 | 0.59 | 1.75 | 1.26 |
| 1988 | 8.33 | 0.80 | 32.3 | 1.25 | 0.78 | 1.89 | 1.33 |
| 1987 | 8.33 | 1.10 | 8.9 | 1.25 | 1.16 | 2.21 | 1.60 |
| 1986 | 8.33 | 1.12 | 16.9 | 1.25 | 1.23 | 2.18 | 1.54 |
| 1985 | 8.33 | 1.19 | 8.8 | 1.25 | 1.38 | 2.31 | 1.60 |
| 1984 | 8.00 | 1.19 | 10.2 | 1.25 | 1.44 | 2.32 | 1.56 |
| 1983 | 7.14 | 1.22 | 7.6 | 1.25 | 1.52 | 2.35 | 1.54 |
| 1982 | 7.69 | 1.21 | 9.8 | 1.25 | 1.57 | 2.38 | 1.49 |
| 1981 | 7.14 | 1.24 | −1.4 | 1.25 | 1.65 | 2.45 | 1.46 |
| 1980 | 3.70 | 1.16 | 6.5 | 1.25 | 1.56 | 2.27 | 1.29 |
| 1979 | 3.33 | 1.21 | −1.3 | 1.25 | 1.60 | 2.32 | 1.21 |
| 1978 | 3.85 | 1.16 | 3.3 | 1.25 | 1.52 | 2.19 | |
| 1977 | 3.70 | 1.15 | 4.1 | 1.25 | 1.51 | 2.16 | |
| 1976 | 3.70 | 1.16 | 5.8 | 1.25 | 1.52 | 2.15 | |
| 1975 | 3.57 | 1.18 | 3.3 | 1.25 | 1.54 | 2.17 | |
| 1974 | 4.35 | 1.18 | 6.2 | 1.25 | 1.54 | 2.14 | |
| 1973 | 3.85 | 1.21 | 5.5 | 1.25 | 1.57 | 2.17 | |
| 1972 | 3.33 | 1.23 | 6.4 | 1.25 | 1.60 | 2.19 | |
| 1971 | 3.45 | 1.27 | 2.4 | 1.25 | 1.65 | 2.24 | |
| 1970 | 3.57 | 1.25 | 5.5 | 1.25 | 1.63 | 2.19 | |
| 1969 | 3.33 | 1.29 | 0.3 | 1.25 | 1.66 | 2.22 | |
| 1968 | 3.33 | 1.26 | 7.5 | 1.25 | 1.60 | 2.12 | |
| 1967 | 3.33 | 1.33 | 6.1 | 1.25 | 1.68 | 2.20 | |
| 1966 | 3.23 | 1.39 | 6.0 | 1.25 | 1.73 | 2.24 | |
| 1965 | 3.23 | 1.45 | 4.7 | 1.25 | 1.79 | 2.30 | |
| 1964 | 3.23 | 1.48 | 3.7 | 1.25 | 1.81 | 2.31 | |
| 1963 | 3.13 | 1.50 | 0.7 | 1.25 | 1.82 | 2.30 | |
| 1962 | 3.13 | 1.47 | 2.4 | 1.25 | 1.77 | 2.21 | |
| 1961 | 3.23 | 1.47 | 3.3 | 1.25 | 1.75 | 2.16 | |
| 1960 | 3.70 | 1.48 | 1.6 | 1.25 | 1.75 | 2.14 | |
| 1959 | 3.70 | 1.47 | −0.1 | 1.25 | 1.71 | 2.07 | |
| 1958 | 3.70 | 1.43 | 4.5 | 1.25 | 1.64 | 1.96 | |
| 1957 | 3.57 | 1.46 | 1.7 | 1.25 | 1.66 | 1.95 | |
| 1956 | 3.70 | 1.44 | 1.2 | 1.25 | 1.62 | 1.88 | |
| 1955 | 3.70 | 1.41 | 2.0 | 1.25 | 1.58 | 1.80 | |
| 1954 | 3.57 | 1.39 | 2.3 | 1.25 | 1.54 | 1.73 | |
| 1953 | 3.57 | 1.37 | 0.9 | 1.25 | 1.51 | 1.67 | |
| 1952 | 3.70 | 1.34 | 2.5 | 1.25 | 1.46 | 1.57 | |
| 1951 | 3.70 | 1.33 | 3.0 | 1.25 | 1.43 | 1.51 | |
| 1950 | 3.70 | 1.36 | 11.5 | 1.25 | 1.41 | 1.45 | |
| 1949 | 8.33 | 1.57 | 0.4 | 1.25 | 1.57 | 1.57 | |

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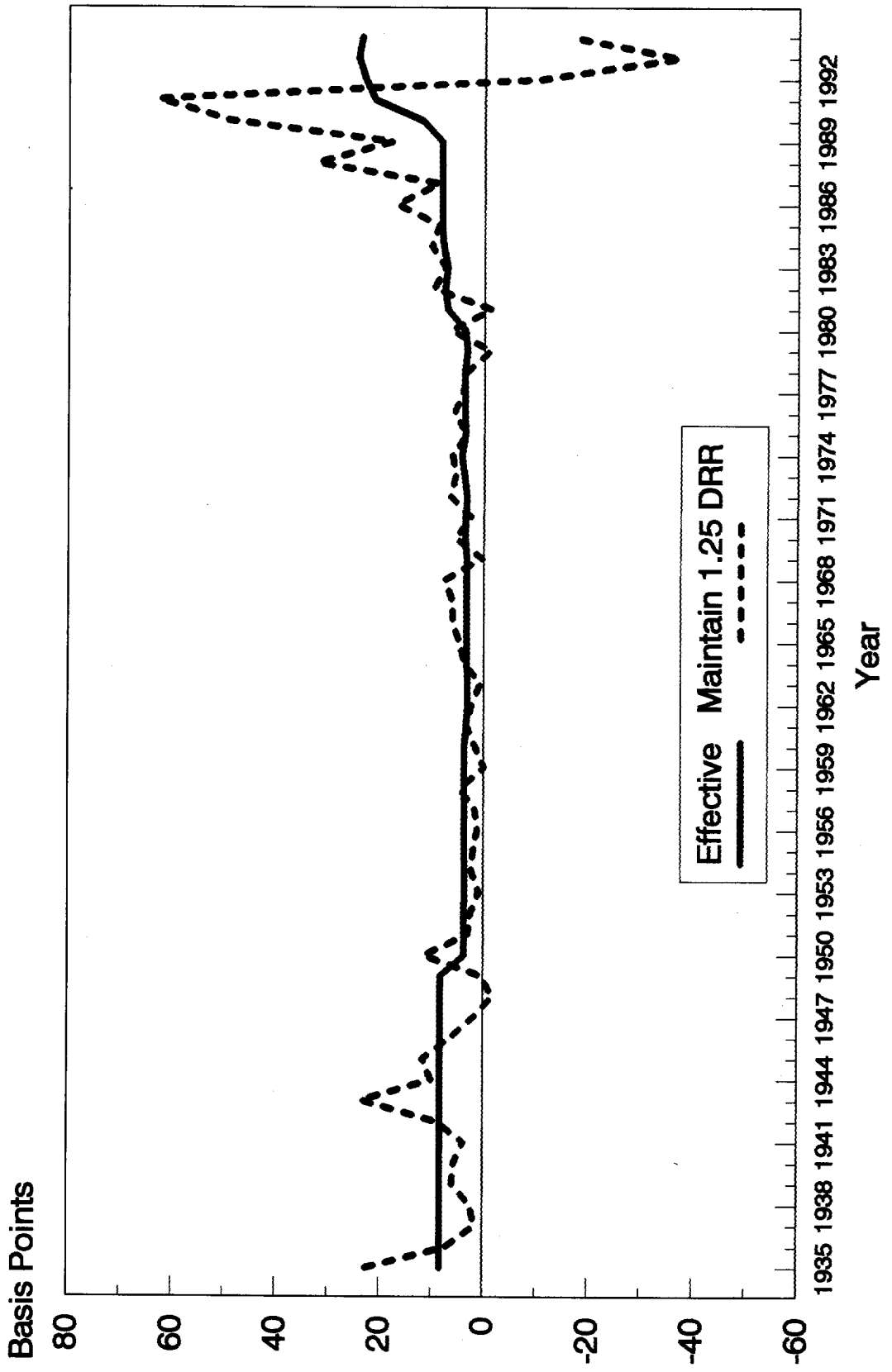
Figure 19

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Pay-as-you-go assessments have the undesirable effect that the banking industry must pay the most for its insurance at precisely the time it can least afford it. For example, as indicated in Figure 20, in 1988 through 1991, when the banking industry was experiencing its greatest difficulties since the 1930s, pay-as-you go assessments would have drastically reduced bank income. In 1988, median bank return-on-assets (ROA) would have been reduced by 37 percent; in 1989 by 19 percent; in 1990 by 57 percent; and in 1991 by 71 percent. These sharp reductions in income could have significantly impaired the recovery and recapitalization of the banking industry and increased the FDIC's costs from bank failures. Thus, the Board's obligation to consider the impact on bank earnings and capital of an assessment rate structure would virtually preclude it from adopting a rigid pay-as-you-go rate-setting approach.

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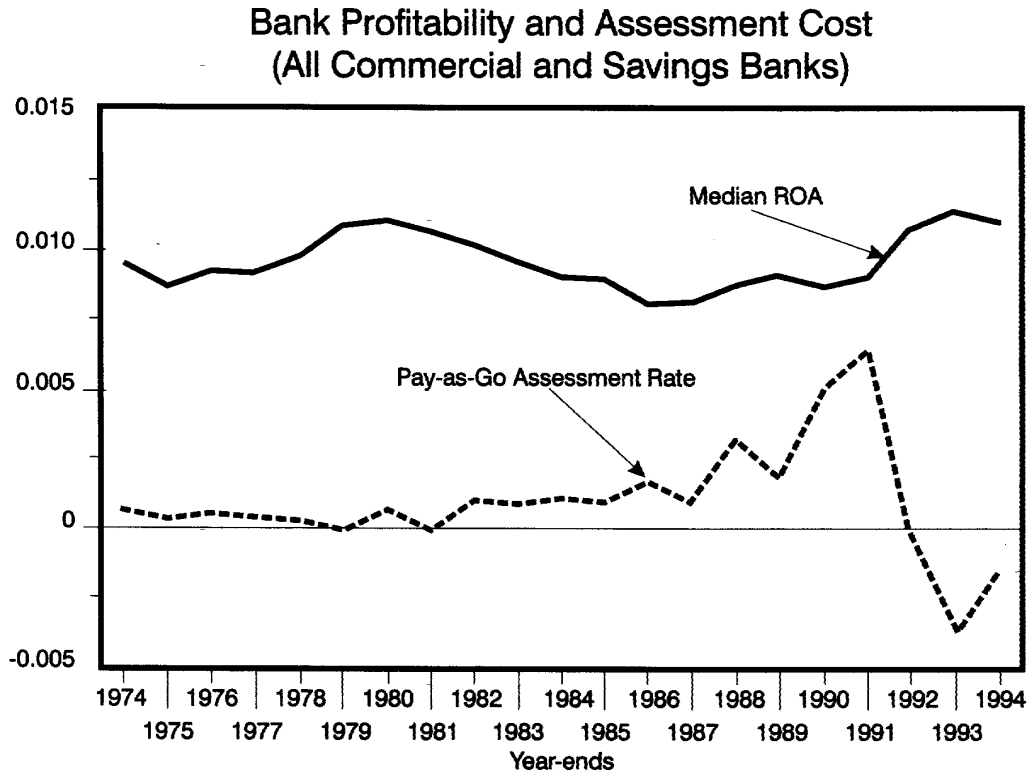
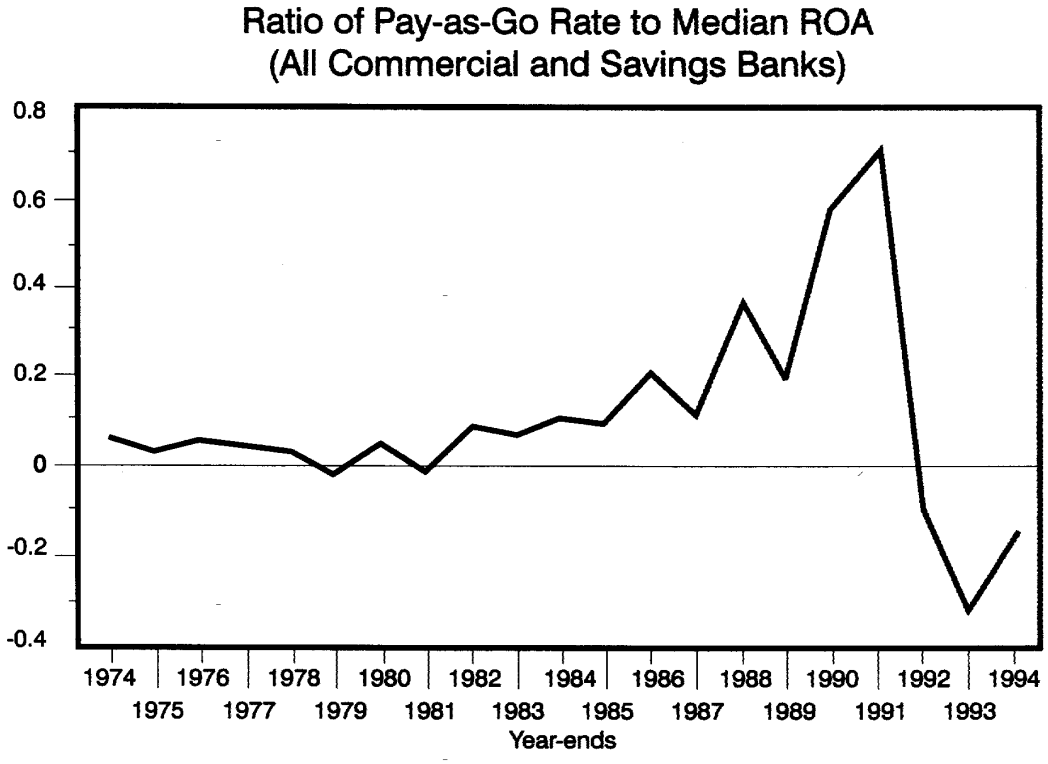
# Figure 20

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For these reasons, there is likely to be considerable pressure brought to bear on the FDIC during periods when the banking industry is under stress not to charge assessments high enough to maintain the DRR. If the reserve ratio falls below the DRR, the FDIC is required by law to increase assessments to regain the DRR within one year. However, if the drop is such that the DRR cannot be attained after a year of increased assessments, the FDIC is mandated to impose assessments equivalent to a minimum average weighted rate of 23 basis points which would be in effect until the DRR is attained—potentially for up to 15 years. While the requirement to charge an average rate of at least 23 basis points is less onerous for the industry and the insurance fund than a strict pay-as-you-go rule, it may be cause for concern. Although BIF institutions absorbed the increase in effective annual assessment rates to 23 basis points as of 1992 with no known direct casualties, it is notable that a strong recovery was emerging in the banking industry at the same time, in part because of a more favorable interest rate environment. It is questionable whether such increases could have been absorbed without a discernable adverse impact during a downturn or at the trough of a banking cycle such as 1988–89.

A strict pay-as-you-go approach results in substantial adverse effects on industry earnings and capital at the time the industry can least afford additional costs. It ignores the real risks that exist in banking beyond a six-month time horizon and, thus, appears to conflict with the Board's duty to consider fully the probability and likely amount of insurance losses and case resolution expenditures. Further, because such an approach would likely be abandoned during times of banking difficulties, it is likely to result in periodic episodes where the fund falls below its DRR and the FDIC is operating in ''recapitalization mode,'' or in even more severe straits.[29] For these reasons, the Board regards the pay-as-you-go approach as seriously flawed.

[29] For example, in 1991 the BIF reserve ratio reached a negative 0.36 percent of insured deposits.

The alternative basis for setting BIF assessments, and the basis adopted by the Board, is to look beyond the immediate time frame in estimating the revenue needs of the fund. For illustrative purposes Table 4 shows the assessments that would have equated revenues to costs over certain periods in the FDIC's history. The analysis begins at year-end 1949, after the FDIC had retired its initial Treasury capital contribution. From 1950 through 1980, a period of relative stability in banking compared to more recent times, an assessment rate of roughly 4.5 basis points would have balanced costs and revenues over the period. From 1980 through 1994 the required assessment rate would have been roughly 13 basis points, and for the entire 1950–1994 period the required rate would have been seven basis points. Under all these scenarios the reserve ratio of the fund would have fluctuated considerably and would have been ''maintained'' in a long-run average sense.

The FDIC's historical loss experience thus suggests that an effective assessment in the range of 4.5 basis points to 13 basis points would be expected to balance revenues and expenses over a relatively long period of time. There are several factors that cause the Board to adopt an effective average assessment rate at the low end of the range suggested by historical experience.

Recent developments suggest that the FDIC's expected cost resulting from a given level of banking risk may be smaller now than it was in the 1980s. Prompt corrective action has strengthened the regulators' hands in closing nonviable institutions promptly. The least-cost resolution process mandated by FDICIA has reduced the number of instances where the FDIC is permitted to protect uninsured depositors in bank failures. The nationwide depositor preference statute has placed the FDIC and the depositors ahead of all nondeposit creditors in receiverships of failing banks, although it remains to be seen whether, as the markets gain more experience with depositor preference, bank liabilities will shift as a bank approaches failure in ways that would reduce the FDIC's cost savings. Sectoral price inflation and the danger of subsequent deflation appear less of a concern now than in the 1980s. While underlying risks are still significant, the banking industry will face any new episode of problems with higher capital ratios than it enjoyed in the 1980s. Finally, the BIF balance and reserve ratio are much higher than they were during most of the 1980s, resulting in higher levels of investment income that will reduce the effective assessment rate needed to balance revenues and expenses.

The net result of these changed conditions is that a purely historical analysis of long-term expected costs should be substantially tempered by a judgment about the effect of these changes on expected losses. Since we have not had a significant episode of bank failures since the imposition of these changes, there is little empirical basis for speculation about the magnitude of cost reductions likely to occur. Nevertheless, it is the judgment of the Board that an effective assessment rate for the banking industry at the lower end of the 4.5 to 13 basis-point range suggested by historical experience is likely to cover expected losses to the BIF over a reasonable time horizon. The Board expects that this judgment will be revisited on a semiannual basis in light of changing conditions.

(f) *Rate Setting—Planning for Volatility in Insured Deposits.* The FDIC sets assessment rates to be effective for a subsequent six-month period. An element of uncertainty about the reserve ratio that will result from a given rate schedule arises from the possibility for insured deposits to grow or shrink over the six-month period at rates different than originally expected.

Figures 21 and 22 provide some perspective on this issue. Figure 21 displays the frequency of various percentage changes in insured deposits at commercial banks occurring during six-month intervals, quarterly from 1984 through the first quarter of 1995. The impacts of these percentage changes on the BIF reserve ratio, applied to an assumed BIF ratio of 1.25 percent of BIF-insured deposits as of the first quarter of 1995, are displayed in Figure 22.

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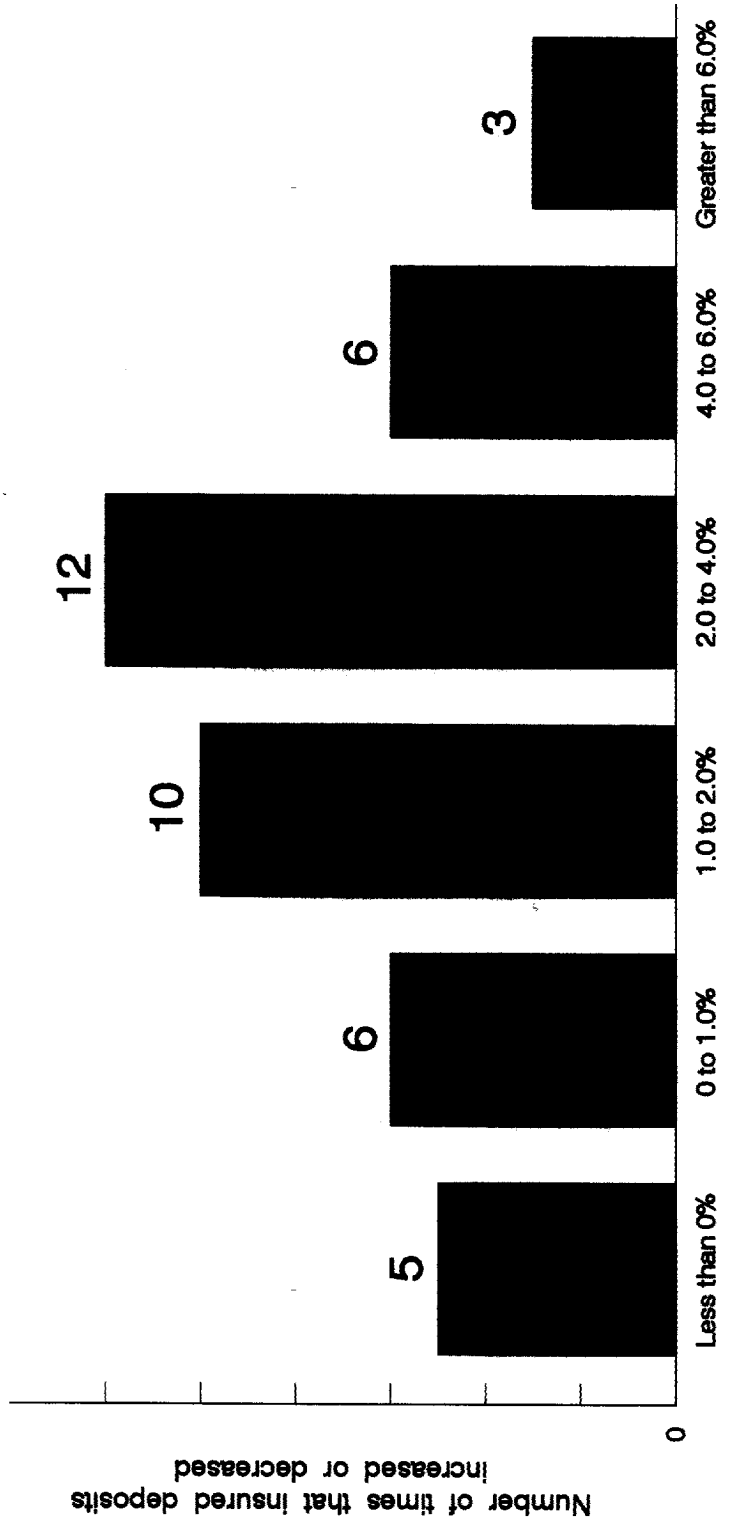
**Figure 21**

**Insured Deposits: Historical Growth* Experience Over the Past 10 Years**

**(Figure 22 shows the potential impact on the BIF)**



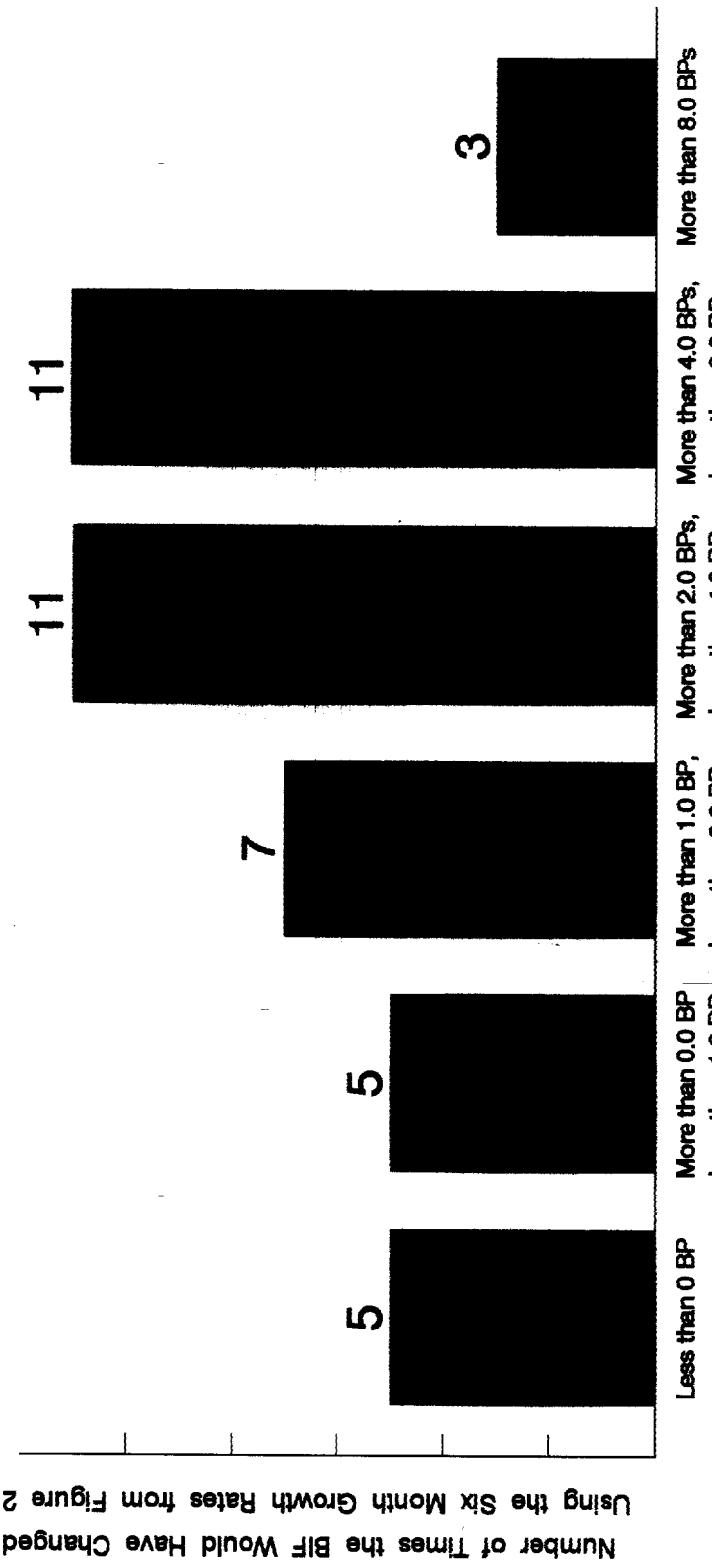

* Percentage changes in estimated insured deposits at commercial banks were calulated for each 6-month period from 1984Q2 - 1995Q1. The resulting absolute changes, not annualized, are displayed here.

** Prior to March 31, 1991 the call report information used to estimate insured deposits were reported only on June 30. Insured deposits for the intervening quarters are derived assuming that the ratio of insured deposits to total deposits remained unchanged from its June 30 value.

## Figure 22

## The Potential Impact* of Deposit Growth on the BIF

(Shows the Basis Point change the BIF would experience using historical Insured-deposit growth rates from Figure 21)




*Downward impact of the six-month percent changes in insured deposits from Figure 21 on a 1.25 percent BIF reserve ratio, measured in basis points of insured deposits.

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The 1984–1985 period described in Figures 21 and 22 can be divided into two subperiods. From 1984 to mid-1991, there was healthy, sustained growth in insured deposits. Since mid- to late 1991, however, insured deposits have for all intents and purposes not grown at all. It is uncertain how much the dramatic reduction in assessments resulting from the new rate schedule in the final rule will stimulate growth in BIF-insured deposits.

The experience of the 1984–1995 period indicates that changes in insured deposits can subject the BIF reserve ratio to considerable variation relative to the DRR. For example, during three six-month periods since 1984, insured deposits increased at rates that if applied today, would reduce the BIF reserve ratio by more than eight basis points, to less than 1.17 percent, other things constant.

The import of these facts is that if the FDIC set assessment rates so that the BIF were expected to end the subsequent six-month period at the DRR, based on a modest expected growth in insured deposits, then actual growth in insured deposits could deviate sufficiently from expected growth that the FDIC could end the assessment period with a reserve ratio of considerably less than the DRR. This attests to the difficulty of precisely managing the reserve ratio and suggests maintenance of the DRR may require the FDIC to allow for the possibility of unexpected changes in insured deposits.

2. Summary of Application of Statutory Factors

(a) *Financial Factors: Probability and Likely Amount of Insurance Losses; Case Resolution Expenditures and Income; Operating Expenses; Revenue Needs of the Fund.* As discussed in Section IV.B.1 above, the Board believes that its insurance responsibilities require it to look beyond the immediate timeframe in setting assessment rates. The probability and likely amount of losses and case resolution expenses are determined by risk factors that operate over a far longer horizon than six months. Accordingly, the Board's duty to assess risk-based assessments in accordance with these statutory factors require it to price the risk of adverse events that may occur beyond the immediate horizon.

Projected income and expense for the second half of 1995 are presented in Table 5. Total income from assessments and investments of about $1.1 billion is expected to exceed total insurance losses and operating expenses in the range of $302 million to $352 million. The BIF reserve ratio is expected to be between 1.27 percent and 1.31 percent at June 30, 1995, depending on the timing of the proposed refund of overpayments and the growth in insured deposits during the second quarter.

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Table 5

# BIF Assessment Rates
# Factors to be Considered

## Second Semiannual Assessment Period, 1995

| | |
|---|---|
| **BIF Ratio at June 30* (Percent)** | **1.27 to 1.31** |
| **Expected Income ($Millions)** | **1,149** |
| **Assessment Income ($Millions)** | **510** |
| **Net Interest Income ($Millions)** | **576** |
| **Expected Insurance Losses and Change in Provisions for Future Losses ($Millions)** | **-200 to 600** |
| **Expected Operating Expenses ($Millions)** | **252** |
| **Estimated BIF-Insured Deposits at December 31** ($Billions)** | **1,890 to 1,985** |
| **BIF Ratio at December 31*** (Percent)** | **1.24 to 1.36** |

* Range reflects effective date for new assessment schedule of May 1 versus June 1, and annual insured deposit growth rate of +2 percent versus -2 percent for second quarter.

** Lower bound assumes annual growth of insured deposits of -2 percent for second quarter and 0 percent growth for second half. Upper bound assumes annual growth of 6 percent for last 3 quarters of 1995, based on quarterly volatility from 1984:Q2 to 1995:Q1, as shown in Figure 21 *Federal Register* notice.

*** Reflects ranges for all preceding items in Table 2.

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The BIF reserve ratio as of December 31, 1995, will be dependent on a variety of factors, none of which can be predicted with certainty at this time.

The Board considered a range of assumptions about these factors in an effort to estimate the BIF reserve ratio at year-end 1995 that would result from the new rate schedule. Insurance losses and increases in the reserve for future failures during the second half of 1995 were assumed to range from a negative $200 million to a positive $600 million. This range reflects the possibility that institutions for which the FDIC has established a loss reserve would recover during the second half of 1995 or, alternatively, that currently unidentified institutions would develop problems during this period that would require the FDIC to establish a loss reserve. The range of variability considered for this factor is modest relative to the variations in the reserves that have occurred in recent years. BIF-insured deposits are assumed to grow at an annualized rate of between zero and six percent during the last three quarters of 1995. While six percent growth appears unlikely at this time, it is not outside the range of historical experience, as indicated in Figure 21. Under these assumptions, the BIF reserve ratio would be between 1.24 percent and 1.36 percent at year-end 1995.

The rule adopted by the Board thus is expected to result in an excess of revenue over expense for the second half of 1995. The Board based this decision on two general factors. First is the requirement to set assessment rates to account for the probability and likely amount of insurance losses. As just discussed, this requires the Board to consider the possibility of adverse events that may not occur during the immediate timeframe. The FDIC's experience during two very different times—the relatively stable period from 1950 to 1980, and the more volatile post-1980 period—suggests that an assessment in the range of 4 to 13 basis points would, on average, meet the revenue needs of the fund over a long period of time in light of the probability and amount of losses, case resolution expenditures, income, and operating expenses that have characterized the FDIC's past experience.

The Board has considered other factors governing the probability and likely amount of losses and case resolution expenditures that are likely to occur in future years. As discussed in more detail in Section IV.B.1(e), these include recent statutory changes (prompt corrective action, least-cost resolution and depositor preference), the currently reduced likelihood of problems arising from sectoral inflations and subsequent deflations, and the high capital ratios generally prevailing in banking. These factors tend to reduce the probability and likely amount of losses and caused the Board to adopt an effective assessment rate at the low end of the historically suggested range.

Another factor driving the selection of an assessment rate at the low end of the historical range was the investment income deriving from the current BIF balance. The investment income of the BIF will be substantially higher than it was during most of the last ten years. This reduces the need for assessment income to meet the revenue needs of the insurance fund. It is anticipated that the Board will revisit this issue on a semiannual basis by considering further adjustments in assessment rates if the BIF continues to grow in light of the Board's obligation to maintain the BIF at the target DRR.

The second general factor governing the selection of the rates adopted by the Board is the need to allow for the possibility of unanticipated changes in insured deposits or loss reserves that may occur during a semiannual period. The BIF ratios projected to occur at midyear and year-end 1995, respectively, are projections based on a reasonable range of estimates of the growth in BIF insured deposits during 1995. It must be emphasized that the level of BIF-insured deposits for neither date are known at this time. As discussed in subsection (f) above, based on the historical variability in semiannual changes in insured deposits, it is conceivable that the BIF ratio might not reach the DRR at year-end even under the new rate schedule. As indicated in Figure 22, it is within the range of the historical experience of the past 10 years that insured deposits can change by enough in a six-month period to move the BIF reserve ratio by as much as eight basis points.

Similarly, in evaluating the probability and likely amount of insurance losses, the Board considered the uncertainty inherent in predicting the level of the FDIC's reserve for future failures. This reserve is determined using a methodology agreed to by the U.S. General Accounting Office and is intended to estimate the cost of failures that can reasonably be anticipated over a subsequent 18-month period. The provision for insurance losses has displayed considerable volatility in recent years, ranging from a $15.4 billion addition to the reserve in 1991 to a $7.7 billion reduction in the reserve in 1993.

The net effect of variability in insured deposits and losses, and additions to the loss reserve, can be of considerable practical import in light of the Board's duty to maintain the DRR. For example, as indicated in Table 5, an annualized growth in BIF insured deposits of six percent over the last three quarters of 1995, in conjunction with insurance losses and additions to reserves of $600 million during the second half of 1995, would result in the BIF falling short of the DRR at year-end. The new rate schedule provides a level of comfort that unanticipated changes in insured deposits will not cause the BIF to fall below the DRR.

(b) *Impact on Earnings and Capital.* In deciding against adopting a strict pay-as-you-go policy for setting assessments, the Board considered the adverse effects on banking industry earning and capital of such a policy. As discussed in subsection (e), such a policy has the undesirable effect of sharply increasing the assessment costs of insured institutions at a time when they can least afford such increases. Subsection (e) describes how a pay-as-you-go policy applied during the 1980s would have had a severe adverse impact on the earnings and capital of the banking industry during the years 1988–1991.

The Board considered the near-term impact of adopting the 4 to 31 basis point rate matrix. Because assessment rates for most BIF members will decline under the new assessment schedule, the impact on earnings and capital will be positive. Lower assessment costs will reduce expenses by approximately $4.4 billion per year. Based on the industry's year-end 1994 average tax rate of 33 percent, after-tax profits will increase by approximately $3 billion per year. BIF members may pass some portion of the cost savings on to their customers through lower borrowing rates, lower service fees, and higher deposit rates. Their ability to do so will be affected by factors such as the level of competition faced by banks. As discussed in Section III above, the potential adverse effect on weaker institutions resulting from the decreased assessment rate paid by their competitors is likely to be minimal in terms of the number of additional failures.

(c) *Other Factors the Board Deems Appropriate.* When setting assessment rates to maintain the reserve ratio at the DRR, section 7(b)(2)(A)(ii) authorizes the Board to consider ''any other factors that the Board of Directors may deem appropriate''. The statute does not limit the discretion of the Board to determine those factors which are appropriate to consider in the rate-setting process. Although the statute specifically lists other criteria, such as case resolution expenditures, which must be included in its determination, the Board is free to take into account economic and other data which it deems relevant. Accordingly, the Board has incorporated

into its balancing process a review of variables particular to the financial services industry such as interest and exchange rate volatility and nonbank competition as well as projections for the economy in general.

The proposal reviewed the propriety of including under this factor consideration of the competitive disparity arising from the differential in assessments for members of the BIF and SAIF. The Board is adopting without change the interpretation of ''other factors'' which was set forth in the proposal.

The proposal discussed the interplay of the ''other factors'' provision with section 7(b)(2)(B), which requires the Board to set semiannual assessments for members of each fund ''independently'' from semiannual assessments for members of the other insurance fund. Read together, these provisions do not specifically prohibit Board consideration of the impact of BIF rates on SAIF members as long as the rates are set independently. However, the proposal indicated the potential conflict with section 7(b)(2)(A)(i) which requires the Board to set rates to maintain the BIF reserve ratio. If the Board were to take into consideration the impact on the SAIF when it set BIF rates (*i.e.*, setting BIF rates higher than otherwise necessary to minimize the disparity between BIF and SAIF rates), and, as a result, the reserve ratio continued to increase in excess of the DRR, it might be considered a violation of the statute.

Although a total of 591 commenters indicated that the Board should not take into account the impact on the SAIF and its members when setting the rates for BIF members, few of those comments provided any legal analysis. Those that did, (including the ABA, ABA State Association Division, IBAA, Citicorp, New York Clearing House, the California Bankers Association, GreenPoint Bank and Bank of Boston) concurred with the analysis set forth in the proposal. A number of these commenters indicated that ''other'' factors should be interpreted only to encompass factors that relate to the condition of the BIF.

By contrast, the Savings Association Insurance Fund Industry Advisory Committee (SAIFIAC) indicated that the FDIC ''has an equal duty and responsibility to each Fund * * * [which] dictates that any proposal to lower BIF rates must be coupled formally with both a regulatory determination that the SAIF PROBLEM MUST BE DEALT WITH, and a proposal for a solution.'' (Emphasis in original.) SAIFIAC further indicated its belief that the proposal declined to take into account the impact on SAIF because that impact could not be quantified.

The Board continues to believe that setting BIF rates higher than otherwise would be warranted would likely cause an increase in the BIF reserve ratio above in the DRR in violation of the statute. Accordingly, the Board is adopting the interpretation of ''other factors'' as proposed.

3. Conclusions

The principal conclusion of the foregoing analysis is that the exercise of the FDIC's insurance responsibilities require it to look beyond the immediate period in pricing risk. A pure pay-as-you-go pricing system can expose the banking industry to unduly high and volatile insurance assessments that can adversely affect the soundness of the banking system and the BIF. Moreover, the FDIC's experience with bank failures makes it clear that a meaningful evaluation of the risk associated with even highly rated and well-capitalized institutions must look beyond a six-month period. Accordingly, the Board will undertake to look beyond the immediate period in determining the revenue needs of the BIF.

The second principal conclusion is that the Board's duty to maintain the DRR as a target requires it to take account of the substantial variability of a number of factors influencing the revenue needs of the fund. Insured deposits display enough variability to cause the BIF reserve ratio to fluctuate considerably relative to the DRR. Insurance losses are extremely difficult to predict, and the FDIC's policy of establishing loss reserves for failures expected to occur as much as 18 months in the future magnifies the problem of prediction. This is because the prediction of the BIF's income in the second half of 1995 necessarily must allow for the possibility of changes in the reserve for future failures that may not occur until year-end, for failures anticipated to occur through mid-1997.

In light of the imprecision inherent in the measurement of banking risk—whether through examination ratings, capital measures or models used to project bank failures—the Board does not intend to specify a time period over which the FDIC will attempt to estimate its expenses for the purpose of setting assessment rates. Instead, rate-setting will be undertaken as an evolving process in which historical analysis tempered by informed judgment about current conditions, including the investment income deriving from the balance in the BIF, is revisited on a semiannual basis.

The historical analysis presented above suggests that an effective average assessment rate in the range of 4.5 to 13 basis points would be expected to meet the revenue needs of the fund over the very long term. The factors outlined above have convinced the Board that the lower end of the assessment range is reflective of the risks currently facing the BIF and, moreover, takes adequate account of the variability in insured deposits, losses, and additions to the reserve for future failures that may affect the adequacy of the BIF relative to the DRR over the second half of 1995. The Board is, accordingly, adopting the 4 to 31 basis point rate matrix as originally proposed.

In adopting the 4 to 31 basis point rate schedule, the Board emphasizes its expectation that the rate-setting process going forward will evolve continuously. For example, even assuming no change in the FDIC's risk exposure to potential bank failures, the attempt to balance revenues and costs over a longer horizon is consistent with semiannual adjustments to reflect changes in the fund balance. Increases in the BIF balance, due either to shocks or to favorable industry conditions that persist beyond the period that could be expected, would increase investment income and make it less likely that the fund would fall short of the DRR over any given future horizon, other things equal. In response to this, and depending upon other relevant factors, the Board may deem it appropriate in subsequent semiannual periods to reduce assessments below the level that previously had been expected to be necessary to meet the revenue needs of the funds.

## V. Application and Adjustment of New Assessment Schedule

The Board is adopting the proposal to apply the new assessment rate schedule in the semiannual period during which the DRR is achieved, with refunds of any overpayments from the first day of the month following the month in which the DRR is achieved. Under the final rule, overpayments will be refunded with interest at a rate that corresponds to the rate of interest earned by the FDIC on the overpayments.

In addition, the Board is adopting, with two clarifications, the proposed process for modifying the new assessment rate schedule by means of an adjustment factor of 5 basis points, as necessary to maintain the reserve ratio at 1.25 percent without the necessity of engaging in separate notice-and-comment rulemaking proceedings for each adjustment.

*A. Semiannual Period During Which DRR Is Achieved*

In the proposal, the Board interpreted the language and legislative history of section 7(b)(2)(E) of the FDI Act—that is, the requirement to assess a minimum average rate of 23 basis points—as prohibiting the Board from decreasing the assessment rates paid by BIF members until after the FDIC is able to confirm that the reserve ratio has, in fact, reached the DRR, regardless of projections for BIF recapitalization. If the Board were to decrease the rates based on projections for BIF recapitalization, the reserve ratio would ''remain'' below the DRR at the time of the Board's action and the minimum-assessments provision of section 7(b)(2)(E) would continue to apply. Accordingly, the Board proposed to decrease assessment rates once the FDIC has been able, based on a review of the relevant quarterly reports of condition (call reports) necessary to determine the amount of estimated insured deposits,[30] that the DRR has in fact been achieved. The rate reduction would be effective on the first day of the month following the month in which the DRR is attained. The Board further proposed to refund, with interest from the date the new rates take effect, any overpayments of assessments under the new rate schedule resulting from the delay in confirming attainment of the DRR.

Of the 356 commenters addressing these elements of the proposal, 343 expressed support for the process of implementing the new rates and refunding overpayments. Of these, 286 respondents expressly mentioned support for refunding the assessments with interest from the date the new rates become effective.

One commenter thought that, for overpayments in the first semiannual assessment period of 1995, interest should be paid from the date the FDIC received the assessment in January, rather than from the date the new rates take effect. Eight commenters disapproved of the proposed process, believing rates should be dropped more quickly.

Numerous commenters urged that the determination be made as quickly as possible. For example, the IBAA urged the FDIC to ''make the necessary determinations as soon as humanly possible so that banks will enjoy the benefits of premium reduction as early as possible.'' The ABA urged the FDIC to reduce assessments in the third quarter ''if the weight of the evidence shows that the BIF will have reached the DRR before June 30.'' The ABA's position is that waiting for confirmation of data from the June 30 call reports would merely unnecessarily complicate the whole process of changing rates.[31]

The FDIC has carefully considered the comments addressing these issues. However, the Board continues to believe, given the statutory language of section 7(b)(2)(E) and the relevant legislative history, that the FDIC does not have authority to lower assessment rates until it is certain that the DRR has been attained. Accordingly, as proposed, the Board has decided not to apply the new rate schedule until the first day of the month after the month in which the DRR has actually been reached. In the event it is determined that the DRR has been reached before the September 30 assessment payment date, as is expected, the Board will promptly notify BIF members that the amount of the September 30 payment will be adjusted to reflect the new rate schedule. In order to avoid any additional overpayment or confusion, the final rule provides that the FDIC also may delay collection of the assessments that would otherwise be due on September 30 (or such later payment date that next follows the effective date of the new rate schedule). If this occurs, it is very likely that the FDIC would also delay for a brief period the date of the associated invoice, which is provided one month prior to the collection date (for example, the invoice date for a September 30 collection date is August 30).

Because the new assessment rate schedule will apply from the first day of the month after the month in which the DRR was achieved, it is likely to be determined that many BIF members have overpaid their assessments. For example, if the DRR is determined to have been achieved on May 31 and the new assessment schedule becomes retroactively effective on June 1, it is likely that all institutions except those paying the highest rates will have overpaid their assessment for the first semiannual period of 1995. Similarly, most institutions will have overpaid their assessments paid on June 30, 1995, for the July-September quarter of the second semiannual period.

In such instances, the FDIC will refund the overpayment with interest from the effective date of the new assessment rate schedule, in the case of overpayments for the first semiannual period, and from the payment date, in the case of overpayments for the second semiannual period. The FDIC anticipates that it will provide such refunds electronically by means of credits sent through the Automated Clearing House (ACH) system, but may do so by check or in more than one payment. In the case of electronic refunds, it is anticipated that the same routing transit numbers and accounts used for direct-debit assessments collection will be used for the electronic credits.

Under the proposal, the interest rate to be paid by the FDIC on overpayments resulting from a change in the BIF rate schedule would have been the rate normally applicable to assessment over- or underpayments in general. However, under the unique circumstances applicable here, the Board has decided to pay an interest rate that corresponds to the rate actually earned by the FDIC on the overpayments. Because the FDIC knew that it was highly likely that the June 30 collection of assessments at the existing rates would result in significant overpayments for all but the riskiest institutions, the Board believes that it is fair and appropriate to pay an interest rate that returns to the overpaying institutions the amount of interest actually earned by the FDIC on their overpayments. Accordingly, the final rule incorporates a special interest rate that is the arithmetic average of the overnight simple interest rate received by the FDIC on its U.S. Treasury investments during the relevant period (including weekends and holidays at the rate for the previous business day). For example, had the relevant period been June 1995, the applicable rate would have been 6 percent.

The FDIC recognizes that, once the new assessment rate schedule becomes effective, insured institutions may have

[30] The reserve ratio is the dollar amount of the BIF fund balance divided by the estimated insured deposits of BIF members. Although data for the fund balance is accounted for on a monthly basis, the amount of estimated insured deposits is based on data from the quarterly reports of condition (call reports). Because it appears that the BIF recapitalized in the second quarter, the amount of estimated insured deposits would be determined by the information on the June call reports which are due on July 30 (or for some institutions, August 14). Due to the customary time lag involved in verifying the information from the call reports, it is probable that the determination that the DRR has been achieved will not be made until mid-September. Moreover, because the fund balance is determined only on a monthly, rather than a daily basis, the date on which the Board ascertains that the DRR has been attained is the last day of the month.

[31] The ABA reiterated this view in a May 19, 1995, meeting with FDIC staff members, which the ABA had requested to discuss the proposal. At the meeting, the ABA urged that the FDIC quickly act to reduce BIF rates to a level no higher than that necessary to bring the BIF to its DRR. FDIC staff stated the Board's position reflected in the proposal that the FDIC is precluded from reducing rates until it has been able to determine that the DRR has in fact been reached. A summary of the ABA meeting is included in the public comment file on the proposal, along with other oral and written comments submitted by the ABA and other respondents.

questions regarding the application of the new rate schedule and the mechanics of the refund process, including how and when refunds will be made. Accordingly, the FDIC will be providing additional, more specific information regarding these matters to insured institutions.

*B. Semiannual Periods after the DRR is Achieved: the Adjustment Factor*

As to the semiannual assessment periods after the DRR is achieved and the new rate schedule has become effective, the Board is adopting the proposed adjustment factor, with two clarifications.

Under the proposal, the new assessment rate schedule, once activated, would continue to apply to succeeding semiannual periods, with modification as necessary in future periods to maintain the reserve ratio at the target DRR by means of an adjustment factor of up to and including an aggregate of plus-or-minus 5 basis points or fraction thereof. The proposal limited to this 5 basis-point range the amount by which the Board could adjust the assessment rate schedule without engaging in a notice-and-comment rulemaking proceeding. Such adjustments would be applied to each cell in the rate schedule uniformly; they could not be applied only to selected risk classifications. For example, if the Board were to adjust the rate schedule by a reduction of 2 basis points, then the assessment rate applicable to each assessment risk classification would be reduced by 2 basis points (from, say, 4 to 2 basis points, 7 to 5 basis points, 14 to 12 basis points, and so on). Thus, the differences between the respective cells in the rate schedule would remain unchanged. Similarly, such adjustments would neither expand nor contract the 27-basis point spread between the lowest- and highest-risk classifications.

The 5 basis-point maximum would limit the extent to which the rate schedule could be adjusted over time without triggering a new notice-and-comment rulemaking proceeding. Thus, for example, if the rate for 1A banks were 4 basis points, no matter how many times the assessment schedule were adjusted up or down, the rate for 1A banks could not be increased over time to a rate higher than 9 basis points without a new notice-and-comment rulemaking proceeding. The same limitations would apply to rate reductions.

Under the proposal, the adjustment factor for any particular semiannual period would be determined by (1) the amount of assessment income necessary to maintain the reserve ratio at 1.25 percent (taking into account operating expenses and expected losses and the statutory mandate for the risk-based assessment system) and (2) the particular risk-based assessment schedule that would generate that amount considering the risk composition of the industry at the time. The Board proposed to adjust the assessment rate schedule every six months by the amount, up to and including the maximum aggregate adjustment factor of 5 basis points, necessary to maintain the reserve ratio at the DRR. Such adjustments would be adopted in a Board resolution that reflects consideration of the following statutory factors: (1) Expected operating expenses; (2) projected losses; (3) the effect on BIF members' earnings and capital; and (4) any other factors the Board determined to be relevant.

The Board resolution would be adopted and announced at least 45 days prior to the date the invoice is provided for the first quarter of the semiannual period for which the adjusted rate schedule would take effect. Thus, the rate schedule applicable to the November 30 invoice would be announced no later than October 16 and the schedule applicable to the May 30 invoice would be announced by April 15. If the amount of the adjustment under consideration by the FDIC would result in an adjusted schedule exceeding the 5 basis-point maximum, then the Board would initiate a notice-and-comment rulemaking proceeding to be completed prior to the invoice date.

A total of 75 commenters addressed the issues of the proposed process to adjust the rates and the amount of the adjustment factor. Of the 61 comments in support of the process (including 8 trade associations and 47 BIF members), 41 indicated that the size of the adjustment factor (5 basis points) was appropriate. The ABA (as well as the ABA State Association Division) supported the process only so long as the purpose of the adjustment was to maintain the reserve ratio at the DRR. A number of commenters, including Signet Banking Corporation and Wells Fargo Bank, supported the proposed adjustment process but noted that it should be used both for rate increases and decreases. (The proposal intended that the adjustment process would be used both for increases and decreases.) NationsBank also supported the proposal but indicated any adjustments should be made not more frequently than annually.

Other commenters expressed concern about the lack of opportunity for comment, particularly where an increase in rates could have a significant effect on BIF members. For example, the IBAA opposed the use of the proposed adjustment process for increases but not for decreases in the assessment schedule because of the lack of opportunity to comment on assumptions made by the FDIC concerning expected expenses, loss rates, investment income, and other factors. The IBAA indicated that this is particularly important in a case where the FDIC would raise the schedule by the full amount of the adjustment factor (5 basis points) which would represent more than double the proposed 4 basis-point rate for institutions in the 1A risk classification. Chemical Bank opposed both the process and the size of the adjustment factor for both increases and decreases in the rate, noting that an increase of 5 basis points would represent more than a doubling of the rate for most banks. The Bankers Roundtable also expressed concerns with permitting the FDIC to raise assessments without notice and comment where an increase could significantly increase costs to the banks. To provide the FDIC with some flexibility, it proposed an alternative process whereby the use of the adjustment factor at the FDIC's sole discretion would be limited to 2 basis-point changes; changes above 2 basis points but less than 5 basis points could be imposed after an abbreviated comment period (two-three weeks); changes above 5 basis points would go through the normal comment period.

Banc One Corporation opposed the proposed adjustment process based on the erroneous belief that it would permit the Board to raise the assessment schedule by as much as 9 basis points from one semiannual period to another without the opportunity for notice and comment. Instead, Banc One favored limiting the adjustment factor to an increase or decrease of 1 basis point only. The New York Clearing House opposed the adjustment process, noting that an increase of 5 basis points would represent a 125 percent increase for banks with risk classification 1A. However, the Clearing House also misunderstood the proposed process, believing that the schedule could be increased sharply ''in only a few years without ever seeking public comment''.

The Board has decided to adopt the proposed rate-adjustment process, with two clarifications. First, given the apparent confusion regarding the maximum extent to which the rate schedule could be adjusted without triggering a new rulemaking proceeding, § 327.9(b)(1) of the final rule clarifies that the maximum adjustment level of plus-or-minus 5 basis points is intended to apply as an aggregate amount, over

time, taking into account both increases and decreases, but that no one adjustment may constitute an increase or decrease of more than five basis points. This clarification reflects the Board's intent to seek public comment on, for example, a proposed increase of 3 basis points for a semiannual period following an earlier period for which the Board, by resolution, adjusted the rate schedule upward by 3 basis points, or a proposed decrease of 6 basis points after a previous increase of three basis points, but not to seek public comment on an increase of 5 basis points following an intervening decrease of 2 basis points.[32] Similarly, language also has been added to this paragraph to expressly state the Board's intent, as indicated in the proposal, that any adjustment apply uniformly to each rate in the schedule.

Second, the final rule also expressly reflects the FDIC's intent promptly to make public the basis for any Board decision to adjust the rate schedule. Under § 327.9(b)(2) of the final rule, with this clarification, the Board will announce the semiannual assessment schedule for the next semiannual period, with the amount and basis for any adjustment from the then-existing schedule, no later than 45 days before the invoice date for the first quarter of that next semiannual period (that is, by October 16 or April 15, as applicable).

The Board fully understands concerns regarding the possibility of assessment rate increases without the benefit of full notice-and-comment rulemaking. However, the Board notes that the adjustment applies to decreases as well as to increases and that, in the current economic environment, the former could be more common than the latter. Moreover, the Board's discretion in applying the adjustment factor is not unfettered. The maximum amount of the adjustments is limited to an increase or decrease of 5 basis points, either at any one time or over time, and in adopting an adjustment the Board must satisfy the criteria enumerated in § 327.9(b) of the final rule, which reflect the statutory rate-setting factors referred to above. Moreover, as with any of its decisions, the Board may act only after due deliberation and in a reasonable manner. As previously indicated, the basis for any adjustment adopted by the Board will be made public promptly after the Board's decision.

Furthermore, while the Board appreciates these concerns, it also recognizes that frequent rate adjustments may be necessary to maintain the reserve ratio at the DRR, and is mindful of the costs involved—both to the industry and the FDIC—of engaging in a formal rulemaking proceeding each and every time even a minor adjustment in the assessment rate schedule is needed. The Board believes—as do 61 of the 75 commenters addressing this issue—that an acceptable balance of the competing concerns is achieved by the approach taken in the final rule.

The Board has noted the suggestion made by the Bankers Roundtable that the final rule include a modified adjustment procedure under which adjustments of between 2 and 5 basis points be subject to an abbreviated notice-and-comment period of 2 to 3 weeks. However, the Board is concerned that such a short period would not allow sufficient time for interested parties both to become aware of a proposed adjustment and still file timely comments. In addition, an abbreviated comment period involves the same costs as a non-abbreviated period, both to interested parties and to the FDIC.

The adjustment factor is expected to provide the Board with the flexibility to raise a maximum additional $1.2-$1.4 billion in the near term without undertaking an additional rulemaking. The 5 basis-point maximum appears modest when viewed historically, as the loss-to-insured deposits ratio has been quite variable; the standard deviation was 8.5 basis points for the 1934–94 period (Figure 8) and 11.9 basis points for 1980–94. In view of the currently favorable banking environment, however, a 5 basis-point adjustment factor should be sufficient to maintain the target DRR in the near term.

[32] The following hypothetical examples illustrate this concept. *Example 1.* (a) On April 15, 1996, the Board adjusts the assessment rate schedule upward by 3 basis points to 7-to-34 basis points. Notice-and-comment rulemaking is not required because the increase does not exceed the 5 basis-point adjustment maximum. (b) On October 16, 1996, the Board again increases the adjusted schedule by 3 basis points, to 10-to-37 basis points. Such action requires notice-and-comment rulemaking because it would result in an aggregate increase of more than 5 basis points. *Example 2.* (a) On April 15, 1996, the Board increases the rate schedule by 3 basis points to 7-to-34 basis points. Notice and comment rulemaking is not required. (b) On October 16, 1996, the Board decreases the previously-adjusted schedule by 2 basis points to 5-to-32 basis points. Rulemaking is not required because the change, in the aggregate, does not result in an increase or decrease of more than 5 basis points. (The change, in the aggregate, is a net increase of one basis point.) (3) On April 15, 1997, the Board adjusts rate schedule upward by 5 basis points. Such action requires notice-and-comment rulemaking because it would result in an aggregate increase of more than 5 basis points, taking into consideration the previous adjustments. In addition, notice-and-comment rulemaking would be required for any single step in either of these examples which by itself, without aggregation, would constitute an increase or decrease of more than 5 basis points.

## VI. Technical Amendments

In addition to the amendments discussed above, the Board is further amending the assessments regulation to delete the BIF Recapitalization Schedule currently set forth in 12 CFR 327.9(d). Because the DRR has already been or soon will be reached, this schedule is no longer needed. Moreover, the schedule, which calls for BIF to reach the DRR in 2002, is now obsolete.

In addition, the final rule substitutes the term ''institution'' for the outdated term ''bank'' in § 327.9(a).

## VII. Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in this notice. Consequently, no information has been submitted to the Office of Management and Budget for review.

## VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply to a rule of particular applicability relating to rates, wages, corporate or financial structures or reorganizations thereof. *Id.* at 601(2). Accordingly, the statute does not apply to the proposed changes in the assessment rate schedule, the structure of that schedule and future adjustments thereto. In any event, to the extent an institution's assessment is based on the amount of its domestic deposits, the primary purpose of the Regulatory Flexibility Act, that agencies' rules do not impose disproportionate burdens on small businesses, is fulfilled.

## IX. Riegle Community Development and Regulatory Improvement Act of 1994

Section 302(b) of the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103–325, 108 Stat. 2160 (1994), requires that, in general, new and amended regulations that impose additional reporting, disclosure, or other new requirements on insured depository institutions shall take effect on the first day of a calendar quarter. This restriction is inapplicable to the final rule, which does not impose such additional or new requirements.

## List of Subjects in 12 CFR Part 327

Assessments, Bank deposit insurance, Banks, banking, Financing Corporation, Savings associations.

For the reasons stated in the preamble, the Board is amending part 327 of title 12 of the Code of Federal Regulations as follows:

## PART 327—ASSESSMENTS

l. The authority citation for part 327 continues to read as follows:

**Authority:** 12 U.S.C. 1441, 1441b, 1817–1819.

2. Section 327.8 is amended by adding a new paragraph (i) to read as follows:

**§ 327.8 Definitions.**

* * * * *

(i) As used in § 327.9, the following terms have the following meanings:

(1) *Adjustment factor.* The maximum number of basis points by which the Board may increase or decrease Rate Schedule 2 set forth in § 327.9(a).

(2) *Assessment schedule.* The set of rates based on the assessment risk classifications of § 327.4(a) with a difference of 27 basis points between the minimum rate which applies to institutions classified as 1A and the maximum rate which applies to institutions classified as 3C.

3. Section 327.9 is amended by revising paragraph (a), removing paragraph (b), redesignating paragraph (c) as paragraph (d), and adding new paragraphs (b) and (c) to read as follows:

**§ 327.9 Assessment rate schedules.**

(a) *BIF members.* Subject to § 327.4(c), the annual assessment rate for each BIF member other than an institution specified in § 327.31(a) shall be the rate in the following Rate Schedules applicable to the assessment risk classification assigned by the Corporation under § 327.4(a) to that BIF member. Until the BIF designated reserve ratio of 1.25 percent is achieved, the rates set forth in Rate Schedule 1 shall apply. After the BIF designated reserve ratio is achieved, the rates set forth in Rate Schedule 2 shall apply. The schedules utilize the group and subgroup designations specified in § 327.4(a):

RATE SCHEDULE 1

| Capital group | Supervisory subgroup | | |
|---|---|---|---|
| | A | B | C |
| 1 ..... | 23 | 26 | 29 |
| 2 ..... | 26 | 29 | 30 |
| 3 ..... | 29 | 30 | 31 |

RATE SCHEDULE 2

| Capital group | Supervisory subgroup | | |
|---|---|---|---|
| | A | B | C |
| 1 ..... | 4 | 7 | 21 |
| 2 ..... | 7 | 14 | 28 |
| 3 ..... | 14 | 28 | 31 |

(b) *Rate adjustment; announcement—*(1) *Semiannual adjustment.* The Board may increase or decrease Rate Schedule 2 set forth in paragraph (a) of this section up to a maximum increase of 5 basis points or a fraction thereof or a maximum decrease of 5 basis points or a fraction thereof (after aggregating increases and decreases), as the Board deems necessary to maintain the reserve ratio at the BIF designated reserve ratio. Any such adjustment shall apply uniformly to each rate in the schedule. In no case may such adjustments result in a negative assessment rate or in a rate schedule that, over time, is more than 5 basis points above or below Rate Schedule 2, nor may any one such adjustment constitute an increase or decrease of more than 5 basis points. The adjustment factor for any semiannual period shall be determined by:

(i) The amount of assessment revenue necessary to maintain the reserve ratio at the designated reserve ratio; and

(ii) The assessment schedule that would generate the amount of revenue in paragraph (b)(1)(i) of this section considering the risk profile of BIF members.

(2) In determining the amount of assessment revenue in paragraph (b)(1)(i) of this section, the Board shall take into consideration the following:

(i) Expected operating expenses;

(ii) Case resolution expenditures and income;

(iii) The effect of assessments on BIF members' earnings and capital; and

(iv) Any other factors the Board may deem appropriate.

(3) *Announcement.* The Board shall:

(i) Adopt the semiannual assessment schedule and any adjustment thereto by means of a resolution reflecting consideration of the factors specified in paragraph (c)(2)(i) through (iv) of this section; and

(ii) Announce the semiannual assessment schedule and the amount and basis for any adjustment thereto not later than 45 days before the invoice date specified in § 327.3(c) for the first quarter of the semiannual period for which the adjusted assessment schedule shall be effective.

(c) *Special provisions.* The following provisions apply only with respect to the first time the BIF designated reserve ratio is achieved after 1994:

(1) Notwithstanding the provisions of § 327.3(c)(2) or § 327.3(d)(2), the Corporation may modify the time of the direct debit of the assessment payment which next occurs after the Board determines that the designated reserve ratio has been achieved;

(2) Notwithstanding the provisions of § 327.7(a)(3), if, as a result of the new rate schedule having gone into effect, an institution has overpaid its assessment, the Corporation shall provide interest on any such overpayment, as follows:

(i) For the first semiannual period of 1995, beginning on the date the new rate schedule goes into effect; and

(ii) For the second semiannual period of 1995, beginning on the date of the overpayment; and

(3) Notwithstanding the provisions of § 327.7(b)(3), the interest rate applicable to overpayments described in paragraph (c)(2) of this section shall be the arithmetic average of the overnight simple interest rates received by the Corporation on its U.S. Treasury investments for the period during which the Corporation held the overpayment amount.

* * * * *

By order of the Board of Directors.

Dated at Washington, DC, this 8th day of August 1995.

Federal Deposit Insurance Corporation.

**Jerry L. Langley,**

*Executive Secretary.*

[FR Doc. 95–20170 Filed 8–15–95; 8:45 am]

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## 12 CFR Part 327

**RIN 3064–AB59**

## Assessments; Retention of Existent Assessment Rate Schedule for SAIF-Member Institutions

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Final rule.

**SUMMARY:** This final rule retains the existing assessment rate schedule applicable to members of the Savings Association Insurance Fund (SAIF). The effect of this final rule is that the SAIF assessment rates to be paid by depository institutions whose deposits are subject to assessment by the SAIF will continue to range from 23 cents per $100 of assessable deposits to 31 cents per $100 of assessable deposits, depending on risk classification.

**EFFECTIVE DATE:** This final rule becomes effective September 15, 1995.

**FOR FURTHER INFORMATION CONTACT:** James R. McFadyen, Senior Financial Analyst, Division of Research and Statistics, (202) 898–7027, or Valerie Jean Best, Counsel, Legal Division, (202) 898–3812, Federal Deposit Insurance Corporation, Washington, D.C. 20429.

**SUPPLEMENTARY INFORMATION:** The Board of Directors of the FDIC (Board) is retaining the existing assessment rate

schedule applicable to members of the SAIF. The order of discussion under this caption is as follows. The proposed rule to retain the existing assessment rate schedule for SAIF-member institutions is outlined in Section I. The final rule adopted by the Board through this rulemaking procedure is described in Section II. The statutory provisions governing SAIF assessment rates are summarized in Section III. Next, a detailed description of the problems confronting the SAIF is set forth in Section IV. The comment letters received in response to the proposed rule are analyzed under the caption ''Comment Summary'', and the FDIC's response to the comments is set forth under the caption ''Adoption of Final Rule''.

**Background**

*I. Introduction; The SAIF Assessment-Rate Proposal*

The Board has the legal authority to reduce SAIF assessment rates to a minimum average of 18 basis points until January 1, 1998. Beginning January 1, 1998, the minimum average rate must be 23 basis points until SAIF achieves its designated reserve ratio (DRR) of 1.25 percent of estimated insured deposits. Based upon the results of its semiannual review of the capitalization of the SAIF and of the SAIF assessment rates, the Board was inclined to retain the existing assessment rate schedule applicable to SAIF-member institutions for the second semiannual assessment period of 1995 so that capitalization of the SAIF is accomplished as soon as possible.

The FDIC wished to have the benefit of public comment before ending its review for the period, however. Therefore, on February 16, 1995, the Board published a proposed rule to retain the existing assessment rate schedule applicable to members of the SAIF.[1] The Board requested comment on all aspects of the proposed rule. At the same time, the Board published a proposed rule to decrease the assessment rate schedule for members of the Bank Insurance Fund (BIF) to a range of 4–31 basis points, depending on risk classification, when the reserve ratio of the BIF attains the minimum DRR of 1.25 percent of estimated insured deposits.[2]

The Board held a hearing at FDIC headquarters in Washington, D.C. on March, 17, 1995 to provide opportunity for interested parties to express orally their views on the proposals to decrease assessment rates for members of the BIF while retaining the 23–31 basis point assessment schedule for members of the SAIF. Every person or organization that requested an opportunity to testify was accommodated.

A total of twenty witnesses were heard by the full Board during the day-long hearing. They included the Savings Association Insurance Fund Industry Advisory Committee, the American Bankers Association, the Independent Bankers Association of America, America's Community Bankers, the National Association of Home Builders, several bank or thrift associations, individual bank and thrift executives, consumer organizations, a private sector attorney and an independent consultant. The written testimony of each witness as well as the hearing record were included in the FDIC's public comment file on the two proposals.

The public comment period for both proposals expired on April 17, 1995. The Board received a combined total of over 3,200 comment letters including testimony from the public hearing. After taking into account duplicate letters submitted by the same commenter, 2,891 comments were tabulated representing 2,310 individual BIF member respondents, 454 individual SAIF member respondents, 61 trade associations and 66 other individuals/organizations. Comments concerning the BIF proposal are discussed in a separate final rule governing BIF assessment rates published elsewhere in this **Federal Register**.

As detailed in the Comment Summary below, thrifts commenting on the SAIF proposal uniformly asked that the impending disparity between premiums assessed against the banking industry and the thrift industry be reduced or eliminated. A significant number of SAIF members stated, however, that a reduction in SAIF assessment rates to the minimum authorized by current law would not resolve the long-term challenges facing SAIF. They noted that, among other things, draws on the SAIF by the Financing Corporation (FICO) would continue to undermine the SAIF. Many of these commenters urged legislative action, stating that ''the Congress must act decisively to defuse the coming crisis of the SAIF''. The legislative initiatives suggested by the various commenters require Congressional action and were not part of the assessment-rate proposals. Nonetheless, these initiatives are included in the Comment Summary in an effort to present a complete review of the comments received by the FDIC and in recognition of the significant number of letters that offered comments on such initiatives.

*II. Description of Final Rule*

After considering the comments received in response to the proposed rule and other relevant information, the Board has determined to retain the existing assessment rate schedule applicable to members of the SAIF. As a result of this action, the SAIF assessment rate to be paid by institutions whose deposits are subject to assessment by the SAIF will continue to range from 23 cents per $100 of assessable deposits to 31 cents per $100 of assessable deposits, depending on risk classification.

Despite the general good health of the thrift industry, the SAIF is not in good condition and its prospects are not favorable. The issues confronting the SAIF are discussed in detail under Section IV. To summarize, the SAIF is significantly undercapitalized. On March 31, 1995, the SAIF had a balance of $2.2 billion, or about 31 cents in reserves for every $100 in insured deposits. An additional $6.6 billion would have been required on that date to fully capitalize the SAIF to its DRR of 1.25 percent of estimated insured deposits. At the current pace, and under reasonably optimistic assumptions, the SAIF would not reach the statutorily mandated DRR until at least the year 2002. Moreover, the SAIF became responsible for resolving failed thrifts on July 1, 1995. The failure of a single large SAIF-insured institution or several sizeable institutions or an economic downturn leading to higher than anticipated losses could render the fund insolvent. While the FDIC is not currently predicting such thrift failures, they are possible.

The main source of income for the SAIF is assessments. A sizable portion of the SAIF's ongoing assessments is diverted to meet interest payments on obligations of the FICO. Reducing the minimum average rate to 18 basis points is presently projected to delay SAIF capitalization until 2005, and it would cause a FICO shortfall as early as 1996. Moreover, there will still be a significant differential between BIF and SAIF assessment rates even if the Board reduces the SAIF assessments to the minimum average allowed by statute.

*III. Statutory Provisions Governing SAIF Assessment Rates*

A. Section 7 of the Federal Deposit Insurance Act

Section 7(b) of the Federal Deposit Insurance Act (FDI Act) governs the Board's authority for setting assessments for SAIF members. 12 U.S.C. 1817(b). Section 7(b)(1)(A) and (C) require that the FDIC maintain a risk-based

[1] 60 FR 9266 (Feb. 16, 1995).

[2] 60 FR 9270 (Feb. 16, 1995).

assessment system, setting assessments based on: (1) The probable risk to the fund posed by each insured depository institution taking into account different categories and concentrations of assets and liabilities and any other relevant factors; (2) the likely amount of any such loss; and (3) the revenue needs of the fund. Section 7(b)(2)(A)(iii) further directs the Board to impose a minimum assessment on each institution not less than $1,000 semiannually. The Board must set semiannual assessments and the DRR for each deposit insurance fund independently. FDI Act section 7(b)(2)(B).

In general, the Board must set semiannual assessments for SAIF members to maintain the reserve ratio at the DRR or, if the reserve ratio is less than the DRR, to increase the reserve ratio to the DRR. FDI Act section 7(b)(2)(A)(i). The reserve ratio is the dollar amount of the fund balance divided by estimated SAIF-insured deposits. The DRR for the SAIF is currently 1.25 percent of estimated insured deposits, the minimum level permitted by the FDI Act. In setting SAIF assessments to achieve and maintain the DRR, the Board must consider the SAIF's expected operating expenses, case resolution expenditures and income, the effect of assessments on members' earnings and capital, and any other factors that the Board may deem appropriate. FDI Act section 7(b)(2)(D).

Before January 1, 1998, if the SAIF remains below the DRR, the total amount raised by semiannual assessments on SAIF members may not be less than the amount that would have been raised if section 7(b) as in effect on July 15, 1991 remained in effect. See FDI Act section 7(b)(2)(E) and (F). The minimum rate required by section 7(b) as then in effect was 0.18 percent.

Beginning January 1, 1998, all minimum assessment provisions applicable to BIF members also apply to SAIF members. Under these provisions, if the SAIF remains below the DRR, the total amount raised by semiannual assessments on SAIF members may not be less than the amount that would have been raised by an assessment rate of 0.23 percent. See FDI Act section 7(b)(2)(E).

In setting semiannual assessments for members of the SAIF, beginning January 1, 1998, if the reserve ratio of the SAIF is less than the DRR, the Board must set semiannual assessments either, (a) at rates sufficient to increase the reserve ratio to the DRR within 1 year after setting the rates, or (b) in accordance with a schedule for recapitalization, adopted by regulation, that specifies target reserve ratios at semiannual intervals culminating in a reserve ratio that is equal to the DRR not later than 15 years after implementation of the schedule. FDI Act section 7(b)(3). Section 8(h) of the Resolution Trust Corporation Completion Act (RTCCA), Public. Law. No. 103–204, 107 Stat. 2369, 2388, amended section 7(b)(3) to allow the Board, by regulation, to amend the SAIF capitalization schedule to extend the date by which the SAIF must be capitalized beyond the 15-year time limit to a date which the Board determines will, over time, maximize the amount of semiannual assessments received by the SAIF, net of insurance losses incurred. FDI Act section 7(b)(3)(C).

Amounts assessed by the FICO against SAIF members must be subtracted from the amounts authorized to be assessed by the Board. FDI Act section 7(b)(2)(D).

In order to achieve SAIF capitalization, the Board adopted a risk-related assessment matrix in September 1992 (see Table 1) which has remained unchanged.

TABLE 1.—SAIF-MEMBER ASSESSMENT RATE SCHEDULE FOR THE FIRST SEMIANNUAL ASSESSMENT PERIOD OF 1995

[Basis points]

| Capital group | Supervisory subgroup | | |
|---|---|---|---|
| | A | B | C |
| Well Capitalized | 23 | 26 | 29 |
| Adequately Capitalized | 26 | 29 | 30 |
| Undercapitalized | 29 | 30 | 31 |

B. Statutory Provisions Governing FICO Assessments

FICO was originated by section 302 of the Competitive Equality Banking Act of 1987 (CEBA), Public Law 100–86, 101 Stat. 552, 585, which added section 21 to the Federal Home Loan Bank Act (FHLB Act).[3] FICO's assessment authority derives from section 21(f) of the FHLB Act, 12 U.S.C. 1441(f). As amended by section 512 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Public Law 101–73, 103 Stat. 183, 406, section 21(f) requires that FICO obtain funding for ''anticipated interest payments, issuance costs, and custodial fees'' on FICO obligations from the following sources, in descending priority order: (1) FICO assessments previously imposed on savings associations under pre-FIRREA funding provisions; (2) ''with the approval'' of the FDIC Board, assessments against SAIF member institutions; and (3) FSLIC Resolution Fund (FRF) receivership proceeds not needed for the Resolution Funding Corporation (REFCORP) Principal Fund.

Under section 21(f)(2), FICO assessments against SAIF members are to be made in the same manner as FDIC insurance assessments under section 7 of the FDI Act. The amount of the FICO assessment—together with any amount assessed by REFCORP under section 21B of the FHLB Act—must not exceed the insurance assessment amount authorized by section 7.[4] Section 21(f)(2) further provides that FICO ''shall have first priority to make the assessment'', and that the amount of the insurance assessment under section 7 is to be reduced by the amount of the FICO assessment. One important effect of the FICO assessment is to exacerbate any differential that may exist between BIF and SAIF assessment rates.

*IV. Problems Confronting the SAIF*

A. Background: SAIF Assessment Rates

As stated in the Board's proposal, in deciding against changes in the SAIF assessment rate, the Board has considered the SAIF's expected operating expenses, case resolution expenditures and income under a range of scenarios. The Board also has considered the effect of an increase in the assessment rate on SAIF members' earnings and capital. When first adopted, the assessment rate schedule yielded a weighted average rate of 25.9 basis points. With subsequent improvements in the industry and the migration of institutions to lower rates within the assessment matrix, the average rate has declined to 23.7 basis points (based on risk-based assessment categories as of July 1, 1995 and the assessment base as of March 31, 1995—see Table 2).

[3] Title III of CEBA, entitled the Federal Savings and Loan Insurance Corporation Recapitalization Act of 1987, directed the Federal Home Loan Bank Board to charter FICO for the purpose of financing the recapitalization of the FSLIC by purchasing FSLIC securities (and, subsequently, securities issued by the FSLIC Resolution Fund as successor to FSLIC).

[4] The REFCORP Principal Fund is now fully funded and, accordingly, REFCORP's assessment authority has effectively terminated.

TABLE 2.—SAIF ASSESSMENT BASE DISTRIBUTION SUPERVISORY AND CAPITAL RATINGS IN EFFECT JULY 1, 1995
DEPOSITS AS OF MARCH 31, 1995

[In billions]

| Capital group | | Supervisory subgroup | | | | | |
|---|---|---|---|---|---|---|---|
| | | A | A | B | B | C | C |
| Well Capitalized | Number | 1,553 | 85.9% | 138 | 7.6 | 25 | 1.4% |
| | Base | $604.8 | 83.4% | $58.0 | 8.0% | $16.6 | 2.3% |
| Adequately Capitalized | Number | 25 | 1.4% | 31 | 1.7% | 26 | 1.4% |
| | Base | $17.4 | 2.4% | $18.3 | 2.5% | $6.9 | 1.0% |
| Under Capitalized | Number | 0 | 0.0% | 0 | 0.0% | 10 | 0.6% |
| | Base | $0.2 | 0.0% | $0.0 | 0.0% | $3.4 | 0.5% |

''Number'' reflects the number of SAIF members; ''Base'' reflects the SAIF-assessable deposits of SAIF members and of BIF-member Oakar banks.

The primary source of funds for the SAIF is assessment revenue from SAIF-member institutions. Since the creation of the fund and through the end of 1992, however, all assessments from SAIF-member institutions were diverted to other needs as required by FIRREA.[5] Only assessment revenue generated from BIF-member institutions that acquired SAIF-insured deposits under section 5(d)(3) of the FDI Act (12 U.S.C. 1815(d)(3)) (so-called ''Oakar'' banks) was deposited in the SAIF throughout this period.

B. The SAIF is Significantly Undercapitalized

SAIF-member assessment revenue began flowing into the SAIF on January 1, 1993. However, the FICO has a priority claim on SAIF-member assessments in order to service FICO bond obligations. Under existing statutory provisions, FICO has assessment authority through 2019, the maturity year of its last bond issuance. At a maximum of $793 million per year, the FICO draw is substantial, and is expected to represent 45 percent of estimated assessment revenue for 1995, or 11 basis points of the average assessment rate of 23.7 basis points.[6] The SAIF had a balance of $2.2 billion (unaudited) on March 31, 1995. With primary resolution responsibility residing with the Resolution Trust Corporation (RTC), there have been few demands on the SAIF. The SAIF assumed resolution responsibility for failed thrifts from the RTC on July 1, 1995, however. In addition to assessment revenue and investment income, there are other potential sources of funds for the SAIF as follows. First, the FDIC has a $30 billion line of credit available from the Department of the Treasury (Treasury) for deposit insurance purposes, which to date has not been utilized. FDI Act section 14(a). The SAIF would have to repay any amounts borrowed from the Treasury with premium revenues, however. The FDIC would have to provide the Treasury with a repayment schedule demonstrating that future premium revenue would be adequate to repay any amount borrowed plus interest. FDI Act section 14(c).

Next, the RTCCA authorized the appropriation of up to $8 billion in Treasury funds to pay for losses incurred by the SAIF during fiscal years 1994 through 1998, to the extent of the availability of appropriated funds. In addition, at any time before the end of the 2-year period beginning on the date of the termination of the RTC, the Treasury is to provide out of funds appropriated to the RTC but not expended, such amounts as are needed by the SAIF and are not needed by the RTC. To obtain funds from either of these sources, however, certain certifications must be made to the Congress by the Chairman of the FDIC. FDI Act sections 11(a)(6)(D), (E) and (J). Among these, the Chairman must certify that the Board has determined that:

(1) SAIF members are unable to pay additional semiannual assessments at the rates required to cover losses and to meet the repayment schedule for any amount borrowed from the Treasury for insurance purposes under the FDIC's line of credit without adversely affecting the SAIF members' ability to raise capital or to maintain the assessment base; and

(2) An increase in assessment rates for SAIF members to cover losses or meet any repayment schedule could reasonably be expected to result in greater losses to the Government.

It may require extremely grave conditions in the thrift industry in order for the FDIC to certify that raising SAIF assessments would result in increased losses to the Government. Moreover, these funds cannot be used to capitalize the fund—that is, to provide an insurance reserve, which was the original purpose of requiring a 1.25 reserve ratio.

The RTC's resolution activities and the thrift industry's substantial reduction of troubled assets in recent years have resulted in a relatively sound industry as the SAIF assumes resolution responsibility. However, with a balance of $2.2 billion, the SAIF does not have a large cushion with which to absorb the costs of thrift failures. The FDIC has significantly reduced its projections of failed-thrift assets for 1995 and 1996, but the failure of a single large institution or several sizeable institutions or an economic downturn leading to higher than anticipated losses could render the fund insolvent. The FDIC's loss projections for the SAIF are discussed in more detail below.

C. Condition and Performance of SAIF-Member Institutions[7]

During the first quarter of 1995, SAIF-member institutions continued to improve asset quality and posted improved, though modest, earnings. SAIF members had a return on assets of 0.64 percent in the first quarter, up from 0.55 percent in the fourth quarter and 0.40 percent in the first quarter of 1994, when a few of the largest thrifts incurred substantial restructuring charges. Earnings improvement over the fourth quarter was due to lower loss provisions (down 18 percent) and reduced noninterest expense (down 10 percent). This helped offset lower net interest income caused by a narrowing of the average net interest margin, which fell to 2.97 percent from 3.12 percent in the fourth quarter. Increased competition for deposits, particularly in the West Region, raised interest expense

[5] From 1989 through 1992, more than 90 percent of SAIF assessment revenue went to the FRF, the REFCORP and the FICO.

[6] The FICO has an annual call on up to the first $793 million in SAIF assessments until the year 2017, with decreasing calls for two additional years thereafter. With interest credited for early payment, the actual annual draw is expected to approximate $780 million.

[7] Excluding one RTC conservatorship and one self-liquidating savings institution.

by 6.5 percent over the fourth quarter, while interest income was up only 1.7 percent.

Asset quality continued to improve in the first quarter, as noncurrent loans fell 4.2 percent from year-end 1994 and 28 percent from the level of a year ago. The inventory of foreclosed real estate fell even further, down 7.3 percent during the first quarter and 40 percent over four quarters. Although loss reserves have declined slightly over the past year, the drop in noncurrent loans resulted in a coverage ratio of 84 cents for each dollar of noncurrent loans, about the same as in December and 10 cents higher than in March 1994. Most major balance sheet categories, including total assets, loans and deposits, showed small declines during the first three months of 1995, although equity capital grew slightly, raising the equity-to-assets ratio to 7.88 percent.

As of March 31, 1995, there were 1,806 members of the SAIF, including 1,731 savings institutions and 75 commercial banks. On this date, there were 58 SAIF-member ''problem'' institutions with total assets of $32 billion, compared to 83 institutions with $63 billion a year earlier. No SAIF members failed during the first quarter of 1995.

This discussion has focused on the improving condition of the SAIF-member thrift industry, but any such discussion must mention the relatively weak economic conditions still confronting a large segment of the industry. Eighteen percent of all SAIF-insured deposits are concentrated in the nation's eight largest thrift institutions, all of which operate predominantly in California. This state, in general, has lagged behind most of the nation in recovering from the most recent recession, and many California thrifts have significant exposure in the weakest areas of southern California. Additionally, a few large institutions have suffered low earnings and still have relatively high levels of risk in their loan portfolios. Consequently, despite the improving health of the thrift industry, the SAIF still faces significant risk relative to the fund's current reserve level.

D. Impact of a Premium Differential

In a separate rule-making on August 8, 1995, the Board adopted a final rule amending the FDIC's regulation on assessments to establish a new assessment rate schedule for institutions whose deposits are subject to assessment by the BIF. Under the new schedule, BIF assessment rates range from 4 to 31 basis points, compared to a range of 23 to 31 basis points under the former BIF schedule and the current SAIF schedule. Lower BIF rates were adopted because the BIF is believed to have recapitalized during the second quarter of 1995. Largely due to the FICO obligation, the SAIF is not expected to capitalize until 2002 (this projection is discussed below), and SAIF assessment rates cannot be lowered below the statutory minimum of 18 basis points.

Under the current BIF and SAIF assessment rate schedules, average SAIF rates are likely to remain about 20 basis points higher than average BIF rates for the next seven years, until the SAIF is capitalized. After capitalization, SAIF rates would continue to be at least 11 basis points higher until the FICO bonds mature in 2017 to 2019, assuming the Board sets SAIF assessment rates to cover FICO's needs.

If BIF members pass along their assessment savings to their customers, SAIF members may be forced to pay more for deposits or charge less for loans to remain competitive. For SAIF members, this could result in reduced earnings and an impaired ability to raise funds in the capital markets. Among the weakest thrifts, a 20-basis point differential could result in competitive pressures that cause additional failures. An analysis of over a five-year time span suggests that any such increase in failures attributable to an average 20-basis point differential is likely to be sufficiently small as to be manageable by the SAIF under current interest-rate and asset-quality conditions. Moreover, the analysis indicates that under harsher than assumed interest-rate and asset-quality conditions, these economic factors would have a significantly greater effect on SAIF-member failure rates than would an average 20-basis point premium differential.

A separate analysis focused on BIF and SAIF members in the 3C assessment categories (undercapitalized/supervisory subgroup C) that will be paying 31 basis points. These weaker institutions will be competing with a large group of BIF members in category 1A (well capitalized/supervisory category A) that will be paying only 4 basis points. The analysis assumed that the 3C institutions would have to absorb the entire 27-basis point differential in the form of higher interest paid or lower interest earned. The result was that apart from institutions that have already been identified by the FDIC's supervisory staff as likely failures, the wider spread is likely to have a minimal impact in terms of additional failures.

Nevertheless, the Board recognizes that a premium differential between BIF- and SAIF-insured institutions is likely to increase competitive pressures on thrifts and impede their ability to generate capital both internally and externally.[8]

E. Assessment Rate Spread

Under the SAIF assessment rate schedule there is a spread of 8 basis points, from 23 basis points for institutions in category 1A to 31 basis points for institutions in category 3C. Under the newly adopted BIF assessment schedule, the spread for BIF members was increased from 8 to 27 basis points. This was accomplished by dropping the minimum, most favorable rate from 23 to 4 basis points. Thus, the weakest BIF members will incur no additional deposit insurance cost. In order to apply a similar 27-basis point spread to SAIF members, it would be necessary to raise the highest SAIF assessment rate to 45 to 50 basis points, based on a lowest rate of 18 to 23 basis points. Because 86 percent of SAIF members would continue to pay the lowest rate, the revenue benefit of a 27-basis point spread would be limited. However, analysis indicates that SAIF assessments ranging to 50 basis points, creating a premium differential of as much as 46 basis points, would greatly increase the expenses of SAIF members and likely would result in significant additional failures. While the Board recognizes that a spread of more than 8 basis points would better serve the goals of a risk-related premium system, given the minimum average of 18 basis points currently prescribed by law, a wider spread could only be implemented by raising rates for all but the strongest SAIF members, which likely would have adverse consequences for an undercapitalized SAIF. For these reasons, the Board chose to retain an assessment rate spread of 8 basis points for members of the SAIF.

F. The Ability of the SAIF to Fund FICO

Under law, SAIF assessments paid by BIF-member Oakar banks are deposited in the SAIF and are not subject to FICO draws.[9]

Further, SAIF assessments paid by any former savings association that: (i) Has converted from a savings association charter to a bank charter, and (ii) remains a SAIF member in accordance with section 5(d)(2)(G) of the FDI Act (12 U.S.C. 1815(d)(2)(G)) (a

[8] See ''The Condition of the BIF and the SAIF and Related Issues,'' Testimony of Ricki Helfer, Chairman, FDIC, before the Subcommittee on Financial Institutions and Consumer Credit, Committee on Banking and Financial Services, U.S. House of Representatives, Attachment C entitled ''Analysis of Issues Confronting the Savings Association Insurance Fund,'' March 23, 1995.

[9] See Notice of FDIC General Counsel's Opinion No. 7, 60 FR 7055 (Feb. 6, 1995).

so-called ''Sasser'' bank), are likewise not subject to assessment by FICO.[10] On March 31, 1995, BIF-member Oakar banks held 26.8 percent of the SAIF assessment base, and SAIF-member Sasser banks held an additional 7.2 percent (see Table 3).

TABLE 3.—PERCENTAGE DISTRIBUTION OF THE SAIF ASSESSMENT BASE

| | Available to FICO (percent) | Not available to FICO | | | Total (percent) |
|---|---|---|---|---|---|
| | | Oakar (percent) | Sasser (percent) | Subtotal (percent) | |
| 12/89 | 99.8 | 0.2 | 0.0 | 0.2 | 100.0 |
| 12/90 | 95.8 | 3.9 | 0.3 | 4.2 | 100.0 |
| 12/91 | 89.9 | 8.7 | 1.5 | 10.1 | 100.0 |
| 12/92 | 85.9 | 10.3 | 3.8 | 14.1 | 100.0 |
| 12/93 | 74.7 | 19.4 | 5.9 | 25.3 | 100.0 |
| 12/94 | 67.3 | 25.4 | 7.3 | 32.7 | 100.0 |
| 3/95 | 66.0 | 26.8 | 7.2 | 34.0 | 100.0 |

While the pace of Oakar acquisitions slowed as RTC resolution activity wound down, Oakar acquisitions may continue and become an even greater proportion of the SAIF assessment base.[11] This has the potential result of the SAIF having insufficient assessments to cover the FICO obligation at current assessment levels. The rate of Sasser conversions is difficult to predict and is partially dependent on state laws, but any future conversions would also decrease the proportion of SAIF assessment revenues available to FICO.

In addition to the growth of the Oakar/Sasser portion of the SAIF assessment base, the ability of the SAIF to fund FICO interest payments will be adversely affected by an ongoing premium differential. A differential is likely to create powerful incentives for SAIF-insured institutions to minimize their premium costs by reducing their SAIF-assessable deposits.[12] This can be accomplished in a number of ways despite the current moratorium on the conversion of SAIF-insured deposits to BIF-insured deposits. SAIF-insured institutions could reduce their SAIF deposits by shifting their funding to nondeposit liabilities, such as Federal Home Loan Bank advances and reverse repurchase agreements. Institutions could also reduce their funding needs by securitizing assets or by changing business strategies, such as choosing to become a mortgage bank. Lastly, SAIF-insured institutions and their parent companies could structure affiliate relationships that would facilitate the migration of deposits from a SAIF-insured institution to a BIF-insured affiliate. At least a dozen organizations have already filed applications seeking to establish such affiliate relationships.

If a competitive imbalance attributable to a premium differential materializes, that is, if BIF members pass along their savings to their customers, a rapid acceleration in the shrinkage of the SAIF assessment base could begin soon thereafter. With two insurance funds providing essentially the same product at significantly different prices, it must be expected that purchasers will seek the lower price. Attempts to control this behavior through legislation or regulation are likely to be ineffective and may only result in companies finding less efficient means. A result of the expected shrinkage of the SAIF assessment base could be a default on FICO bonds. At current assessment rates, a SAIF assessment base of $328 billion is needed to generate sufficient assessment revenue to cover the FICO draw of up to $793 million per year. The FICO-available base, which excludes Oakar and Sasser deposits, was $478 billion on March 31, leaving a ''cushion'' of $150 billion. This cushion could quickly be depleted if the strategies described above are successful, possibly causing a FICO default. A legislated reversal of the Oakar/Sasser exemption would only defer a FICO shortfall because the existence of a significant, prolonged premium differential is likely to result in continued erosion of the SAIF assessment base.

### G. Failed-Asset Estimates for the SAIF

Among the factors that affect the ability of the SAIF to capitalize and to meet the FICO assessment are the number of thrift failures and the dollar amount of failed assets going forward.

Estimates of failed-institution assets are made by the FDIC's interdivisional Bank and Thrift Failure Working Group. In July 1995, the Working Group estimated failed thrift assets of $100 million for the second half of 1995, $2 billion for 1996 and $2 billion for the first half of 1997. The estimate of $100 million for the second half of 1995 represented a sharp decline from the $3 billion estimated by the Working Group in November 1994. The $2 billion estimate for 1996 was unchanged. In the estimation process, failed assets for the first twelve months of the two-year period are based on the FDIC's projected failure of specific institutions. Estimates for the second twelve months are derived from the FDIC's longer-term loss experience. For loss projections beyond mid-year 1997, the assumed failed-asset rate for the SAIF was 22 basis points, or about $2 billion per year.

In the FDIC's projections, banks and thrifts were assumed to face similar longer-run loss experience. The BIF's historical average failed-asset rate from 1974 to 1994 was about 45 basis points. However, a lower failure rate than the recent historical experience of the BIF was assumed because the thrift industry is relatively sound following the RTC's removal of failing institutions from the system, and the health and performance of the remaining SAIF members has improved markedly. As of March 31,

[10] *Id.*

[11] SAIF-assessable deposits held by BIF-member Oakar banks will continue to grow at the same rate as the Oakar bank's overall deposit base. Under section 5(d)(3) of the FDI Act, as amended by the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), such deposits are adjusted annually by the acquiring institution's overall deposit growth rate (excluding the effects of mergers or acquisitions).

[12] ''The Condition of the SAIF and Related Issues,'' Testimony of Ricki Helfer, Chairman, FDIC, before the Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Attachment A entitled ''The Immediacy of the Savings Association Insurance Fund Problem'', July 28, 1995. ''The Condition of the SAIF and Related Issues,'' Testimony of Ricki Helfer, Chairman, FDIC, before the Subcommittee on Financial Institutions and Consumer Credit, Committee on Banking and Financial Services, U.S. House of Representatives, Attachment A entitled ''The Immediacy of the Savings Association Insurance Fund Problem,'' August 2, 1995.

1995, 86 percent of all SAIF-member institutions were in the best risk classification of the FDIC's risk-related premium matrix.

One of the purposes of the FDICIA was to minimize losses to the insurance funds. FDICIA increased regulatory oversight and emphasized capital. Specifically, FDICIA requires the closing of failing institutions prior to the full depletion of their capital, limits riskier activities by institutions that are less than adequately capitalized, and establishes audit standards and statutory time frames for examinations. The law also requires the implementation of risk-related assessments, which have provided effective incentives for institutions to achieve and maintain the highest capital and supervisory standards. In light of these provisions, the high levels of thrift failures and insurance losses experienced over the past decade must be tempered when considering the industry's near-term future performance.

H. Projections for the SAIF

The FDIC currently projects that, under reasonably optimistic assumptions, the SAIF is not likely to reach the statutorily mandated DRR of 1.25 percent until 2002. Also, projections indicate the fund will not encounter problems meeting the FICO obligation through 2004. It is important to note that the baseline assumptions underlying these projections foresee shrinkage in the non-Oakar portion of the SAIF assessment base of 2 percent per year. If thrifts react aggressively to the premium differential and reduce their SAIF-assessable deposits, as discussed in Section IV.F, substantially greater shrinkage may occur. Under higher rates of shrinkage, the SAIF is likely to capitalize sooner than 2002 because a lower level of insured deposits would require a smaller fund to meet the DRR; however, FICO interest payments could soon be imperiled.

As stated earlier, the Board has the authority to reduce SAIF assessment rates to a minimum average of 18 basis points until January 1, 1998, at which time the average rate would rise to 23 basis points until capitalization occurs. Projections made under this scenario (and using the other baseline assumptions) indicate that the SAIF would capitalize in 2005, or three years later than under the existing rate schedule. Perhaps more importantly, reduction of the SAIF assessment rate to 18 basis points is expected to cause a FICO shortfall in 1996.

**Comment Summary**

*I. Comments Regarding SAIF Assessment Rates*

A. General Comments

Approximately 111 commenters said that the SAIF rate should be decreased to 18 basis points; an additional 108 commenters urged that the differential between BIF members and SAIF members be limited to 5 basis points, regardless of the rates prescribed. With regard to the potential 19 basis point differential between BIF-members and SAIF-members, one large savings association stated:

> Such a differential is significant in a narrow margin business such as home mortgage lending, which is the primary business of most SAIF members. This differential when leveraged at 20 to 1 will result in the BIF members producing 4 percent greater returns on equity than the SAIF members for the same business.

This savings association suggested that some SAIF members would try to overcome any disadvantage a differential may pose by reducing their costs, while others may attempt to increase revenue through potentially risky investments which could increase SAIF losses. Most commenters urging a reduction in SAIF rates were SAIF members.

Many commenters did not offer comments concerning the particular rate at which the minimum SAIF assessment rate should be set. Rather, the vast majority of SAIF-affiliated commenters simply commented that a disparity between SAIF rates and BIF rates would harm the thrift industry and asked that the premium differential be reduced or eliminated: ''If disparity must exist, make it minimal''. These comments are discussed in more detail later in this summary.

In contrast, approximately 67 commenters (64 BIF members, 2 SAIF members, 1 trade group, and 1 other) said that the SAIF assessment rate should not be decreased below the current minimum rate of 23 basis points. The following comment is typical of those who supported maintaining SAIF assessment rates at current levels: ''[T]he current level of assessments * * * has not posed problems for the capital or earnings of thrifts. Most thrifts are healthy today''.

While expressing alarm as to the impending disparity, many SAIF-members did not specifically oppose the proposed reduction in BIF rates. For example, one large savings association stated: ''[The savings association] supports the revised assessment schedule that is proposed for BIF members but believes that the effect of the resulting substantial SAIF/BIF premium differential could overwhelm the currently healthy savings institutions and render the SAIF insolvent''.

B. Impact of an Assessment Rate Differential

Comments from SAIF-insured institutions focused on the competitive disadvantage inherent in the proposed premium differential. Approximately 133 commenters argued that capital will flow away from savings associations if a disparity in the rates were permitted; over 300 argued that savings associations will be at a disadvantage competitively if rates were disparate; more than 90 commenters claimed that a disparity would mean fewer funds for home buyers. Over 80 commenters argued that a rate disparity would cause the SAIF assessment base to shrink. One thrift expressed its concerns as follows:

> The impending disparity between BIF and SAIF deposit insurance premiums will bring about the gradual demise of the thrift industry. The significant competitive disadvantage to SAIF members will cause a natural migration of deposits to BIF-insured institutions and an erosion of the SAIF's premium assessment income. Lower profits will make it increasingly difficult for savings institutions to raise capital in the marketplace, eventually contributing to a rise in thrift failures. The SAIF will be faced with a dwindling deposit assessment base, fixed obligations to the FICO bond holders, and waning capitalization levels of its members.
>
> * * * * *
>
> The thrift industry today is profitable, well-managed, and well-capitalized. It provides consumer and financial services in more than 12,500 offices nationwide, and it employs 217,600 people. Thrifts specialize in home financing and hold $649 billion in mortgage loans and securities. The thrift industry plays an important role in the U.S. economy; it does not deserve the fate which awaits it if Congress does not promptly address the premium disparity issue.

Many thrifts compared the proposed premium disparity to an additional 15 percent tax on thrifts' earnings. One letter said the differential would raise the effective tax rate for savings associations to 60 percent, compared to about 30 percent for banks and zero for credit unions. Another stated that thrifts would be hurt because depositors are almost solely focused on yields and would not hesitate to move their funds if their savings institutions could not pay competitive interest rates on deposits.

Approximately 215 commenters argued that savings associations had a competitive advantage in the 1970s with the interest-rate advantage accorded

thrifts under Regulation Q. They indicated that banks had been able to survive in such an environment of disparate rates and that savings associations should also be able to survive. Under such a differential, thrifts ''certainly did not get all of the deposit dollars and they certainly would not lose all of them now,'' stated one letter. Another claimed: ''Nineteen basis points is hardly an unbridgeable competitive gulf.'' A state trade association for bankers agreed that the premium differential would undoubtedly cause some savings associations competitive problems, but noted that banks and savings associations already compete with a number of financial firms that do not currently pay deposit premiums and cited credit unions as an example. A number of other letters also downplayed the competitive disadvantage of a premium disparity by arguing that thrifts already compete with nondeposit competitors such as securities firms, mutual funds, mortgage bankers, insurance companies and finance companies that do not pay any deposit-insurance premium.

Of particular interest were those comments submitted by holding companies that control both BIF-member banks and SAIF-member thrifts, as well as comments submitted by institutions that were obligated to pay assessments to BIF and SAIF as a result of participating in a transaction pursuant to the so-called ''Oakar'' provisions (12 U.S.C. 1815(d)(3)). One holding company that owned both a BIF member and a SAIF member wrote:

> To the extent that the rate differential is a Government imposed cost, there is a significant advantage to the bank and a real disadvantage to the thrift that has nothing to do with the way either the bank or the thrift handles its own business or cares for the customer. This will be the effect of the disparity of premium rates, resulting in fewer thrifts to pay insurance premiums, potential FICO bond defaults and, in the end, a more expensive solution will be imposed to resolve a crisis much larger than at present, and banks will be forced to participate in the expense of solving that problem. Therefore, if we want to talk fairness, this is where fairness begins and ends: it is not fair to anyone to impose a more expensive solution later when much less is needed if we act now and can offer a quid pro quo to the banks for their participation.

This holding company recommended that the Board champion legislation that would merge the funds but, at the same time, provide the banking industry with a quid pro quo for the additional cost that would be placed on it. It suggested that regulatory relief from the burdens of data gathering, retention and reporting could provide significant savings to offset what would otherwise be deposit insurance premium savings. It also suggested that the remaining RTC funds be used to capitalize the SAIF.

A bank holding company that acquired failed thrifts from the RTC commented that a premium disparity would force its thrift to pay less interest to its depositors and/or increase the charge on borrowers, make it more difficult for its thrift to provide home loans or lend to small businesses, and threaten its thrift's ability to participate in low and moderate income housing programs. Another bank holding company with both bank and thrift subsidiaries commented that banks should not be forced to pay for FICO but that any remaining RTC funds should be used to reduce FICO obligations. Another such holding company suggested a 3-basis point surcharge on BIF members, dropping the SAIF rate to 15 basis points and merging the funds when SAIF became fully capitalized.

C. Need for Immediate Action

Many commenters suggested that if immediate steps were not taken to eliminate the impending disparity between SAIF and BIF rates, the ultimate cost to SAIF and FICO would be higher. One federally-chartered savings association wrote:

> The shrinkage of the deposit base of savings institutions since FIRREA has already called into question whether the business can recapitalize itself given the tax being imposed by the FICO obligation. The creation of a significant premium disparity will bring about new and ever creative ways to avoid or reduce the impact of the high cost alternative. I do not believe that the premium disparity will wreak widespread destruction over the savings institution industry. It will, however, cause the business to disappear and hasten the day of reckoning for the SAIF.

A holding company stated:

> We believe that leaving solutions to these problems for another day will be most harmful to both banks and thrifts and to the country as a whole and certainly more expensive to resolve than if the issues are faced now and resolved.

Many commenters suggested that if SAIF rates remained high, SAIF members would find other means to shift deposits out of SAIF. One holding company commented:

> [We believe that a] solution needs to be found and implemented at once, that delay is costly in solving this problem and that delay encourages business to channel its talent and resources towards ''artificial restructuring'' such as Great Western's proposal (which makes business sense only because of the anticipated disparity in premium costs for deposit insurance), rather than towards true business reorganizations that have lasting value to the business and our nation as a whole.

Approximately 293 institutions suggested that there was no immediate SAIF problem, implying that there was no urgent need to capitalize SAIF. For example, a trade association said: ''[T]he S&L industry and SAIF are in much better shape than anyone could have imagined only two years ago. The S&L industry is profitable and increasingly well capitalized''. It suggested that the SAIF situation be carefully monitored through Congressional oversight hearings and other mechanisms. One banker said: ''If and when the SAIF fund is in jeopardy or the FICO payment cannot be made, call us''. A few bankers suggested implementing the proposed assessments and waiting two years to see if, in fact, a differential materializes and whether it adversely impacts thrifts. However, it seems likely that some cost differential would materialize between banks and thrifts because, among bankers indicating a likely use for their premium savings, they most frequently mentioned paying higher interest on deposits and/or charging lower rates for loans. Other possible uses included augmenting capital to fund growth, technology updates and higher dividends to shareholders.

A few bankers saw it as inevitable that some of the cleanup costs borne by thrifts will be shifted to the banking industry. ''My fellow bankers would probably hang me for even suggesting we pay,'' wrote one banker who recommended using excess RTC funds to reduce FICO by one-half, adding 1 or 2 basis points to the proposed BIF rates to be used toward FICO and leaving SAIF rates at current levels until FICO is paid and SAIF capitalized. Another banker offered to pay an additional 1½ to 2½ basis points toward SAIF and FICO if other financial service providers did the same. The taxation of credit unions was frequently mentioned as a potential source of funding.

A number of BIF-affiliated commenters noted that the Board should not take into account a potential differential between BIF and SAIF when setting BIF assessment rates. A large trade association for bankers noted, however, that the Board is permitted to consider the effect of SAIF assessments on the earnings and capital of thrift members.

*II. Suggested Legislative Initiatives*

A. Summary

As indicated above, SAIF members uniformly agreed that the impending disparity would harm their industry. Many commenters affiliated with SAIF-

members argued that the SAIF rate should be lowered to the statutory minimum average of 18 basis points, and others argued that the SAIF rate should be lowered to within 5 basis points of the BIF rates. A significant number of such commenters noted, however, that reducing or eliminating the disparity would not be a final solution, noting that FICO draws would continue to undermine SAIF. Some commenters predicted another insurance fund crisis which would ''cause irreparable damage to the entire industry which already has lost significant market share to less regulated non-bank competitors''. Many of these commenters urged legislative action. A thrift trade association wrote:

> The [FDIC] is charged with the management of both BIF and SAIF and with the responsibility of seeing to it that neither fund becomes a burden on the taxpayers of America. For this reason, it is incumbent on the FDIC board to promptly recommend to the Congress a course of action that will mitigate the effects of the premium differential and achieve competitive parity between all insured institutions as soon as possible.

B. ''Fairness'' Arguments

In an apparent attempt to explain why SAIF members alone should not bear the burden of recapitalizing SAIF, approximately 159 commenters (10 BIF members, 134 SAIF members, 4 trade associations, and 11 other organizations/individuals) argued that savings associations in operation today were no more responsible than BIF members for the condition of SAIF. One holding company commented:

> While none of the existing thrifts today caused the S&L crisis of the last decade any more than did the banks, the banks were promised premium relief once BIF was adequately capitalized at 1.25 percent. However, going forward, there is no moral issue about having deposit insurance available at the same rate to thrifts and to banks even though in the past failed thrifts cost much more than failed banks.

Some commenters criticized earlier legislative policy concerning SAIF funding. One trade association for bankers wrote:

> In 1989 when SAIF was created, Congress authorized two types of supplemental funding from the Treasury—a backup funding for SAIF premiums and payments to maintain a minimum fund balance. The requirement under prior law was that the Treasury capitalize the SAIF at $8.8 billion by fiscal 1999. Treasury never requested these authorized funds. The RTC Completion Act repealed this authorization. But it is important to note that in 1989, the government promised to contribute $8.8 billion to the SAIF and then five years later reversed itself. This is unfair to the thrift industry.

A thrift holding company added that FICO bonds were issued with non-callable provisions, which precluded refinancing of these obligations in the recent low interest rate environment. It argued: ''We believe that this oversight in the FICO bond provisions and the lack of supplemental funding by the Treasury for the SAIF, support an argument that the recapitalization of the SAIF should be borne by the government and not SAIF members.''

A large savings association referenced the additional payments from Treasury contemplated by FIRREA, and suggested that these ''safety net payments'' were intended to balance the additional burdens imposed on the thrift business by FIRREA (on top of the FICO burden imposed in 1987). It described these added burdens to be ''confiscating the thrift industry's $2.5 billion investment in the retained earnings of the Home Loan Banks, diverting an added $3.1 billion in premiums to REFCORP and FRF, and requiring the Home Loan Banks each year to pay $300 million in interest on REFCORP bonds.'' The savings association argued that if the original FIRREA payments had been carried out, the Treasury would have paid $5.3 billion into SAIF over the five year period from fiscal year 1993 through fiscal year 1997 and the fund would have reached its reserve target of 1.25 percent in early 1998 based on FDIC assumptions regarding future losses and deposit growth.

Approximately 949 commenters (922 BIF members, 1 SAIF member, 12 trade associations, and 14 other organizations/individuals) stated as a general principle that the banking industry should not pay for SAIF problems. Bankers stated that they solved their own problem by recapitalizing the BIF and did not cause the problems now confronting the SAIF. They were adamant about not using BIF funds to capitalize or otherwise assist the SAIF even though this was not part of the assessment rate proposals. ''The SAIF should paddle their own boat'', commented one banker, which succinctly expressed the views of others that SAIF members should continue to pay higher premiums until their fund is capitalized.

Some bankers commented that banks and thrifts operate in separate industries, and there is no rationale for asking one to assist the other (''* * * no different than asking a cow man to bail out a broke sheep farmer under the guise that both raise livestock''). Others see banks and thrifts as competitors in the same industry and similarly see no reason to assist a competitor (''* * * like asking General Motors to bail out Chrysler''). A few letters contended that the banking industry has already paid dearly for the savings and loan crisis of the 1980s through an increased regulatory burden. A number of bankers cited higher interest rates paid by thrifts with which they compete, and a few letters included newspaper clippings of advertisements placed by thrifts. ''If they can afford to pay higher interest rates for deposits'', wrote one banker, ''they can afford to bear the burden to recapitalize SAIF''.

Thrifts countered along the following lines: ''The simple fact is today's thrift institutions are now being punished for the savings and loan cleanup of the 1980s. While this may be emotionally gratifying for some, it makes little sense from an economic perspective''.

C. Use of RTC Funds

Over 250 commenters (179 BIF members, 60 SAIF members, 9 trade associations, and 8 other organizations/individuals) urged that RTC funds be made available to SAIF for capitalization purposes; over 90 (9 BIF members, 65 SAIF members, 9 trade associations, and 9 organizations/individuals) urged that the RTC funds be made available to SAIF on a contingent basis to rescue SAIF from future losses.

The solution most frequently recommended by thrifts (and their primary trade group) involved having the FICO burden shared proportionately by BIF and SAIF, using excess RTC funds to cover losses in institutions identified as problems as of year-end 1997 and reducing the SAIF differential to 5 basis points until the SAIF is capitalized. These measures would require Congressional action, but as an interim measure, the FDIC was urged to reduce the SAIF premium to 18 basis points, the minimum average SAIF rate allowed under current law. Variations on this proposal included lowering the DRR to 1 percent, although a few writers asked that this ratio be raised to as high as 1.50 percent for BIF and SAIF.

D. One-time Special Assessment Against SAIF Members

Approximately 11 BIF members and 10 SAIF members, as well as 2 trade groups, urged that a one-time assessment be imposed against SAIF members. In opposition to such a proposal, one large thrift holding company asserted that the thrift industry had already paid sufficient deposit premiums since FIRREA to have capitalized the SAIF but of the $9.5

billion in premiums paid, only $2.4 billion went into SAIF. It argued: ''Any substantial up front assessment on thrifts is not only unfair, it is counterproductive in the sense that it could precipitate even grater losses to the insurance fund''. At the same time, however, it indicated that if its preferred method of recapitalizing SAIF—using RTC funds—proved insufficient to reach the 1.25 percent ratio, a variety of means might be considered to fill the gap, including the use of borrowed funds, a ''one-time assessment or a temporarily higher premium''. It stated that such methods would have to be structured so as to minimize the impact on the earning capacity of the thrift business.[13]

E. Merge the BIF and the SAIF

Merging the BIF and the SAIF was frequently suggested (approximately 121 commenters, including approximately 6 trade groups) and was seen by some as inevitable and possibly less expensive today than ''four or five years down the road''. As one thrift executive wrote: ''The consumer views deposit insurance as coming from one source—backed by the U.S. Government''. A state trade association representing thrifts supported the merging of the two funds ''as the only solution that will assure that all institutions of equal risk profiles will pay the same premium for federal deposit insurance''.[14]

One thrift holding company supporting merger of the funds if the remaining RTC funds were not available submitted the following comment:

> The original distinction between commercial banks and savings institutions has significantly blurred over the last decade * * *. In addition, most, if not all, of the tax and regulatory ''advantages'' which benefitted savings institutions in the past have been eliminated or significantly curtailed. Likewise, the Federal Home Loan Bank system, which was an exclusive province of savings institutions, is now being embraced as a significant competitive benefit by an increasing number of commercial banks. Any portion of a weakened federal deposit insurance fund will have adverse consequences on the entire banking industry in the public's perception.

Another thrift urged that the funds be merged with the FICO interest obligations to be borne by the new fund as a whole and noted:

> Effecting this merger will enable the government to keep its promise to the American people and will avoid using taxpayer funds either to capitalize the SAIF today, or to bail it out several years from now. If deposit insurance premiums for both banks and thrifts were kept at their current levels, a combined fund could reach full capitalization at 1.25% within approximately 20 months after the merger * * *. Thus banks and thrifts would experience very little delay in seeing their premiums reduced.

A California savings association argued that even after SAIF is fully capitalized, the fund would be unsound because the SAIF has too much geographic concentration in California. It urged that the funds be merged to generate sufficient geographic spread.

Some suggested that SAIF members could pay a one-time assessment (80 basis points was mentioned) to capitalize the SAIF prior to a merger of the funds. The premium differential could then be reduced to 5 basis points or less or eliminated altogether. A savings banker suggested that thrifts be allowed to record the special assessment as a credit against the tax bad debt reserve in order to lessen the immediate impact on tax revenues. A variety of writers, including banks, thrifts and an industry watchdog group, questioned the need for a separate thrift charter once the funds have been merged.

Over 775 commenters, including approximately 10 trade groups, argued against a merger of the insurance funds. Many of those opposing a merger of the funds essentially argued that the banking industry should not be required to participate in an economic solution which would benefit their competition. For example, a state trade association representing banks argued that ''for decades S&Ls enjoyed a lax regulatory environment, significant tax breaks, and a mandated competitive advantage''. It said: ''Asking banks to shoulder the bailout burden of a key competitor because a long time competitive advantage will be reversed is unfair and inappropriate, particularly when banks are not responsible for the problems of the thrifts''.

One large trade association opposing a merger of the funds wrote: ''The looming premium differential will prompt thrifts to continue to look for loopholes to leave SAIF, further exacerbating the SAIF/FICO problem. However, merging the funds or delaying the banks' premium reduction is not the answer''. This trade association expressed support for using the remaining authorized and appropriated funds for the RTC to capitalize the SAIF and/or defease the FICO bond obligation. It suggested various ways to use the remaining RTC monies for SAIF/FICO, such as: (1) Transferring the remaining RTC funds to SAIF, leaving the principle intact, but investing the funds so as to generate sufficient interest earnings to pay FICO bond interest of up to $793 million; (2) using the remaining RTC funds to capitalize SAIF, which they claimed would leave ample funds to address the FICO problem; (3) using the RTC funds only to defease the FICO obligation thereby enabling SAIF to capitalize at the current assessment rates by 1998.

F. FICO Issues

Over 200 commenters urged that BIF members share in FICO assessments, with the majority of these urging that BIF members share proportionately. Over 200 commenters urged that RTC funds be used to defease FICO and a few commenters urged that the $8 billion from RTCCA be used as well. Over 70 commenters urged that premiums paid by Oakar and Sasser institutions should be used for FICO bond interest payments. It was recognized, however, that such a change in the law would be of limited benefit to SAIF. A large banking trade group commented:

> Using Oakar and Sasser premiums for FICO bond interest, however, would slow the recapitalization of the SAIF. To address this problem, the Congress could also extend the recapitalization schedule of SAIF, giving FDIC more leeway to reduce SAIF premiums.

One large thrift suggested that if the FICO burden were spread over all SAIF and BIF members equally, the cost would be approximately 2 basis points per institution. It suggested that bank deposit premiums should not be increased to absorb such an additional cost. Rather, the FICO charge should be deducted from any BIF premium paid. In contrast, a bank trade group argued: ''Such payments would merely protect FICO bondholders. * * * Tapping BIF funds for uses other than protection of BIF depositors would set a very dangerous precedent''.

G. Other Approaches

Other recommended alternatives included reducing BIF rates to 15 basis points and putting the excess assessment in a ''secondary reserve'' account, such as existed under FSLIC at one time, which would pay interest to BIF members but would also be used to defray SAIF expenses; transferring the net worth of mutual thrifts to SAIF; and merging the SAIF with the credit union insurance fund.

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[13] In conjunction with this proposal, it suggested that RTC be extended for two years to cover any failures of thrifts currently under its supervisory watch.

[14] In light of the political sensitivity to such a merger, this trade association wrote that it could support a package of changes which contained all of the following: (1) A sharing of the FICO obligation proportionately between BIF and SAIF; (2) Use of excess RTC funds as a backstop against near-term losses; and (3) A reasonable SAIF premium differential to be paid until such time as the SAIF reaches the mandated reserve ratio.

*III. Miscellaneous Comments*

A. Spread From 23 Basis Points to 31 Basis Points

The Board received few comments in response to its question as to whether the current spread of 8 basis points from the lowest to the highest assessment rates should be retained for SAIF members.

B. Transactions Which Would Have the Effect of Allowing Deposits to Shift From One Insurance Fund to the Other

Over 300 BIF-member institutions and 6 trade associations commented that steps should be taken to prohibit transactions which would have the effect of allowing deposits to shift from the SAIF to the BIF, thereby depleting the SAIF. Approximately 42 BIF-member institutions stated that exit and entrance fees should be assessed against transactions which would have the effect of allowing deposits to shift from the SAIF to the BIF (assuming that such transactions were not otherwise subject to exit and entrance fees). A bank trade group commented that, among other options for recapitalizing SAIF, policy makers should consider prohibiting thrifts from chartering banks for the purpose of exiting SAIF; declaring such institutions to be Sasser institutions that remain SAIF-insured; or requiring such institutions to pay the equivalent of exit/entrance fees and continue contributing to FICO.

Thrifts and their trade associations, however, noted that when significant costs are involved on an ongoing basis, institutions and their advisors would spend their time, energy and talent to find ways to avoid these ongoing costs and noted that this could leave Oakar banks and slow-moving thrifts without any relief. They suggested that methods already existed whereby depositors at a thrift could be encouraged to move their deposits to an existing bank affiliate while the thrift would service the deposits (*i.e.*, agent branches).

C. Comments Regarding Oakar Transactions

Seven BIF-members contended that the SAIF-assessable deposits held by BIF-member Oakar banks should be assessed at a lower rate than that imposed against SAIF member institutions (apparently to reflect the fact that FICO's assessment authority does not extend to such banks). Other commenters want banks and holding companies that acquired SAIF-insured institutions, and thereby benefited from the savings and loan bailout to continue to be liable to SAIF (although this is already the case because these acquirers pay SAIF premiums on the acquired deposits).

**Adoption of Final Rule**

As indicated above, the FDIC has determined to retain the existing assessment rate schedule applicable to members of the SAIF. The Board fully understands and appreciates the concerns raised in the comment letters concerning the impending rate differential. Most of the solutions suggested by SAIF-affiliated commenters require Congressional action, however, and are beyond the scope of this rulemaking procedure. Nonetheless, the FDIC agrees with these commenters that the difficulties facing the SAIF can only be addressed comprehensively through Congressional action. Therefore, after extensive analysis of the relevant issues, the FDIC has informed Congress of the FDIC's strong support for a proposal developed on an interagency basis for resolving the problems of the SAIF.[15]

The proposal has three components to address the immediate, pressing financial problems of the SAIF: (1) The SAIF would be capitalized through a special up-front cash assessment on SAIF deposits; (2) the responsibility for the FICO payments would be spread proportionally over all FDIC-insured institutions; and (3) the BIF and the SAIF would be merged as soon as practicable, after a number of additional issues related to the merger are resolved. In addition to the three components of the proposal, the FDIC and the Office of Thrift Supervision also recommend making unspent RTC funds available as a kind of reinsurance policy against extraordinary, unanticipated SAIF losses to limit the potential future costs to taxpayers from the existing full faith and credit guarantee of the U.S. Government that the SAIF enjoys. This proposal is further explained in the Testimony of Ricki Helfer, Chairman, FDIC, on The Condition of the SAIF and Related Issues, before the Committee on Banking, Housing, and Urban Affairs, U.S. Senate, July 28, 1995, and before the Subcommittee on Financial Institutions and Consumer Credit, Committee on Banking and Financial Services, U.S. House of Representatives, August 2, 1995. The proposal is consistent with many of the suggestions made by commenters in response to this final rule.

The FDIC further recognizes that a differential is likely to increase competitive pressures and impede thrifts' ability to generate capital both internally and externally. At this time, however, the FDIC must decline to reduce the minimum average SAIF assessment rate to 18 basis points. As detailed in Sections II and IV above, the SAIF is grossly undercapitalized. At the end of the first quarter of 1995, the SAIF had a balance of $2.2 billion, or only 0.31 percent of insured deposits. That balance was less than 7 percent of the assets of SAIF-insured ''problem'' institutions. At the current pace, and under reasonably optimistic assumptions, the SAIF is unlikely to reach the minimum reserve ratio of 1.25 percent until the year 2002. Even though the SAIF is grossly undercapitalized, a sizable portion of the SAIF's ongoing assessments is, by law, diverted to meet interest payments on obligations of the FICO. On July 1 the SAIF assumed responsibility from the RTC for paying the costs arising from any new failures of thrift institutions. These problems are exacerbated by several additional factors, including the shrinkage of the SAIF assessment base since the SAIF was created in 1989. Given the fund's relatively low balance and the transfer of resolution authority from the RTC to the SAIF on July 1, the FDIC believes that the SAIF must be built as quickly as possible to its mandated reserve level.

Having determined not to reduce the SAIF rate to the statutory minimum average of 18 basis points, one other way to maintain parity between SAIF members and BIF members would be to retain the BIF assessment rate schedule at 23–31 basis points. Few SAIF-affiliated commenters specifically urged such action, however. In contrast to the SAIF, the $23.2 billion BIF balance at the end of the first quarter was 1.22 percent of BIF-insured deposits and 70 percent of the assets of BIF-insured ''problem'' institutions. The BIF probably reached the 1.25 minimum reserve ratio during the second quarter of this year, although the FDIC cannot confirm this fact until the Call Reports for the second quarter have been received and analyzed. For the reasons set forth in the BIF rule published elsewhere in this **Federal Register**, the FDIC has determined to establish a new assessment rate schedule of 4 to 31 basis points for BIF members.

**Paperwork Reduction Act**

No collection of information pursuant to section 3504(h) of the Paperwork

[15] The Condition of the SAIF and Related Issues, Testimony of Ricki Helfer, Chairman, FDIC, before the Committee on Banking, Housing, and Urban Affairs, U.S. Senate, July 28, 1995. The Condition of the SAIF and Related Issues, Testimony of Ricki Helfer, Chairman, FDIC, before the Subcommittee on Financial Institutions and Consumer Credit, Committee on Banking and Financial Services, U.S. House of Representatives, August 2, 1995.

Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) are contained in this proposed rule. Consequently, no information has been submitted to the Office of Management and Budget (OMB) for review.

**Regulatory Flexibility Analysis**

The Board hereby certifies that the final rule would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). This final rule will not necessitate the development of sophisticated recordkeeping or reporting systems by small institutions nor will small institutions need to seek out the expertise of specialized accountants, lawyers, or managers to comply with this final rule. Therefore, the provisions of that Act regarding an initial and final regulatory flexibility analysis (*Id.* at 603 and 604) do not apply here.

**Riegle Community Development and Regulatory Improvement Act of 1994**

Section 302(b) of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA), 12 U.S.C. 4802(b), requires that all new regulations and amendments to regulations prescribed by a Federal banking agency which impose additional reporting, disclosures, or other new requirements on insured depository institutions shall take effect on the first day of a calendar quarter. This provision was designed to assist institutions by establishing a consistent date for complying with new regulations so that institutions would be more regularly informed of new rules and be able to effectuate necessary training, software, and other operational modifications in an orderly manner. However, this final rule does not impose such additional or new regulatory requirements, rather it retains the existing assessment rate schedule for SAIF-member institutions. The FDIC has therefore determined that section 302 of RCDRIA does not apply to this final rule.

**List of Subjects in 12 CFR Part 327**

Assessments, Bank deposit insurance, Banks, banking, Financing Corporation, Savings associations.

For the reasons set forth in the preamble, a portion of part 327 of title 12 of the Code of Federal Regulations is republished as set forth below:

## PART 327—ASSESSMENTS

1. The authority citation for part 327 continues to read as follows:

**Authority:** 12 U.S.C. 1441, 1441b, 1817–1819.

2. Paragraph (d)(1) of § 327.9 as redesignated from paragraph (c)(1) elsewhere in this issue of the **Federal Register** is republished for the convenience of the reader as set forth below:

**§ 327.9 Assessment rate schedules.**

* * * * *

(d) *SAIF members.* (1) Subject to § 327.4(c), the annual assessment rate for each SAIF member shall be the rate designated in the following schedule applicable to the assessment risk classification assigned by the Corporation under § 327.4(a) to that SAIF member (the schedule utilizes the group and subgroup designations specified in § 327.4(a)):

SCHEDULE

| Capital group | Supervisory subgroup | | |
|---|---|---|---|
| | A | B | C |
| 1 | 23 | 26 | 29 |
| 2 | 26 | 29 | 30 |
| 3 | 29 | 30 | 31 |

* * * * *

By the order of the Board of Directors.

Dated at Washington, D.C., this 8th day of August, 1995.

Federal Deposit Insurance Corporation.

**Jerry L. Langley,**

*Executive Secretary.*

[FR Doc. 95–20172 Filed 8–15–95; 8:45 am]

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Federal Register

Wednesday
August 16, 1995

Part V

# Department of Housing and Urban Development

**Office of the Assistant Secretary for Housing; Federal Housing Commissioner**

**24 CFR Parts 203 and 206**

**Home Equity Conversion Mortgage Insurance Demonstration: Streamlining the Demonstration and Allowing Use of the Direct Endorsement Program; Interim Rule**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of the Assistant Secretary for Housing—Federal Housing Commissioner**

**24 CFR Parts 203 and 206**

**[Docket No. FR–2958–I–01]**

**RIN 2502–AF32**

# Home Equity Conversion Mortgage Insurance Demonstration: Streamlining the Demonstration and Allowing Use of the Direct Endorsement Program

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Interim rule.

**SUMMARY:** This interim rule amends HUD's regulations in 24 CFR parts 203 and 206 to simplify the Home Equity Conversion Mortgage (HECM) Insurance Demonstration, and to expedite the processing of HECMs by permitting use of the Direct Endorsement program. The rule implements the statutory disclosure amendments in section 334 of the Cranston-Gonzalez National Affordable Housing Act. The rule also makes other changes, including technical and clarifying changes, to improve and streamline the program based on the first five years of the demonstration.

**DATES:** Effective Date: September 15, 1995.

Comment Due Date: October 16, 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, SW, Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. 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.

**FOR FURTHER INFORMATION CONTACT:** Richard K. Manuel, Acting Director, Single Family Development Division, Office of Insured Single Family Housing, Room number 9272, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–2700; TDD (202) 708–9300. (These are not toll-free telephone numbers.)

**SUPPLEMENTARY INFORMATION:**

## Background

The Home Equity Conversion Mortgage (HECM) Insurance Demonstration was authorized by Section 417 of the Housing and Community Development Act of 1987 (42 U.S.C. 5301), which amended Section 255 of the National Housing Act (12 U.S.C. 1715z–20) to permit elderly homeowners to borrow against the equity in their homes. HUD published final regulations on June 9, 1989, at 54 FR 24823, issued HUD Handbook 4235.1 for the program in August 1989, and immediately began processing applications for commitments to insure. The regulations are codified at 24 CFR part 206. Revision 1 to HUD Handbook 4235.1 was issued in November 1994.

This interim rule reflects ideas for improving the program regulations based on experience from the first five years of the demonstration. It also reflects HUD's implementation of section 334 of the Cranston-Gonzalez National Affordable Housing Act (NAHA) (42 U.S.C. 12701). An explanation of the interim changes follows with a list of purely technical amendments at the end of this section.

## Changes to HECM Regulations

*Section 334 of NAHA*

Section 334 of NAHA amended subsections (d), (e), and (g)[1] of section 255 of the National Housing Act (NHA). Section 255(e) was amended to require additional disclosures to the mortgagor before loan closing, including projections of future loan balances and information that the mortgagor's liability is limited. Existing § 206.43(a) requires the mortgagee to identify and explain to the mortgagor the principal provisions of the mortgage, which include the limitations on liability. HUD provided mortgagees with instructions on these new disclosures through Mortgagee Letter 91–1 and by making a software package available to mortgagees.

Section 154 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub.L. 103–325, September 23, 1994) imposes a very similar disclosure requirement for all reverse mortgages. HUD has concluded that Congress does not expect HECM mortgagees to attempt to comply with the disclosure requirements of both the NAHA and the new law, and that there is no need for HECM mortgagees to be exempted from the new law. The new law will become mandatory when the Federal Reserve Board's implementing regulations, published on March 24, 1995, at 57 FR 15463, become mandatory on October 1, 1995. At that time, HECM mortgagees will be expected to comply with the Federal Reserve Board regulations instead of the current HUD instructions on disclosures. Until then, mortgagees may choose the option of compliance with the Federal Reserve Board regulations as a means of complying with HUD's instructions.

Section 255(d)(7) of the NHA was amended to permit a procedure for the mortgagor to reserve a portion of the equity in the property for the benefit of the mortgagor or the mortgagor's heirs. This interim rule does not implement section 255(d)(7).

HUD has concluded that two of the amendments to section 255 of the NHA by section 334 of NAHA that are mandatory do not require any change to the current part 206. New section 255(d)(9) of the NHA requires that an insured mortgage provide for payments under one of six payment plans selected by the mortgagor: (1) Payments based on a line of credit, (2) monthly payments over a term, (3) monthly payments over the mortgagor's tenure in the home, (4) a combination of (1) and (2), (5) a combination of (1) and (3), and (6) ''or any other basis that the Secretary considers appropriate.'' In addition, new section 255(d)(10) of the NHA requires that an insured mortgage provide for conversion by the mortgagor from one payment plan to any other payment plan except that HUD may limit conversion for fixed rate mortgages by regulation. The payment plans designated above as (1) through (5) and the mortgagor's ability to convert from one plan to another are currently authorized by part 206. HUD has no current plans to alter this regulatory scheme.

HUD does not interpret the statutory reference to conversion by the mortgagor as barring all HUD restrictions on conversions for adjustable rate mortgages, if the restrictions do not have the effect of substantially interfering with the general right to choose payment plans. For example, the existing § 206.26(b)(3) requires conversion to a line of credit with restricted draws if required post-closing repairs are not completed on schedule. Restrictions on convertability

[1] Section 255(g) was amended to raise the limit on HECM's insured under section 255 from 2,500 mortgages to 25,000 mortgages, and to permit HUD to insure mortgages through September 30, 1995 instead of September 30, 1991. In response to these changes, HUD eliminated the reservations system that had been adopted to insure nationwide allocation of the small number of mortgages that had been initially authorized (56 FR 16002, April 19, 1991.) No further rulemaking is needed to implement this amendment.

end with completion of the required repairs. Another specific restriction on conversion is in the existing § 206.26(d), which permits the mortgagee to charge a processing fee for changes in payment plans, not to exceed twenty dollars. HUD is not making any change to these provisions.

Section 206.26(e) of the existing regulations also generally authorizes HUD to restrict changes in payment plans including a limitation on the frequency of payment changes and a minimum notice period for a mortgagor request for change. HUD has not adopted any restrictions under this section. No change is being made to this section, although any future restrictions adopted under the section will be carefully scrutinized to ensure that they do not unduly limit the mortgagor's ability to change payment plans in violation of the statute. HUD has no current plans to include in the regulations any limitations on convertability of fixed rate mortgages.

**Direct Endorsement**

*Sections 203.3, 203.5, and 203.255*

The interim rule makes the HECM program an eligible program for Direct Endorsement processing. In order for a mortgagee to be approved for Direct Endorsement processing of HECMs, the mortgagee will have to initially submit 5 HECMs as test cases to the Secretary for review prior to endorsement for insurance in addition to complying with the other requirements of § 203.3. This requirement for 5 test cases will not apply to any mortgagee that is otherwise approved for Direct Endorsement and that has closed 50 HECMs that were insured by HUD prior to the effective date of the interim rule.

A Direct Endorsement mortgagee will have to submit the documentation and certifications listed at § 203.255 as well as the certificate of counseling, the title insurance commitment, and the mortgagee's election of the assignment or shared premium options as required by § 206.15. Paragraphs (c), (d) and (e) of § 203.255, regarding pre- and post-endorsement review and submission for endorsement by a mortgagee other than the originating mortgagee, will apply to HECMs. Sections 203.3, 203.5 and 203.255 of the current regulations are amended and conforming amendments are made to § 206.3 defining maximum claim amount, § 206.7 regarding regulatory amendments, and § 206.13 on ineligible programs.

*Section 206.15*

Section 206.15 of the current regulations, which pertains to the insurance application process, is revised to conform to the decision to make HECMs eligible for Direct Endorsement processing. Paragraph (a) of § 206.15 is removed because it refers to the old system of reservations of insurance authority which was eliminated after the HECM demonstration was expanded by section 334 of NAHA (See final rule published on April 19, 1991, at 56 FR 16002). Paragraph (b) is removed because the concept of applying for mortgage insurance prior to execution of the mortgage is obsolete under the Direct Endorsement program. Most of paragraph (c) is retained, except references to application for insurance and conditional commitments will be replaced with the Direct Endorsement requirements. The list of documentation in § 206.15(c) is amended to incorporate the Direct Endorsement certifications at § 203.255. The last sentence in § 206.15(c) concerning the General Insurance Fund is moved to a new § 206.102 in subpart C.

**Other Program Amendments**

*Section 206.5*

Section 206.5 of the current regulations is amended to include waiver authority for subpart D regarding servicing to conform to the 1991 adoption of 24 CFR 203.685 permitting waivers of servicing requirements for other single family mortgage insurance programs.

*Section 206.19(f)*

A new paragraph (f) is added to § 206.19 to clarify that loan advances cannot exceed any maximum mortgage amount stated in a mortgage. The HECM program does not require that a maximum mortgage amount be used, but some State laws require mortgages to contain a maximum amount. This change will ensure that a mortgagee could comply both with State law and its contractual obligation to make loan advances and conforms to existing provisions in the approved mortgage instruments.

*Section 206.21*

Section 206.21 is amended to make two corrections to paragraph (d). Paragraph (d) as amended, provides that post-loan disclosures for adjustments must be made 25 days before a change in the interest rate, not a change in mortgage balance, and that disclosure be made of the new interest rate rather than of the new mortgage balance. Paragraph (d), as amended, also requires disclosure of the date of the index used to calculate the new interest rate. These changes will conform the rule to actual program operations as reflected in the program handbook and mortgage instruments.

*Sections 206.25 and 206.26*

The provisions of §§ 206.25 and 206.26 regarding payment calculations and amounts set aside from the principal limit are revised to eliminate differences between the regulations and the HECM Loan Agreement. Section 206.25(b)(1) of the current regulation is reorganized to describe the payments calculation in a manner to better reflect the description in the Loan Agreement (§ 2.5 of the Loan Agreement) required by HUD Handbook 4265.1 and the operations of the HECM payments model software. Another change to § 206.25(d) will more accurately reflect the size of the amount set aside for servicing charges.

Technical changes are made to the ''repair set aside'' provisions at § 206.26(b) to clarify repair set aside procedures as was done in the Loan Agreement (§ 2.9 of the Loan Agreement). The mortgagee will not be required to recalculate monthly payments when the repairs are completed. Instead, excess funds in the repair set-aside will be automatically transferred to a new or existing line of credit. In this way mortgagors will only be charged a fee for changing payments if the mortgagor requested an increase to monthly payments requiring a recalculation. If the amount of funds in the repair set-aside will be insufficient to complete the repairs, monthly payments will be recalculated only if there are insufficient funds in a line of credit to cover the repair charges.

*Section 206.27(b)*

Section 206.27(b) will be amended to clarify that any lien, in addition to the tax deferral liens specified in the regulation, may be recorded so long as those liens are subordinate to the first HECM and any second HECM held by the Secretary.

*Section 206.40*

Section 206.40 of the current regulation is amended to reflect statutory changes made by section 165 of the Housing and Community Development Act of 1987 (Pub. L. 100–242, approved February 5, 1988) which requires applicants and participants in any HUD program to disclose to HUD their Social Security Numbers (SSNs) or Employer Identification Numbers (EINs). To be eligible for mortgage insurance under part 206, the mortgagor must meet the requirements for disclosure and verification of SSNs and EINs as provided by part 200, subpart U. This conforms part 206 to changes

previously made in regulations for other mortgage insurance programs.

*Sections 206.45(a) and 206.15*

The interim rule amends §§ 206.45(a) and 206.15 to adjust the time frame for submission to HUD of a title insurance commitment, and to permit the mortgagee to retain its mortgagee's title insurance policy in the loan servicing file. The requirement for a title policy before endorsement has caused delay in endorsing mortgages. Section 206.45(a), as interim to be amended, would require the Direct Endorsement mortgagee to obtain a title insurance commitment before closing a loan and to obtain a title insurance policy satisfactory to the Secretary. Section 206.15 will be amended to remove the requirement to submit the title insurance policy to HUD, but mortgagees will still be expected to obtain the title insurance policy, based on the commitment obtained before closing, as soon as possible and to retain the policy in the servicing file so that it is available for inspection during HUD monitoring.

These requirements will still serve HUD's objective of ensuring that any special problems regarding validity of a HECM in the jurisdiction are known prior to insurance endorsement. HUD is particularly interested in independent assurance of the validity of title because HUD may be required to become the mortgagee upon mortgagee default and the mortgage is non-recourse. HUD concludes that it is still necessary to depart from its practice in other single family programs which do not require any title evidence prior to endorsement for mortgage insurance because of HUD's unique exposure in the event of title problems, but there is no need to delay endorsement if a title insurance commitment has been obtained by the mortgagee before loan closing.

*Section 206.45*

Three other changes are made to § 206.45 by this rule. Paragraph (b) of that section, which currently requires the mortgaged property to include a dwelling designed principally as a one-family residence, is amended to permit a dwelling for such number of families as the Secretary determines. Such a determination will need to be consistent with statutory constraints. Although current section 255(d)(3) of the NHA does not permit an HECM on a dwelling designed principally as a residence for more than one family, HUD anticipates the possibility of future statutory authority to insure an HECM secured by a dwelling designed principally as a residence for up to four families. HUD therefore has removed the unnecessary regulatory restriction that will bar the Secretary from taking immediate advantage of any liberalization in the size of dwellings eligible for the HECM program.

Paragraph (d) is amended to permit the HECM program to be used for pre-1978 dwellings with defective paint surfaces if no child less than six years of age is expected to reside in the dwelling. This change conforms to a provision of the Residential Lead-Based Paint Hazard Reduction Act of 1992 which changed the childhood age of concern for exposure to lead-based paint hazards from less than seven years of age to less than six years of age.

*Section 206.107(a)(1)*

Section 206.107(a)(1) of the current regulation is amended to conform to the operating procedure announced in Handbook 4235.1, Rev. 1, Ch. 10–2 A.1. The Handbook was issued with the intent that HUD would make this conforming rule change at the earliest opportunity and before the balances of many mortgages would reach the maximum claim amount. Under the current rule, mortgagees have expressed concern that they may be obligated to make loan advances to the mortgagor in excess of the maximum claim amount that HUD is permitted to pay to the mortgagee, while not being able to assign the mortgage to HUD until the debt reached the maximum claim amount. The rule will make clear that this was not HUD's intent by providing mortgagees with a window period for assignment. The mortgage could be assigned when the balance is equal to or greater than 98 percent of the maximum claim amount, or when the mortgagor has requested a payment that will result in the mortgage balance exceeding the maximum claim amount.

A new paragraph (a)(1)(v) is added to § 206.107 which will require that the mortgage assigned to HUD under the mortgagee's assignment option be a first lien and that the underlying security have good and marketable title. The regulation incorporates § 203.353 (mortgagee certification as to lien status, mortgage amount and offsets), § 203.387 (definition of good and marketable title) and § 203.389 (title objections which will not destroy marketability). This clarifies that HUD may refuse assignment of a mortgage on a property if some or all of the loan advances made after the mortgage was closed are not secured by a first lien under the applicable state law governing lien priority for funds advanced after closing. These changes expressly adopt policies that apply to assignments of mortgages to HUD under other authorities.

*Section 206.116*

A new § 206.116 is added to codify the policy that the initial Mortgage Insurance Premium (MIP) paid for an HECM is not refundable. This policy was explained in the preamble to the HECM final rule published on June 8, 1989, at 54 FR 24823. The non-refundable MIP is a key factor in the payment model and in determination of risk under the program.

*Section 206.125*

Three paragraphs of § 206.125 are amended. First, paragraph (a) will relieve the mortgagee from notifying the mortgagor when the mortgage is due and payable because the mortgagor is deceased. While HUD expects the mortgagee to attempt to provide adequate notice to an executor or other party responsible for the property before a foreclosure action is commenced, the term ''mortgagor'' is used in the HECM regulations as referring only to the original mortgagor or mortgagors, not to their successors in interest, so that notice to the mortgagor after death will be an impossibility.

Second, paragraph (b) is revised to require an appraisal of the property within 30 days of the date when the mortgagee is notified that the mortgage is due and payable, or within 30 days of the date the mortgagee becomes aware of the mortgagor's death, instead of permitting the mortgagee to wait until 15 days before the foreclosure sale as in the current rule. An appraisal will be needed in any event—either to support a pre-foreclosure sale or in connection with the mortgagee's bidding at foreclosure—and the early availability of an appraisal will enable the mortgagor or the mortgagor's estate to offer the property for sale at realistic terms in an attempt to avoid foreclosure. The mortgagor may request an appraisal at any time if the property is being sold. The mortgagee would no longer have to request the Secretary to make an appraisal of the property. To be consistent with the change to Direct Endorsement processing, which involves greater reliance on mortgagees, the appraisal for this purpose would be ordered by the mortgagee.

Paragraph (b) is also revised so that the current requirement for the mortgagor to bear the expense applies only when the mortgage is not due and payable. After the mortgage has been accelerated, the mortgagor may not have funds available to pay for the appraisal or there may be a substantial period of time before costs related to the property

can be paid by the mortgagor's estate. The revised paragraph (b) therefore provides for the mortgagee to pay for the appraisal if the mortgage is due and payable, with a right of reimbursement from any proceeds from the sale of the home. If there are insufficient sales proceeds, a related change in § 206.129(d)(iv) will permit the mortgagee to include the cost of the appraisal in its claim for insurance benefits.

Third, paragraph (d) is amended to extend the time to foreclose that is allowed without specific approval by HUD. The time is extended to six months from the date of notice to the mortgagor that the mortgage is due and payable, or from the date of the mortgagor's death if applicable, or from the date that State law or Federal bankruptcy law will permit the commencement of foreclosure. Such an extension will provide additional time for the mortgagor or the mortgagor's estate to sell the property. It is foreseen that the additional time may be especially necessary where the property is being sold by the mortgagor's estate or through probate proceedings.

*Section 206.129*

Several technical amendments are made to § 206.129. Paragraph (d) is amended to conform the HECM claim requirements to the updated claim requirements for other insured single-family mortgages issued at 57 FR 47967, October 20, 1992. A claim payment under paragraph (d), made when a mortgagee acquires title or is an unsuccessful bidder at foreclosure, will include the items listed in paragraphs (p) and (q) of § 203.402 (HUD-approved amount paid to mortgagor for a deed-in-lieu of foreclosure, and reasonable costs of evicting occupants), as well as the items currently listed in the HECM regulation. The last sentence of § 206.129(d)(2)(ii) is removed because it is repetitive of § 203.402(p), which will be added, as noted above. The claim also will include a certification that the property is undamaged by incorporating the certification provisions of § 203.380. Section 206.129(d)(3)(ii) will incorporate the inspection and preservation requirements of § 203.377.

Paragraph (e)(1) of § 206.129 is amended with respect to claims made in connection with the assignment option. Claims will be calculated by starting with the mortgage balance at the time of assignment instead of the maximum claim amount. This amendment is related to the change previously discussed that will permit assignments before the mortgage balance has reached the maximum claim amount. Paragraph (e)(2) also will be amended to provide authority to reimburse mortgagees for certain costs and attorney fees incurred in connection with the assignment of mortgages to the Secretary as is currently provided for under § 203.404(a)(3) for Section 203(b) mortgages.

*Section 206.203*

A technical amendment is made to § 206.203 to clarify that mortgagees need only send a statement of account for line of credit payments. Statements of account are not required for monthly payments. New payment plans are required when payments are recalculated.

*Section 206.207*

Section 206.207 is amended to add title search costs to the list of allowable post-endorsement charges by mortgagees in the case where the mortgage was extended under § 206.27(d)(10) for an additional amount of debt or additional number of years beyond the debt or term originally covered by the mortgage. Some State laws do not permit a lien to be established for an indefinite amount or for advance over an indefinite number of years, and later extension of the mortgage is necessary because of the characteristics of the HECM program. The section also is amended to permit a mortgagee to charge a mortgagor for property preservation expenses incurred by a mortgagee in connection with vacant or abandoned properties.

**Technical Amendments**

In addition to the foregoing amendments, certain minor technical amendments are made to the following sections in 24 CFR part 206.

*Section 206.9*

This section is amended to correct the heading of paragraph (b).

*Section 206.43(a)*

The section is amended to include a cross reference to § 206.207(b).

*Section 206.47(a)*

This section is amended to replace the phrase ''minimum property standards'' with ''the applicable property standards of the Secretary''.

*Section 206.102*

This section is added to include language currently in § 206.15, stating that insured HECMs are obligations of the General Insurance Fund.

*Section 206.113*

This section is amended to reflect a name change from the Treasury Fiscal Requirements Manual to Treasury Financial Manual.

*Section 206.121*

This section is amended to correct a cross-reference citation.

*Section 206.123(a)(4)*

This section is amended to include a cross reference to § 206.127(a)(2).

*Section 206.125(g)(3)*

This section is amended to include the full text of § 204.305(b) from the coinsurance regulations in lieu of incorporation by reference, because of HUD's recent rule that terminated the single family coinsurance program.

*Section 206.129(d)(2)*

This section is amended to include the full text of § 204.322(l) from the coinsurance regulations. Some language from the related § 204.305(a) is now included in § 206.125(g)(1).

*Section 206.205(a)*

This section is amended to add the word ''special'' before ''assessments''.

**Other Matters**

*Justification for Interim Rule*

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking, 24 CFR part 10. However, part 10 does provide for exceptions from that general rule where the Department finds good cause to omit advance notice and participation. The good cause required is satisfied when prior public procedure is ''impracticable, unnecessary, or contrary to the public interest.'' (24 CFR 10.1) The Department finds that good cause exists to publish this interim rule for effect without first soliciting public comment in that prior public procedure is both contrary to the public interest and unnecessary.

Of the numerous changes made by the interim rule, the greatest immediate impact is expected to be the change to Direct Endorsement (DE) processing for HECM loans. DE processing permits the lender to close the loan without prior approval from the Department. It is used nearly exclusively for single family mortgage insurance programs other than the HECM program, and has proven to be an effective method of reducing the time needed for loan approval while permitting reduced HUD field office staffs to deal with other matters that cannot be assigned to mortgagees. The potential borrowers will clearly benefit by elimination of processing through the HUD offices. Lenders will no longer have a legal commitment for insurance

at the time they close the loan. However, HUD will always endorse the loan under Direct Endorsement if it has been processed by the lender in accordance with all applicable requirements. Lenders that follow all HUD requirements are under no greater risk under Direct Endorsement than if they closed a HECM loan in reliance on a HUD commitment. HUD has received numerous informal communications from lenders endorsing a conversion to Direct Endorsement processing for the HECM program as soon as possible.

The many other changes included in this interim rule fall into several general categories. Many are clarifications that reflect actual program operation during the years the HECM program has been in effect. Others are conforming changes that eliminate some unneeded and unintended small discrepancies between part 206 and comparable provisions in part 203. Another category of changes reflects changes in other laws that have occurred since the original publication of part 206. Finally, some changes are simple wording changes to remove possibility of confusion in meaning. In all of these cases, HUD has determined that there is no public benefit to a delay in effectiveness pending a public notice and comment period. There is no expansion of regulatory burden for lenders or borrowers.

**Regulatory Reinvention**

Consistent with Executive Order 12866, and President Clinton's memorandum of March 4, 1995, to all Federal Departments and Agencies on the subject of Regulatory Reinvention, the Department is reviewing all its regulations to determine whether certain regulations can be eliminated, streamlined, or consolidated with other regulations. As part of this review, this interim rule, at the final rule stage, may undergo revisions in accordance with the President's regulatory reform initiatives. In addition to comments on the substance of these regulations, the Department welcomes comments on how this interim rule may be made more understandable and less burdensome.

**Environmental Impact**

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 implements section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). This 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, Office of the General Counsel, Department of Housing and Urban Development Room 10276, 451 Seventh Street, SW, Washington, DC 20410.

**Executive Order 12866**

This interim rule was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866 on Regulatory Planning and Review, issued by the President on September 30, 1993. Any changes made in this interim rule as a result of that review are clearly identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC.

**Impact on Small Entities**

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this interim rule before publication and by approving it certifies that this interim rule will not have a significant economic impact on a substantial number of small entities. The interim rule is limited to revision of the Home Equity Conversion Mortgage Demonstration. Specifically, the requirements of the interim rule are directed to making the program more efficient for participating mortgagees, mortgagors and the Department.

**Executive Order 12612, Federalism**

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this interim rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the interim rule is not subject to review under the Order.

**Executive Order 12606, the Family**

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this interim rule will not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. No significant change in existing HUD policies or programs will result from promulgation of this interim rule, as those policies and programs relate to family concerns.

**Regulatory Agenda**

This interim rule was listed as sequence number 1414 in the Department's Semiannual Agenda of Regulations published on May 8, 1995 (60 FR 23368, 23383) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

**List of Subjects**

*24 CFR Part 203*

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

*24 CFR Part 206*

Aged, Condominiums, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, 24 CFR parts 203 and 206 are amended as follows:

## PART 203—SINGLE FAMILY MORTGAGE INSURANCE

1. The authority citation for 24 CFR part 203 is revised to read as follows:

**Authority:** 12 U.S.C. 1709, 1710, 1715b, and 1715u; 42 U.S.C. 3535(d). In addition, subpart C is also issued under 12 U.S.C. 1715u.

2. In § 203.3, paragraph (b)(4) is revised to read as follows:

**§ 203.3 Approval of mortgagees for Direct Endorsement.**

* * * * *

(b) * * *

(4) The mortgagee must submit initially 15 mortgages processed in accordance with §§ 203.5 and 203.255. Separate approval is required to originate mortgages under part 206 of this chapter through the Direct Endorsement program unless at least 50 mortgages closed by the mortgagee have been insured under part 206 of this chapter prior to September 15, 1995. Other mortgagees who have not closed at least 50 mortgages under part 206 of this chapter must submit five (5) Home Equity Conversion Mortgages, processed in accordance with §§ 203.3 and 203.255. The documents required by § 203.255 will be reviewed by the Secretary and, if acceptable, commitments will be issued prior to endorsement of the mortgages for insurance. If the underwriting and processing of these 15 mortgages (or the 5 Home Equity Conversion Mortgages) is satisfactory, then the mortgagee may be approved to close subsequent mortgages

and submit them directly for endorsement for insurance in accordance with the process set forth in § 203.255. Unsatisfactory performance by the mortgagee at this stage constitutes grounds for denial of participation in the program, or for continued pre-endorsement review of a mortgagee's submissions. If participation in the program is denied, such denial is effective immediately and may be appealed in accordance with the procedures set forth in paragraph (d)(2) of this section. Unsatisfactory performance solely with respect to mortgages under 24 CFR part 206 may, at the option of the Secretary, be grounds for denial of participation or for continued pre-endorsement review for 24 CFR part 206 mortgages without affecting the mortgagee's processing of mortgages under other parts.

* * * * *

3. In § 203.5, paragraph (b) is revised to read as follows:

**§ 203.5 Direct Endorsement process.**

* * * * *

(b) *Eligible programs.* All single family mortgages authorized for insurance under the National Housing Act shall be originated through the Direct Endorsement program, except mortgages authorized under sections 203(n), 203(p), 213(d), 221(h), 221(i), 225, 233, 237, 809 or 810 of the National Housing Act, or any other insurance programs announced by **Federal Register** notice or as provided in § 203.1. The provision contained in § 221.55 of this chapter regarding deferred sales to displaced families is not available in the Direct Endorsement program.

* * * * *

4. Section 203.255 is amended by:

a. Revising the last sentence of paragraph (b)(11);

b. Redesignating the existing paragraph (b)(12) as paragraph (b)(13);

c. Adding a new paragraph (b)(12); and

d. Revising paragraph (c) introductory text and paragraph (c)(3), to read as follows:

**§ 203.255 Insurance of mortgages.**

* * * * *

(b) * * *

(11) * * * The certification shall incorporate each of the mortgagee certification items which apply to the mortgage loan submitted for endorsement, as set forth in the applicable handbook or similar publication that is distributed to all Direct Endorsement mortgagees;

(12) For a Home Equity Conversion Mortgage under part 206 of this chapter, the additional documents required by § 206.15 of this chapter; and

* * * * *

(c) *Pre-endorsement review for Direct Endorsement.* Upon submission by an approved mortgagee of the documents required by paragraph (b) of this section, the Secretary will review the documents and determine that:

* * * * *

(3) The stated mortgage amount does not exceed the maximum mortgage amount for the area as most recently announced by the Secretary, except for mortgages under 24 CFR part 206;

* * * * *

## PART 206—HOME EQUITY CONVERSION MORTGAGE INSURANCE

5. The authority citation for part 206 is revised to read as follows:

**Authority:** 12 U.S.C. 1715b, 1715z-1720; 42 U.S.C. 3535(d).

6. In § 206.3, the definition of ''*Maximum claim amount*'' is revised to read as follows:

**§ 206.3 Definitions.**

* * * * *

*Maximum claim amount* means the lesser of the appraised value of the property or maximum dollar amount for an area established by the Secretary for a one-family residence under section 203(b)(2) of the National Housing Act (as adjusted where applicable under section 214 of the National Housing Act). Both the appraised value and the maximum dollar amount for the area shall be as of the date the Direct Endorsement underwriter receives the appraisal report. Closing costs shall not be taken into account in determining appraised value. Appraised value shall be determined by an appraisal performed in accordance with part 267 of this chapter.

* * * * *

7. Section 206.5 is amended by revising the first sentence, to read as follows:

**§ 206.5 Waivers.**

The Secretary, in an individual case, may waive any requirement of subparts B and D of this part not required by statute if the Secretary finds that application of such requirement will adversely affect achievement of the purposes of this program. * * *

8. Section 206.7 is revised to read as follows:

**§ 206.7 Effect of amendments.**

The regulations in this part may be amended by the Secretary at any time and from time to time, in whole or in part, but amendments to subparts B and C of this part shall not adversely affect the interests of a mortgagee on any mortgage to be insured for which either the Direct Endorsement mortgagee has approved the mortgagor and all terms and conditions of the mortgage or the Secretary has made a commitment to insure. Such amendments shall not adversely affect the interests of a mortgagor in the case of a default by a mortgagee where the Secretary makes payments to the mortgagor.

9. In § 206.9, the paragraph heading of paragraph (b), is revised to read as follows:

**§ 206.9 Eligible mortgagees.**

* * * * *

(b) *HUD approved mortgagees.*

* * * * *

10. The title of subpart B is revised to read ''Subpart B—Eligibility; Endorsement.''

**§ 206.13 [Removed]**

11. Section 206.13 is removed.

12. Section 206.15 is revised to read as follows:

**§ 206.15 Endorsement for insurance.**

Mortgages originated under this part must be endorsed through the Direct Endorsement program under § 203.5 of this chapter, except as provided in § 203.1 of this chapter. The mortgagee shall submit to the Secretary, within 60 days after the date of closing of the loan or such additional time as permitted by the Secretary, properly completed documentation and certifications as listed in § 203.255 of this chapter and the certificate received by the mortgagor from the counseling entity that the mortgagor has received counseling as required under § 206.41, a copy of the title insurance commitment satisfactory to the Secretary (or other acceptable title evidence if the Secretary has determined not to require title insurance under § 206.45(a)), the mortgagee's election of either the assignment or shared premium option under § 206.107, and any other documentation required by the Secretary. Sections 203.255(c), (d) and (e) of this chapter, pertaining to pre-endorsement review, submission for endorsement by purchasing mortgagee, and post-endorsement review for Direct Endorsement, apply to mortgages under this part. If the mortgagee has complied with the Direct Endorsement requirements of §§ 203.3, 203.5 and 203.255 of this chapter and the requirements of this part, and the mortgage is determined to be eligible, the Secretary will endorse the mortgage

for insurance by issuance of a Mortgage Insurance Certificate.

13. In § 206.19, a new paragraph (f) is added to read as follows:

**§ 206.19 Payment options.**

* * * * *

(f) *Payments limited by lien amount.* No payments shall be made under any of the payment options, notwithstanding anything to the contrary in this section or in § 206.25, in an amount which shall cause the mortgage balance after the payment to exceed any maximum mortgage amount stated in the security instruments or to otherwise exceed the amount secured by a first lien.

14. In § 206.21, paragraphs (c)(2) and (d) are revised to read as follows:

**§ 206.21 Interest rate.**

* * * * *

(c) * * *

(2) Compliance with pre-loan disclosure provisions of 12 CFR part 226 (Truth in Lending) shall constitute full compliance with paragraph (c)(1) of this section.

(d) *Post-loan disclosure.* At least 25 days before any adjustment to the interest rate may occur, the mortgagee must advise the mortgagor of the following:

(1) The current index amount;

(2) The date of publication of the index; and

(3) The new interest rate.

* * * * *

15. In § 206.25, paragraph (b)(1) is revised to read as follows:

**§ 206.25 Calculation of payments.**

* * * * *

(b) *Monthly payments—term option.* (1) Using factors provided by the Secretary, the mortgagee shall calculate the monthly payment so that the sum of paragraphs (b)(1)(i) or (b)(1)(ii) of this section added to paragraphs (b)(1)(iii), (b)(1)(iv), (b)(1)(v) and (b)(1)(vi) of this section shall be equal to the principal limit at the end of the payment term:

(i) An initial payment under paragraph (a) of this section plus any initial servicing charge set aside under § 206.19(d); or

(ii) The mortgage balance at the time of a change in payments option in accordance with § 206.26, plus any remaining servicing charge set aside under § 206.19(d); and

(iii) The portion of the principal limit set aside as a line of credit including any set asides for repairs and first year property charges under § 206.19(d); and

(iv) All monthly payments due through the payment term, including funds withheld for payment of property charges under § 206.205; and

(v) All MIP, or monthly charges due to the Secretary in lieu of mortgage insurance premiums due through the payment term; and

(vi) All interest through the remainder of the payment term. The expected average mortgage interest rate shall be used for this purpose.

* * * * *

16. In § 206.26, paragraphs (b)(1) and (b)(2) are revised to read as follows:

**§ 206.26 Change in payment option.**

* * * * *

(b) * * *

(1) If initial repairs after closing under § 206.47 are completed without using all of the funds set aside for repairs, the mortgagee shall transfer the remaining amount to a line of credit and inform the mortgagor of the sum available to be drawn.

(2) If repairs after closing under § 206.47 cannot be completed with the funds set aside for repairs, the mortgagee may advance additional funds to complete repairs from an existing line of credit. If a line of credit is not sufficient to make the advance or if no line of credit exists, future monthly payments shall be recalculated for use as a line of credit in accordance with § 206.25.

* * * * *

17. In § 206.27, paragraph (b)(3) is revised to read as follows:

**§ 206.27 Mortgage provisions.**

* * * * *

(b) * * *

(3) The mortgagor shall not participate in a real estate tax deferral program or permit any liens to be recorded against the property, unless such liens are subordinate to the insured mortgage and any second mortgage held by the Secretary.

* * * * *

18. A new § 206.40 is added to read as follows:

**§ 206.40 Disclosure and verification of Social Security and Employer Identification Numbers.**

The mortgagor must meet the requirements for the disclosure and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

19. In § 206.43, paragraph (a) is revised, and a new paragraph (c) is added, to read as follows:

**§ 206.43 Information to mortgagor.**

(a) *Explanation of mortgage terms.* At the time the mortgagee provides the mortgagor with a loan application, the mortgagee shall provide each mortgagor with a copy of the mortgage forms. At that time the mortgagee shall identify and explain to the mortgagor the principal provisions of the mortgage, including the fact that the liability of the homeowner is limited under the mortgage to the value of the property and whether the mortgagee will collect servicing fees under § 206.207(b).

* * * * *

(c) *Disclosure.* The mortgagee must comply with any regulations issued by the Federal Reserve Board to implement section 154 of the Riegle Community Development and Regulatory Improvement Act of 1994 (15 U.S.C. 1648).

* * * * *

20. In § 206.45, paragraphs (a), (b), and (d) are revised to read as follows:

**§ 206.45 Eligible properties.**

(a) *Title.* A mortgage must be on real estate held in fee simple, *or* on a leasehold under a lease for not less than 99 years which is renewable, *or* under a lease having a remaining period of not less than 50 years beyond the date of the 100th birthday of the youngest mortgagor. The mortgagee shall obtain a mortgagee's title insurance policy satisfactory to the Secretary. If the Secretary determines that title insurance for reverse mortgages is not available for reasonable rates in a State, then the Secretary may specify other acceptable forms of title evidence in lieu of title insurance.

(b) *Type of property.* The property shall include a dwelling designed principally as a residence for one family or such additional families as the Secretary shall determine.

* * * * *

(d) *Lead-based paint poisoning prevention.* If the appraiser of a dwelling constructed prior to 1978 finds defective paint surfaces, § 200.810(d) of this chapter shall apply unless the mortgagor certifies that no child who is less than six years of age resides or is expected to reside in the dwelling.

* * * * *

21. In § 206.47, paragraph (a) is revised to read as follows:

**§ 206.47 Property standards; repair work.**

(a) *Need for repairs.* Properties must meet the applicable property standards of the Secretary in order to be eligible. Properties which do not meet the property standards must be repaired in order to ensure that the repaired property will serve as adequate security for the insured mortgage.

* * * * *

22. A new § 206.102 is added under the undesignated center heading ''Sale,

Assignment and Pledge'' to read as follows:

**§ 206.102 General Insurance Fund.**

Mortgages insured under this part shall be obligations of the General Insurance Fund.

23. In § 206.107, paragraph (a)(1) introductory text is revised and a new paragraph (a)(1)(v) is added, to read as follows:

**§ 206.107 Mortgagee election of assignment or shared premium option.**

(a) * * *

(1) Under the assignment option, the mortgagee shall have the option of assigning the mortgage to the Secretary if the mortgage balance is equal to or greater than 98 percent of the maximum claim amount, or the mortgagor has requested a payment which exceeds the difference between the maximum claim amount and the mortgage balance and:

* * * * *

(v) The mortgage is a first lien of record and title to the property securing the mortgage is good and marketable. The provisions of § 203.353 of this chapter pertaining to mortgagee certifications, § 203.387 of this chapter pertaining to title evidence, and § 203.389 of this chapter pertaining to waived title objections also apply.

* * * * *

24. In § 206.113, paragraph (b) is revised to read as follows:

**§ 206.113 Late charge and interest.**

* * * * *

(b) *Interest.* In addition to any late charge provided in paragraph (a) of this section, the mortgagee shall pay interest on any initial MIP remitted to the Secretary more than 30 days after closing, and interest on any monthly MIP remitted to the Secretary more than 30 days after the payment date prescribed in § 206.111(b). Such interest rate shall be paid at a rate set in conformity with the Treasury Financial Manual.

* * * * *

25. A new § 206.116 is added before the undesignated center heading ''HUD RESPONSIBILITY TO MORTGAGORS'', to read as follows:

**§ 206.116 Refunds.**

No amount of the initial MIP shall be refundable.

26. Section 206.121 is amended by revising the first sentence of paragraph (c), to read as follows:

**§ 206.121 Secretary authorized to make payments.**

* * * * *

(c) *Second mortgage.* If the contract of insurance is terminated as provided in § 206.133(c) and if a second mortgage has been recorded when required by § 206.27(d), all payments to the mortgagor by the Secretary (except late charges) will be secured by the second mortgage. * * *

27. In § 206.123, paragraph (a)(4) is revised to read as follows:

**§ 206.123 Claim procedures in general.**

(a) * * *

(4) The mortgagee acquires title to the property by foreclosure or a deed in lieu of foreclosure and sells the property as provided in § 206.125(g) for an amount which does not satisfy the mortgage balance or fails to sell the property as provided in § 206.127(a)(2); or

* * * * *

28. Section 206.125 is amended by revising the first sentence of paragraph (a)(2) and paragraphs (b), (d)(1), (d)(2), (g)(1), and (g)(3), to read as follows:

**§ 206.125 Acquisition and sale of the property.**

(a) * * *

(2) After notifying the Secretary, and receiving approval of the Secretary when needed, the mortgagee shall notify the mortgagor that the mortgage is due and payable, unless the mortgage is due and payable by reason of the mortgagor's death. * * *

* * * * *

(b) *Appraisal.* The mortgagee shall obtain an appraisal of the property no later than 30 days after the mortgagor is notified that the mortgage is due and payable, or no later than 30 days after the mortgagee becomes aware of the mortgagor's death, or upon the mortgagor's request in connection with a pending sale. The property shall be appraised no later than 15 days before a foreclosure sale. The appraisal shall be at the mortgagor's expense unless the mortgage is due and payable. If the mortgage is due and payable, the appraisal shall be at the mortgagee's expense but the mortgagee shall have a right to be reimbursed out of the proceeds of any sale by the mortgagor.

* * * * *

(d) *Initiation of foreclosure.* (1) The mortgagee shall commence foreclosure of the mortgage within six months of giving notice to the mortgagor that the mortgage is due and payable, or six months from the date of the mortgagor's death if applicable, or within such additional time as may be approved by the Secretary.

(2) If the laws of the State in which the mortgaged property is located or if Federal bankruptcy law does not permit the commencement of the foreclosure within six months from the date of the notice to the mortgagor that the mortgage is due and payable, the mortgagee shall commence foreclosure within six months after the expiration of the time during which such foreclosure is prohibited by such laws.

* * * * *

(g) *Sale of the acquired property.* (1) Upon acquisition of the property by foreclosure or deed in lieu of foreclosure, the mortgagee shall take possession of, preserve and repair the property and shall make diligent efforts to sell the property within six months from the date the mortgagee acquired the property. Repairs shall not exceed those required by local law and, in cases where the sale is made with a mortgage insured by the Secretary or guaranteed by the Secretary of Veterans Affairs, those necessary to meet the objectives of the property standards required for mortgages insured by the Secretary. No other repairs shall be made without the specific advance approval of the Secretary. The mortgagee shall sell the property for an amount not less than the appraised value (as provided under paragraph (b) of this section) unless written permission is obtained from the Secretary authorizing a sale at a lower price.

* * * * *

(3) The mortgagee shall not enter into a contract for the preservation, repair or sale of the property with any officer, employee, owner of ten percent or more interest in the mortgagee or with any other person or organization having an identity of interest with the mortgagee or with any relative of such officer, employee, owner or person.

* * * * *

29. Section 206.129 is amended by revising paragraphs (d)(2)(i), (d)(2)(ii), (d)(2)(iv), (d)(3)(ii), (e)(1), and (e)(2), and by adding paragraphs (d)(2)(v) and (d)(2)(vi) to read as follows:

**§ 206.129 Payment of claim.**

* * * * *

(d) * * *

(2) The claim shall include the following items:

(i) Items listed in § 203.402(a), (b), (c), (d), (e), (g), (j), (p) and (q) of this chapter.

(ii) Foreclosure costs or costs of acquiring the property actually paid by the mortgagee and approved by the Secretary, in an amount not in excess of two-thirds of such costs or $75.00, which ever is greater.

* * * * *

(iv) Costs of any appraisal obtained under §§ 206.125 or 206.127, provided that the appraisal was obtained after the mortgage became due and payable and that the mortgagee is not otherwise reimbursed for such costs.

(v) Reasonable payments made by the mortgagee for:

(A) Preservation and maintenance of the property;

(B) Repairs necessary to meet the objectives of the property standards required for mortgages insured by the Secretary, those required by local law, and such additional repairs as may be specifically approved in advance by the Commissioner; and

(C) Expenses in connection with the sale of the property including a sales commission at the rate customarily paid in the community and, if the sale to the buyer involves a mortgage insured by the Secretary or guaranteed by the Secretary of Veterans Affairs, a discount at a rate not to exceed the maximum allowable by the Commissioner, as of the date of execution of the discounted loan, on sales of properties acquired by the Commissioner pursuant to §§ 203.295 through 203.426 of this chapter.

(vi) A certification that the property is undamaged in accordance with § 203.380 of this chapter.

(3) * * *

(ii) Any adjustment for damage or neglect to the property pursuant to §§ 203.377, 203.378, and 203.379 of this chapter.

(e) * * *

(1) When a mortgagee assigns a mortgage which is eligible for assignment under § 206.107(a)(1), the amount of payment shall be computed by subtracting from the mortgage balance on the date of assignment the items set forth in § 203.404(b) of this chapter and any adjustments for damage or neglect to the property pursuant to §§ 203.377, 203.378 and 203.379 of this chapter.

(2) The claim shall also include:

(i) Reimbursement for such costs and attorney's fees as the Secretary finds were properly incurred in connection with the assignment of the mortgage to the Secretary, and

(ii) An amount equivalent to the interest allowance which will have been earned from the date the mortgage was assigned to the Secretary to the date the claim is paid, if the claim had been paid in debentures, except that if the mortgagee fails to meet any of the requirements of § 206.127(c), or § 206.131 if applicable, within the specified time and in a manner satisfactory to the Secretary (or within such further time as the secretary may approve in writing), the interest allowance in the payment of the claim shall be computed only to the date on which the particular required action should have been taken or to which it was extended. The provisions of §§ 203.405 through 203.411 of this chapter pertaining to debentures are incorporated by reference.

* * * * *

30. In § 206.203, paragraph (b) is revised to read as follows:

**§ 206.203 Providing information.**

* * * * *

(b) Line of credit and payment change statements. The mortgagee shall provide the mortgagor with a statement of the account every time it makes a line of credit payment. The mortgagee shall provide the mortgagor with a new payment plan every time it recalculates monthly payments.

* * * * *

31. In § 206.205, paragraph (a) is revised to read as follows:

**§ 206.205 Property charges.**

(a) *General.* The mortgagor shall pay all property charges consisting of taxes, ground rents, flood and hazard insurance premiums, and special assessments in a timely manner and shall provide evidence of payment to the mortgagee as required in the mortgage.

* * * * *

32. In § 206.207, paragraph (a) is revised to read as follows:

**§ 206.207 Allowable charges and fees after endorsement.**

(a) *Reasonable and customary charges.* The mortgagee may collect reasonable and customary charges and fees from the mortgagor after insurance endorsement by adding them to the mortgage balance, but only for: items listed in § 203.552(a)(6), (9), (11), (13) and (14) of this chapter; items authorized by the Secretary under § 203.552(a)(12) of this chapter, or as provided at § 206.26(d); or charges and fees related to additional documents described in § 206.27(b)(10) and related title search costs.

* * * * *

Dated: July 13, 1995.

**Jeanne K. Engel,**

*General Deputy, Assistant Secretary for Housing—Federal Housing Commissioner.*

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# Part VI

# Department of Transportation

## Federal Aviation Administration

**14 CFR Part 61, et al.**

**Advanced Qualification Program; Proposed Rule**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Parts 61, 63, 65, 108, 121, and 135**

**[Docket No. 25804, Notice No. 95–13]**

**RIN 2120–AF00**

## Advanced Qualification Program

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The FAA proposes to establish a new termination date for Special Federal Aviation Regulation (SFAR) No. 58 (55 FR 40275; Oct. 2, 1990), which provides for the approval of an alternate method (known as ''Advanced Qualification Program'' or ''AQP'') for qualifying, training and certifying, and otherwise ensuring the competency of crewmembers, aircraft dispatchers, other operations personnel, instructors, and evaluators who are required to be trained or qualified under parts 121 and 135 of the FAR. This proposed extension is necessary to establish a new termination date for SFAR 58 to allow time for the FAA to complete the rulemaking process that will incorporate SFAR 58 into the Federal Aviation Regulations (FAR). The current termination date for SFAR 58 is October 2, 1995.

**DATE:** Comments must be received on or before September 5, 1995.

**ADDRESS:** Send or deliver comments on this notice in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–10), Room 915G, Docket No. 25804, 800 Independence Avenue, SW., Washington, DC 20591. Comments must be marked Docket No. 25804. Comments may be examined in the Rules Docket between 8:30 a.m. and 5 p.m. on weekdays, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Allen, Advanced Qualification Program Branch (AFS–230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, P.O. Box 20027, Dulles International Airport, Washington, DC 20041–2027; telephone (703) 661–0260.

**SUPPLEMENTARY INFORMATION:**

### Background

In 1975, the FAA began to address two issues in part 121 pilot training and checking. One issue was the hardware requirements needed for total simulation. The other issue was the redesign of training programs to deal with increasingly complex human factors problems and to increase the safety benefits derived from the simulation. At the urging of the air transportation industry, the FAA addressed the hardware issue first. This effort culminated in 1980 in the development of the Advanced Simulation Program, set forth in part 121, Appendix H.

Since then, the FAA has continued to pursue approaches for the redesign of training programs to increase the benefits of Advanced Simulation and to deal with the increasing complexity of cockpit human factors.

On August 27, 1987, FAA Administrator McArtor addressed the chief pilots and certain executives of many air carriers at a meeting held in Kansas City. One of the issues discussed at the meeting focused on flight crewmember performance issues. This meeting led to the creation of a Joint Government-Industry Task Force on flight crew performance. It was comprised of representatives from major air carriers and air carrier associations, flight crewmember associations, commuter air carriers and regional airline associations, and government organizations. On September 10, 1987, the task force met at the Air Transport Association's headquarters to identify and discuss flight crewmember performance issues. Working groups in three major areas were formed: (1) man/machine interface, (2) flight crewmember training, and (3) operating environment. Each working group submitted a report and recommendations to the Joint Task Force. On June 8, 1988, the recommendations of the Joint Task Force were presented to Administrator McArtor.

The major substantive recommendations to the Administrator from the flight crewmember training working group were the following: (1) Require part 135 commuters whose airplane operations require two pilots to comply with part 121 training, checking, qualification and record keeping requirements. (2) Provide for a Special Federal Aviation Regulation (SFAR) and Advisory Circular to permit development of innovative training programs. (3) Establish a National Air Carrier Training Program Office which provides training program oversight at the national level. (4) Require seconds-in-command to satisfactorily perform their duties under the supervision of check airmen during operating experience. (5) Require all training to be accomplished through a certificate holder's training program. (6) Provide for approval of training programs based on course content and training aids rather than using specific programmed hours. (7) Require Cockpit Resource Management Training and encourage greater use of Line-Oriented Flight Training. Specific recommendations were listed regarding regulatory changes and were separated into those changes which should be incorporated into the SFAR and those in an accompanying Advisory Circular.

In June of 1988, the National Transportation Safety Board (NTSB) issued a Safety Recommendation (A–88–71) on the subject of CRM training. The recommendation stemmed from an NTSB accident investigation of a Northwest Airline crash on August 16, 1987, in which 148 passengers, 6 crewmembers, and 2 people on the ground were killed.

The NTSB noted that both crewmembers had received single-crewmember training during their last simulator training and proficiency checks. In addition, the last CRM training they had received was 3.5 hours of ground school (general) CRM training in 1983. As a result of its investigation, the NTSB recommended that all part 121 carriers:

> Review initial and recurrent flightcrew training programs to ensure that they include simulator or aircraft training exercises which involve cockpit resource management and active coordination of all crewmember trainees and which will permit evaluation of crew performance and adherence to those crew coordination procedures.

In response to the recommendations from the Joint Task Force and from the NTSB, the FAA, in October 1991, published SFAR 58, *Advanced Qualification Program* (AQP), which addresses all of the above recommendations. The FAA also published an Advisory Circular on AQP which describes an acceptable methodology by which the provisions of the SFAR are achieved. Under SFAR 58 certificated air carriers, as well as training centers they employ, are provided with a regulatory alternative for training, checking, qualifying, and certifying aircrew personnel subject to the provisions of FAR parts 121 and 135.

Air carrier participation in AQP is entirely voluntary. Carriers electing not to participate may continue to operate under the traditional FAA provisions for training and checking. The long range advantages to participation, however, are numerous. The regulatory provisions of AQP offer the flexibility to tailor training and certification activities to a carrier's particular needs and operational circumstances. They encourage innovation in the development of training strategies. They

include wide latitude in choice of training methods and media. They permit the use of flight training devices for training and checking on many tasks which historically have been accomplished in airplane simulators. They provide an approved means for the applicant to replace FAA mandated uniform qualification standards with carrier proposed alternatives tailored to specific aircraft. They permit carriers, whose operations include a mixture of parts 135 and 121, to operate under a single regulatory set of requirements for training and checking. They permit the applicant to establish an annual training and checking schedule for all personnel, including pilots-in-command (PIC), and provide a basis for extending that interval under certain circumstances.

From an FAA perspective, the overriding advantage of AQP is quality of training. AQP provides a systematic basis for matching technology to training requirements and for approving training program content based on relevance to operational performance. The FAA's goal for this new program is to improve safety through improved training.

The initial goal of the SFAR was to improve flight crew performance by providing alternative means of complying with certain current provisions in the Federal Aviation Regulations which may inhibit innovative use of some modern technology that could facilitate the training of flight crewmembers. The SFAR has encouraged carriers to become innovative in their approach to training. Based on the aviation industry participation and enthusiasm in AQP, the extension of SFAR 58 is necessary until the rulemaking process codifies AQP as a permanent regulation.

**Benefit/Cost Analysis**

AQP is not mandatory. Consequently, those operators who choose to participate in the program would do so only if it was in their best interest. Enough operators have found it in their best interest that AQP has become an important means for meeting the requirements for air carrier training programs. As of March 1995, 18 carriers and 2 manufacturers have either applied to participate or are already participating in the program. AQP gives air carriers flexibility in meeting the safety goals of the training programs in parts 121 and 135 without sacrificing any of the safety benefits derived from those programs. Thus, extending AQP for another 5 years would not impose any additional costs nor decrease the present level of safety. Because this proposal—1) is extending an existing program; 2) is voluntary; and 3) has become an important means for some operators to comply with the training requirements, the FAA finds that a full detailed regulatory evaluation is not necessary.

**International Trade Impact Analysis**

The proposed rule would not constitute a barrier to international trade, including the export of American goods and services to foreign countries and the import of foreign goods and services into the United States. Since air carriers will not participate in AQP unless it was in their best interest, they likewise will not participate if it would impose a competitive disadvantage on them. Also, the concept of AQP is being embraced by foreign operators as well.

**Regulatory Flexibility Determination**

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Federal regulations. The RFA requires a Regulatory Flexibility Analysis if a rule will have ''significant economic impact on a substantial number of small entities.'' FAA Order 2100.14A outlines the FAA's procedures and criteria for implementing the RFA. Since this proposal would extend what has become an important means for some air carriers to comply with training requirements, the extension will not impose costs above those that air carriers are already incurring, and certainly not above what they would incur from adopting a part 121 or part 135 training program. Thus, the rule if issued, will not impose a significant economic impact on a substantial number of small entities.

**Federalism Implications**

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. Thus, in accordance with Executive Order 12612, it is determined that such a regulation does not have federalism implications warranting preparation of a Federalism Assessment.

**Conclusion**

The FAA has determined that this document involves a proposal that imposes no additional burden on any person. Accordingly, it has been determined that the action does not involve a major rule under Executive Order 12291; however, it is significant under DOT Regulatory Policies and Procedures (44 FR 11304; February 26, 1979).

**List of Subjects**

*14 CFR Part 61*

Air safety, Air transportation, Aviation Safety, Safety.

*14 CFR Part 63*

Air Safety, Air Transportation, Airmen, Aviation safety, Safety, Transportation.

*14 CFR Part 65*

Airman, Aviation safety, Air transportation, Aircraft.

*14 CFR Part 108*

Airplane operator security, Aviation safety, Air transportation, Air carriers, Airlines, Security measures, Transportation, Weapons.

*14 CFR Part 121*

Aircraft pilots, Airmen, Aviation safety, Pilots, Safety.

*14 CFR Part 135*

Air carriers, Air transportation, Airmen, Aviation safety, Safety, Pilots.

**The Amendment**

In consideration of the foregoing, SFAR 58 (14 CFR parts 65, 108, 121, and 135) of the Federal Aviation Regulations is amended as follows:

1. The authority citation for part 61 is revised to read as follows:

**Authority:** 49 U.S.C. 106(g); 40113, 44701–44703, 44707, 44710, 44712, 44714, 44716, 44717, 44722, 45303.

2. The authority citation for part 63 is revised to read as follows:

**Authority:** 49 U.S.C. 106(g); 40108, 40113, 40114, 44701–44703, 44710, 44712, 44714, 44716, 44717, 44722, 45302, 46104.

3. The authority citation for part 65 is revised to read as follows:

**Authority:** 49 U.S.C. 106(g); 40113, 44701–44703, 44710, 44712, 44714, 44716, 44717, 447222, 45303.

4. The authority citation for part 108 is revised to read as follows:

**Authority:** 49 U.S.C. 106(g); 40108, 40113, 40114, 40119, 44701, 44702, 44705, 44712, 44714, 44716, 44717, 44722, 44901–44903, 44906, 44912, 44935–44938, 45302, 46104, 48107.

5. The authority citation for part 121 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40101, 40105, 40113, 44701–44702, 44704–44705.

6. The authority citation for part 135 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 1153, 40101, 40105, 44113, 44701–44705, 44707–44717, 44722, 45303.

7. SFAR 58 is amended by revising the expiration date in paragraph 13.

* * * * *

13. *Expiration.* This Special Federal Aviation Regulation terminates on October 2, 2000 unless sooner terminated.

Issued in Washington, D.C. on Friday, August 11, 1995.

**Thomas C. Accardi,**

*Director, Flight Standards Service.*

[FR Doc. 95–20406 Filed 8–14–95; 12:54 pm]

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**H.R. 2161/P.L. 104–22**

To extend authorities under the Middle East Peace Facilitation Act of 1994 until October 1, 1995, and for other purposes. (Aug. 14, 1995; 109 Stat. 260; 1 page)

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