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Federal Register

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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

[Two Sessions]

WHEN: March 12, 1996 at 9:00 am and
March 26, 1996 at 9:00 am

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

RESERVATIONS: 202–523–4538

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

Electronic Bulletin Board
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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 315

RIN 3206–AG81

Career and Career-Conditional Employment, Noncompetitive Appointment of Certain Former Overseas Employees

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: The Office of Personnel Management (OPM) is revising its regulations implementing Executive Order 12721 under which Federal agencies can noncompetitively appoint certain former overseas employees who as family members accompanied their sponsors on official assignment overseas. These regulations add a new condition justifying the waiver of a portion of the overseas service requirement. The regulations also remove duplication and add clarifying information.

EFFECTIVE DATE: April 8, 1996.

FOR FURTHER INFORMATION CONTACT: Ellen Russell on 202–606–0830, FAX 202–606–2329, or TDD 202–606–0023.

SUPPLEMENTARY INFORMATION: On August 23, 1995 (60 FR 47324) OPM published proposed regulations to make it easier for family members of U.S. Government personnel stationed abroad to get career Federal jobs when they are brought back to the United States because of military downsizing and other management-initiated actions. Rather than penalize family members who are returned to the States before they had worked the full 52 weeks required for noncompetitive appointment, the regulation delegates to agencies the authority to waive up to 26 weeks of service in nonpersonal situations that necessitate the relocation of family members out of the overseas area. Under the final regulation, to waive up to 26 weeks of the 52-week overseas service requirement, the employing agency overseas must certify that the family member was forced to return to the United States because of military drawdowns or other management-initiated decisions not personal to the individual and must include the number of weeks waived.

Other reasons for waiving up to 26 weeks of the 52-week service requirement remain the same, i.e., an emergency situation which necessitated the family member's relocation to the United States. An emergency situation includes conflict, terrorism, or the threat of terrorism but does not include a personal situation such as ill health.

We received comments from three Federal agencies and one individual. The Department of Defense (DOD) made two major suggestions. First, DOD suggested a change in how an individual's 3-year period of eligibility could be extended when he or she was stationed in an area of the United States with no significant opportunities for Federal employment. DOD suggested the determination be made by the major Federal employer in the area where the applicant last resided.

We have not adopted this suggestion but instead have modified the regulation to allow any agency to make the determination in order to provide the most flexibility. This means that an individual leaving an area with no significant Federal employment opportunities could get verification from the major Federal employers in the area and attach this statement to his or her application for noncompetitive appointment.

Alternatively, an agency considering an application for noncompetitive appointment could contact Federal agencies in the area where the applicant was last stationed to verify an individual's claim that he or she was stationed in an area with no significant Federal employment opportunities. This flexibility allows agencies to set up whatever special procedures they deem necessary as part of the special assistance provided to family members.

DOD also suggested the regulations add a 2-year ''open period'' so that individuals who, prior to the issuance of these regulations, returned to the United States before earning the necessary 52 weeks of service would be on an equal footing with family members who are eligible as soon as these final regulations are effective. We agree that the intent of the Executive order is to help as many family members as possible and therefore have added such a provision. Under the final regulation, individuals will be eligible for appointment for 3 years following their return to the United States or until March 31, 1998, whichever is later.

This provision is consistent with an approach OPM took in final regulations published on April 3, 1991 (56 FR 13575). Those regulations implemented a revision in Executive Order 12721 that reduced the amount of necessary overseas service from 18 months to 52 weeks. The 1991 regulation included a 3-year open period to provide equity to family members whose eligibility had already expired but who would have been eligible under the terms of the revised Executive order.

The Department of the Army suggested the regulation include certain provisions that had been in the former Federal Personnel Manual, specifically that overseas service need not be continuous, that an eligible need not be a family member at the time of noncompetitive appointment in the United States, and the eligibles may be appointed in any occupation and grade level for which they qualify. The final regulation reflects these comments.

Another Federal agency noted an error in the 5 CFR 315.608(d)(4)(iv) appointing authority. We have corrected the authority to read ''Public Law 86–36 (50 U.S.C. 402, note)''.

The individual suggested we expand the definition of the ''United States'' to include American Samoa and the Commonwealth of the Northern Mariana Islands. This change would allow family members to use their noncompetitive appointment eligibility in these two locations.

We have not adopted this suggestion because Executive Order 12721 states that eligible individuals may be appointed noncompetitively to a competitive service position in the executive branch ''within the United States (including Guam, Puerto Rico, and the Virgin Islands).'' Since the order itself is so specific on where family members can use their eligibility, we do not believe OPM's regulations could add additional geographic areas to the definition of the ''United States.''

Regulatory Flexibility Act

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

List of Subjects in 5 CFR Part 315

Government employees.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending part 315 of title 5, Code of Federal Regulations, as follows:

PART 315—CAREER AND CAREER-CONDITIONAL APPOINTMENT

1. The authority citation for part 315 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., page 218, unless otherwise noted.

Secs. 315.601 and 315.609 also issued under 22 U.S.C. 3651 and 3652.

Secs. 315.602 and 315.604 also issued under 5 U.S.C. 1104.

Sec. 315.603 also issued under 5 U.S.C. 8151.

Sec. 315.605 also issued under E.O. 12034, 3 CFR, 1978 Comp., p. 111.

Sec. 315.606 also issued under E.O. 11219, 3 CFR, 1964–1965 Comp., p. 303.

Sec. 315.607 also issued under 22 U.S.C. 2506.

Sec. 315.608 also issued under E.O. 12721, 3 CFR, 1990 Comp., p. 293.

Sec. 315.610 also issued under 5 U.S.C. 3304(d).

Sec. 315.710 also issued under E.O. 12596, 3 CFR, 1987 Comp., p. 229.

Subpart I also issued under 5 U.S.C. 3321, E.O. 12107, 3 CFR, 1978 Comp., p. 264.

2. Section 315.608 is revised to read as follows:

§ 315.608 Noncompetitive appointment of certain former overseas employees.

(a) *Authority.* An executive branch agency may noncompetitively appoint, to a competitive service position within the United States (including Guam, Puerto Rico, and the Virgin Islands), an individual who has completed 52 weeks of creditable overseas service as defined in paragraph (b) of this section and is appointed within the time limits in paragraph (d) of this section. Any law, Executive order, or regulation that disqualifies an applicant for appointment in the competitive service, such as the citizenship requirement, also disqualifies the applicant for appointment under this section. An individual may be appointed to any occupation and grade level for which qualified. An agency may waive any requirement for a written test after determining that the duties and responsibilities of the applicant's overseas position were similar enough to make the written test unnecessary.

(1) *Tenure.* A person appointed under this section becomes a career-conditional employee unless he or she has already satisfied the requirements for career tenure or is exempt from the service requirement in 5 CFR 315.201.

(2) *Competitive status.* A person appointed under this section acquires competitive status automatically upon completion of probation.

(b) *Creditable overseas service.* For purposes of this section only, creditable service is service in an appropriated fund position(s) performed by a family member under a local hire appointment(s) overseas during the time the family member was accompanying a sponsor officially assigned to an overseas area and for which the family member received a fully successful or better (or equivalent) performance rating. Creditable overseas service is computed in accordance with the procedures in the OPM Guide to Processing Personnel Actions. Creditable service may have been under more than one appointment and need not be continuous. Leave without pay taken during the time an individual is in the overseas area is credited on the same basis as time worked.

(c) *Service waiver.* Up to 26 weeks of the 52-week service requirement is waived when the head of an agency (or designee) that employed the family member overseas certifies that the family member's expected 52 weeks of employment were cut short because of a nonpersonal situation that necessitated the relocation of the family member from the overseas area. The certification must include the number of weeks waived. For this purpose, a nonpersonal situation includes disaster, conflict, terrorism or the threat of terrorism, and those situations when a family member is forced to return to the United States because of military deployment, drawdowns, or other management-initiated actions. A nonpersonal situation does not include circumstances that specifically relate to a particular individual, for example, ill health or personal interest in relocating.

(d) *Time limit on eligibility.* An individual is eligible for appointment(s) under this authority for a period of 3 years following the date of returning from overseas to the United States to resume residence or until March 31, 1998, whichever date is later. An agency may extend an individual's appointment eligibility beyond 3 years for periods equivalent to—

(1) The time the individual was accompanying a sponsor on official assignment to an area of the United States with no significant opportunities for Federal employment; or

(2) The time an individual was incapacitated for employment.

(e) *Definitions.* In this section terms have the following meaning:

(1) *Family member.* An unmarried child under age 23 or a spouse. An individual must have been a family member at the time he or she met the overseas service requirement and other conditions but does not need to be a family member at the time of noncompetitive appointment in the United States.

(2) *Sponsor.* A Federal civilian employee, a Federal nonappropriated fund employee, or a member of a uniformed service who is officially assigned to an overseas area.

(i) *Officially assigned.* Under active orders issued by the United States Government.

(ii) *Federal civilian employee.* An employee of the executive, judicial, or legislative branch of the United States Government who serves in an appropriated fund position.

(iii) *Nonappropriated fund employee.* An employee paid from nonappropriated funds of the Army and Air Force Exchange Service, Navy Ship's Stores Ashore, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or other instrumentalities of the United States.

(iv) *Member of a uniformed service.* Personnel of the U.S. Armed Forces (including the Coast Guard), the commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration.

(3) *Accompanying.* The family member resided in the overseas area while the sponsor was officially assigned to an overseas post of duty. The family member need not have physically resided with the sponsor at all times or have traveled with the sponsor to or from the overseas area.

(4) *Local hire appointment.* An appointment that is not actually or potentially permanent and that is made from among individuals residing in the overseas area. In this section only, a local hire appointment includes nonpermanent employment under:

(i) Overseas limited appointment under 5 CFR 301.203(b) or (c);

(ii) Expected appointment under Schedule A 213.3106(b)(1), 213.3106(b)(6), or 213.3106(d)(1)) when the duration of the appointment is tied to the sponsor's rotation date or when the appointment is made on a not-to-exceed (NTE) basis;

(iii) An ''American family member'' or ''part-time intermittent temporary (PIT)'' appointment in U.S. diplomatic establishments;

(iv) 50 U.S.C. 403j; Public Law 86–36 (50 U.S.C. 402, note); the Berlin Tariff Agreement; or as a local national employee paid from appropriated funds; or

(v) Any other nonpermanent appointment in the competitive or excepted service approved by OPM.

(5) *Overseas.* A location outside the 50 States of the United States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

FR Doc. 96–5476 Filed 3–7–96; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 164

[Docket No. 93N–0473]

Peanut Butter; Amendment of Standard of Identity

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the standard of identity for peanut butter to remove the specific reference to the addition of vitamins, so that modified peanut butter products with added vitamins can be made in accordance with the agency's general definition and standard of identity for food named by the use of a nutrient content claim (such as ''reduced fat'' or ''reduced calorie'') in conjunction with the standardized term, peanut butter. This action will assist consumers in maintaining healthy dietary practices by providing for modified forms of peanut butter. This action will also promote honesty and fair dealing in the interest of consumers.

DATES: Effective March 8, 1996.

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

SUPPLEMENTARY INFORMATION:

I. Background

In the Federal Register of February 3, 1994 (59 FR 5153), FDA published a proposal to amend the standard of identity for peanut butter in § 164.150 (21 CFR 164.150) to remove the specific prohibition against added vitamins. The proposal was based on comments the agency received in response to a final rule that was published in the Federal Register of January 6, 1993 (58 FR 2066). The comments noted that the requirements of the general definition and standard of identity in § 130.10 (21 CFR 130.10) create a problem for firms interested in producing modified (e.g., ''reduced fat'') peanut butter products. They pointed out that § 130.10(b) requires that the modified food may not be nutritionally inferior to the traditional standardized food, and that § 130.10(d)(3) prohibits the addition of ingredients that are specifically prohibited by the standard for the traditional food. Because there is a specific prohibition against the addition of vitamins to peanut butter in § 164.150(c), modified peanut butter products that are not nutritionally inferior to peanut butter could not be made under § 130.10.

To eliminate this problem, FDA proposed to remove the specific prohibition against the addition of vitamins in the peanut butter standard. The agency stated in that proposal that removal of the term ''added vitamins'' from § 164.150(c) would allow the addition of vitamins to modified peanut butter products made to comply with § 130.10, but that the agency still felt that added vitamins are not suitable ingredients for peanut butter when the food is used in a balanced diet. Interested persons were given until April 4, 1994, to submit comments.

II. Comments

The agency received 12 letters, each containing one or more comments, from a manufacturer, several trade associations, and food processors. Seven letters supported the proposal, and five opposed it. One comment that expressed support for the proposed change suggested an additional change in the standard of identity for peanut butter, and others requested clarification of the nutrient requirements for modified peanut butter. Most of the comments that opposed amendment of the peanut butter standard cited, as grounds for their opposition, issues that are outside the scope of this rulemaking (e.g., whether a modified peanut butter product under the general definition and standard of identity could or should be made with 90 percent of peanuts, as required by the standard of identity for peanut butter, and whether FDA is enforcing its regulations with respect to modified peanut butter products in the marketplace) and they need not be addressed here. A summary of the relevant comments and the agency's responses follow.

1. A comment from a trade association that opposed the proposal stated that its membership believes it would be misleading if the standard of identity for peanut butter were changed. It expressed the opinion that peanut butter is nutritionally sound without vitamin additives.

The agency agrees that peanut butter is nutritionally sound without added vitamins. The removal of the specific prohibition against added vitamins in the peanut butter standard is only to permit their addition, as necessary, to modified peanut butter products made under the general definition and standard of identity in § 130.10. FDA clearly stated in the proposed rule that the removal of this prohibition would not change the agency's position that added vitamins are not suitable ingredients in peanut butter when it is not being modified to reduce, for example, its fat content. Thus, in this final rule, the agency is merely removing the prohibition on the addition of vitamins to peanut butter in the standard of identity in § 164.150. It is not making any provision for the addition of these ingredients to this food under § 164.150. If vitamins are added to peanut butter, it would have to be labeled in compliance with § 130.10, i.e., ''peanut butter with added vitamins.'' Any such addition of vitamins to the food would have to be consistent with the provisions of the fortification policy in 21 CFR 104.20, or be otherwise rational.

2. One comment stated that it supported the proposal to remove the phrase ''added vitamins'' in § 164.150(c), but that the proposal did not go far enough. It stated that the agency should remove the entire statement contained in paragraph § 164.150(c), i.e., ''except that artificial flavorings, artificial sweeteners, chemical preservatives, added vitamins, and color additives are not suitable ingredients of peanut butter.'' The comment stated that none of these ingredients would be permitted in peanut butter notwithstanding the above language because the only optional ingredients permitted in peanut butter under the standard are ''safe and suitable seasoning and stabilizing ingredients.'' The comment contended that few would argue that these ''prohibited'' ingredients (artificial flavorings, artificial sweeteners, chemical preservatives, vitamins, and color additives) qualify as seasoning or stabilizing ingredients. The comment further contended that if the agency has a concern in this regard, it could state for the record that stabilizing and seasoning ingredients, as used in the

peanut butter standard, do not include these categories of ingredients.

The comment also noted that many peanut butters include a sweetener seasoning, and that there might be an opportunity to use an approved high intensity artificial sweetener to replace sugar or corn syrup in the formulation of a modified peanut butter. Likewise, the comment stated, if someone wanted to use a safe and suitable artificial flavor in a modified peanut butter product (the inclusion of which would be required to be adequately communicated via the labeling requirements contained in 21 CFR 101.22), there is no reason to prohibit its use. Thus, the comment urged the agency to fix the entire problem presented in the language of the peanut butter standard coupled with the requirement in § 130.10(d)(3) that specifically prohibits the use in the modified food of any ingredient whose use is specifically prohibited by the standard of identity for that food.

FDA is not making the requested change. The suggested removal of the prohibition against the addition of artificial flavorings, artificial sweeteners, chemical preservatives, and color additives from § 164.150(c) was not foreshadowed in the proposed rule. Further, there is no compelling reason, such as a conflict with the provisions of the general definition and standard of identity, to make the change at this time. When FDA developed the general definition and standard of identity, it specifically included a provision in § 130.10(d)(3) to prohibit the use of ingredients that were explicitly prohibited by the standard of identity for the traditional food. The purpose of the provision was to ensure that the modified food would resemble the traditional food in as many ways as possible. One way to ensure such resemblance was to require the use of similar ingredients in the new food and to exclude those ingredients that were prohibited in the traditional food.

The agency notes that if the manufacturers of modified peanut butter products find that these remaining prohibitions in § 164.150(c) represent significant barriers to the development of peanut butter products modified to meet a nutrition goal, such as ''reduced calorie'' or ''reduced fat'' products, they may submit a petition to further amend the peanut butter standard of identity.

3. One comment noted that the agency's proposal only deals with added vitamins in modified peanut butter products and questioned whether added minerals were also of concern to the agency.

Depending on the degree of modification of the peanut butter, manufacturers may need to add minerals to the modified peanut butter product to ensure that the food will not be nutritionally inferior to peanut butter. There is, however, no specific prohibition in the standard of identity for peanut butter that would preclude the addition of minerals to a modified peanut butter. FDA notes that the general definition and standard of identity in § 130.10(b) states that nutrients shall be added to the modified food to restore nutrient levels, so that the product will not be nutritionally inferior, as defined in § 101.3(e)(4) (21 CFR 101.3(e)(4)), to the traditional standardized food. Nutritional equivalence of modified peanut butter products to peanut butter is defined in the common or usual name regulation for peanut spreads in § 102.23 (21 CFR 102.23). Section 102.23(b) includes a nutrient profile based on the levels of nutrients found in peanut butter that may be used as guidance by manufacturers in determining whether nutrients need to be added to a modified peanut butter product. This nutrient profile includes requirements for protein content and quality, as well as minimum levels of niacin, vitamin B_6, folic acid, iron, zinc, magnesium, and copper that must be present in the food.

4. One comment requested that FDA clarify how the equivalent micronutrient levels for modified peanut butter products are to be determined. It noted that the nutrient levels vary from product to product. The comment suggested the use of U.S. Department of Agriculture Handbook data or an industry generated data base for nutrient data on peanut butter and requested that the agency state in the final rule what source is appropriate. The comment included a copy of data on the vitamin E content of peanut butter from its submission that it made to the agency in the rulemaking to establish a common or usual name regulation for peanut spreads in § 102.23 (see 40 FR 51052, November 3, 1975, and 42 FR 36452, July 15, 1977).

As noted above in the response to comment 3, FDA has established requirements for nutrient levels in spreadable peanut products in the common or usual name regulation on peanut spreads in § 102.23. These levels may be used by manufacturers as guidance in determining nutritional equivalency to peanut butter. However, manufacturers may make comparisons to their own traditional peanut butter formulation. The types and levels of nutrient additions will depend on the types of modifications that need to be made in formulating the modified peanut butter product and the effects of such modifications on the composition of the finished food.

With respect to the comment's resubmission of data on vitamin E, FDA addressed that data in the final rule establishing § 102.23 (see 42 FR 36452 at 36454). At that time, the agency stated that the values submitted by the comment were consistent with published literature values and suggested that 10 international units per 100 grams of peanut butter would approximate the average content of vitamin E in peanut butter. However, because the vitamin E content of peanut butter is subject to variation, additional data would be necessary before the agency could establish a value for nutritional equivalence in peanut spreads. Therefore, the agency stated that no peanut spread would be considered to be an imitation of peanut butter solely because it contains less vitamin E than peanut butter. The agency has not received any information to change that position. Thus, modified peanut products that comply with the minimum requirements for nutrient levels specified for peanut spreads (§ 102.23) will not be considered to be nutritionally inferior to peanut butter under the provisions in § 101.3(e)(4).

After considering the comments received and the other relevant factors that the agency discussed in the proposal, FDA concludes that it will promote honesty and fair dealing in the interest of consumers to amend the standard of identity for peanut butter in the manner proposed. Accordingly, FDA is revising § 164.150(c) by removing the specific reference to ''added vitamins.'' This change will allow the replacement of nutrients normally present in peanut butter that may be lost in formulating and manufacturing modified peanut butter products, thereby ensuring that the modified version of the food will not be nutritionally inferior to peanut butter.

III. Economic Impacts

FDA has examined the impact of this final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs Federal agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). According to Executive Order 12866, a regulatory action is ''economically significant'' if it meets any one of a number of specified conditions, including having an annual

effect on the economy of $100 million or adversely affecting in a material way a sector of the economy, competition, or jobs. A regulation is considered ''significant'' under Executive Order 12866 if it raises novel legal or policy issues. The Regulatory Flexibility Act requires Federal agencies to minimize the economic impact of their regulations on small business.

There are no compliance costs associated with this final rule because this final rule will not prohibit any current activity. The benefit of this final rule is that it allows modified peanut butter products to be labeled with a nutrient content claim and the standardized term ''peanut butter.'' This labeling may reduce the cost of identifying these products for some consumers. Therefore, FDA finds that this final rule is neither an economically significant nor significant regulatory action as defined by Executive Order 12866. In compliance with the Regulatory Flexibility Act, FDA certifies that this final rule, if promulgated, will not have a significant impact on a substantial number of small businesses.

IV. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 164

Food grades and standards, Nuts, Peanuts.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 164 is amended as follows:

PART 164—TREE NUT AND PEANUT PRODUCTS

1. The authority citation for 21 CFR part 164 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 379e).

2. Section 164.150 is amended by revising paragraph (c) to read as follows:

§ 164.150 Peanut butter.

* * * * *

(c) The seasoning and stabilizing ingredients referred to in paragraph (a) of this section are suitable substances which are not food additives as defined in section 201(s) of the Federal Food, Drug, and Cosmetic Act (the act), or if they are food additives as so defined, they are used in conformity with regulations established pursuant to section 409 of the act. Seasoning and stabilizing ingredients that perform a useful function are regarded as suitable, except that artificial flavorings, artificial sweeteners, chemical preservatives, and color additives are not suitable ingredients in peanut butter. Oil products used as optional stabilizing ingredients shall be hydrogenated vegetable oils. For the purposes of this section, hydrogenated vegetable oil shall be considered to include partially hydrogenated vegetable oil.

* * * * *

Dated: February 29, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–5493 Filed 3–7–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF STATE

22 CFR Part 40

[Public Notice 2345]

Bureau of Consular Affairs; Regulations Pertaining to Both Nonimmigrants and Immigrants Under the Immigration and Nationality Act, as Amended; Failure To Comply With INA

AGENCY: Bureau of Consular Affairs, DOS.

ACTION: Final rule.

SUMMARY: The Department is finalizing the interim rule [59 FR 51367] published on October 11, 1994. The regulation implements 212(o) of the Immigration and Nationality Act (INA), which prohibits the issuance of an immigrant visa to an alien for ninety days following an alien's departure from the U.S. unless the alien was maintaining a lawful nonimmigrant status at the time of departure, or unless the alien is the spouse or unmarried child of certain individuals who obtained temporary or permanent resident status under INA 210 or 245A or section 202 of the Immigration Reform and Control Act of 1986 (IRCA).

EFFECTIVE DATE: The effective date of this final rule is October 1, 1994.

FOR FURTHER INFORMATION CONTACT: Stephen K. Fischel, Chief, Legislation and Regulations Division, 202–663–1204.

SUPPLEMENTARY INFORMATION:

Expansion of INA 245 Adjustment of Status and Companion Provision

On August 26, 1994 the President signed into law the appropriations bill for the Department of State, Pub. L. 103–317. Section 506(b) thereof amends INA 245 to permit qualified immigrants to acquire permanent residence through adjustment of status in the United States even though they entered the United States without inspection or violated their nonimmigrant status after entry.

This Act further amends the INA at section 212 by adding subsection ''(o)'', which encourages aliens who can benefit from the broadened INA 245 adjustment of status provisions to take advantage of them by discouraging them from seeking immigrant visa issuance from a U.S. consular post abroad. To induce such aliens to seek INA 245 adjustment of status, Congress imposed a requirement that an immigrant visa applicant be physically absent from the United States for ninety days since the last departure before an immigrant visa can be issued. Under this amendment, an alien who departs from the United States would be eligible to receive an immigrant visa on the 91st day following the departure. Two classes of aliens are exempted from this provision. The first class consists of aliens maintaining lawful nonimmigrant status at the time of departure. The second class consists of the spouses and children of certain aliens who benefited from the special agricultural worker program, the legalization program, and the Cuban—Haitian adjustment provisions of IRCA, and who sought benefits under the family unity provisions of the Immigration Act of 1990.

Final Rule

Interim rule 2092, published on October 11, 1994 at 59 FR 51367, invited interested persons to submit comments concerning the amendments. No comments were received.

PART 40—[AMENDED]

1. The authority citation for Part 40 continues to read as follows:

Authority: 8 U.S.C. 1104; sec. 506(a), Pub. L. 103–317, 108 Stat. 1724.

2. Accordingly, the interim rule's regulations and the October 1, 1994 effective date published at 59 FR 51358 are adopted without change.

Dated: February 15, 1996.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 96–5442 Filed 3–7–96; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8658]

RIN 1545–AL84

Determination of Interest Expense Deduction of Foreign Corporations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains Income Tax Regulations relating to the determination of the interest expense deduction of foreign corporations and applies to foreign corporations engaged in a trade or business within the United States. This action is necessary because of changes to the applicable tax law made by the Tax Reform Act of 1986, and because of changes in international financial markets.

EFFECTIVE DATE: June 6, 1996.

FOR FURTHER INFORMATION CONTACT: Ahmad Pirasteh or Richard Hoge, (202) 622–3870 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On April 24, 1992, the IRS published proposed amendments (INTL–309–88, 1992–1 C.B. 1157) to the Income Tax Regulations (26 CFR parts 1) under section 882 of the Internal Revenue Code in the Federal Register (57 FR 15308). A public hearing was held on October 30, 1992. Numerous written comments were received. After consideration of all of the comments, the regulations proposed by INTL–309–88 are adopted as amended by this Treasury decision, and the prior regulations are withdrawn. The revisions are discussed below.

Discussion of Major Comments and Changes to the Regulations

1. Introduction

Section 882(c) of the Internal Revenue Code provides that a foreign corporation is allowed a deduction only to the extent that the expense is connected with income that is effectively connected with the conduct of a U.S. trade or business within the United States (ECI), and that the proper allocation is to be determined as provided in regulations. The proposed § 1.882–5 regulations that were issued in 1992 generally followed the approach adopted in the 1981 final regulations, with various changes intended to clarify and update the regulations.

The proposed regulations attracted a substantial number of comments, addressing both general and specific aspects of the regulations. In response to these comments, the Treasury Department and the IRS simplified the regulations, coordinated them more closely with other regulations, and generally responded to the concerns of foreign corporations doing business in the United States. For example, U.S. assets are defined in the first step of the three-step formula to coincide closely with the definition of a U.S. asset used for purposes of section 884. The computation of the actual ratio in Step 2 has been simplified considerably, minimizing both the number and the frequency of required computations. In Step 3, consistent with the emphasis in the regulations on the use of actual ratios and rates rather than prescribed ones whenever possible, the final regulations allow taxpayers to use either their actual interest rate on U.S. dollar liabilities, or, if they elect, to use their actual rates on liabilities denominated in each of the currencies in which their U.S. assets are denominated. The Treasury and the IRS believe that the final regulations strike a reasonable balance between the concerns of foreign corporate taxpayers and the interests of the United States Government.

2. Section 1.882–5(a): Rules of General Application

Section 1.882–5(a) provides general rules for determining a foreign corporation's interest expense allocable to ECI. The final regulations specify that the provisions of § 1.882–5 constitute the exclusive rules for allocating interest expense to the income from the U.S. trade or business of all foreign corporations, including foreign corporations that are residents of countries with which the United States has an income tax treaty. In general, this requires all foreign corporations to use the three-step methodology described in the final regulations. In response to commenters' questions, however, § 1.882–5(a)(1)(ii) now provides that a foreign corporation that is engaged in a U.S. trade or business, either directly or through a partnership, and that satisfies certain requirements may allocate interest expense directly to income generated by a particular asset to the same extent that a U.S. corporation is permitted to directly allocate interest expense under the rules of § 1.861–10T. When a foreign corporation directly allocates interest expense under this rule, the final regulations require adjustments to all three steps of the calculation to avoid double counting of assets and liabilities.

Numerous commenters questioned whether a taxpayer that is entitled to the benefits of a U.S. income tax treaty should be required to use the rules of § 1.882–5 for purposes of determining the amount of interest expense allocable to the foreign corporation's income attributable to its U.S. permanent establishment. The IRS and the Treasury Department believe that the methodology provided in these regulations is fully consistent with all of the United States's treaty obligations, including the Business Profits article of our tax treaties. Generally, the Business Profits article requires that, in determining the business profits of a permanent establishment, there shall be allowed as deductions expenses that are incurred for the purposes of the permanent establishment, including interest expense. Section 1.882–5(a)(2) of the final regulations is a reasonable method of implementing that general directive, as our treaties do not compel the use of any particular method.

Most of the other changes to the general rules of § 1.882–5(a) are clarifications in response to commenters' questions. For example, the final regulations clarify certain aspects of the rules that limit a foreign corporation's allocable interest expense to the amount actually paid or accrued by the corporation in a taxable year, and the rules that coordinate the provisions of § 1.882–5 with any other section that disallows, defers, or capitalizes interest expense, and include examples that illustrate how § 1.882–5 applies to an asset that produces income exempt from U.S. taxation.

Many commenters requested that the regulations clarify how and when to make the various elections allowed under § 1.882–5. The final regulations provide uniform rules for changing any election prescribed under § 1.882–5, and give all taxpayers an opportunity to make new elections, if desired, for the first taxable year beginning after the effective date of these regulations. The regulations provide that, once a method is elected, a taxpayer must use the method for five years, unless the Commissioner or her delegate consents to an earlier change based on extenuating circumstances. The final regulations reflect the current practice of the IRS by providing that if the taxpayer fails to make a timely election, the district director or the Assistant Commissioner (International) may make any and all elections on the taxpayer's behalf.

Several commenters asked that the final regulations allow taxpayers to make correlative adjustments to their § 1.882–5 calculations in cases where,

under the authority of § 1.881–3, the district director has determined that a taxpayer has acted as a conduit entity in a conduit financing arrangement. The IRS and Treasury do not believe that it is appropriate in this regulation to alleviate the consequences of § 1.881–3 if a taxpayer has engaged in a transaction one of the principal purposes of which is to avoid U.S. withholding tax. Allowing such correlative adjustments in this regulation would prevent § 1.881–3 from serving its function as an anti-abuse rule.

3. Section 1.882–5(b): Determination of Total Amount of U.S. Assets for the Taxable Year (Step 1)

As in the proposed regulations, the final regulations provide that the classification of an item as a U.S. asset under § 1.884–1(d) generally governs its classification as a U.S. asset for purposes of § 1.882–5. Under the rules of § 1.884–1(d), an item generally is treated as a U.S. asset if all of the income it generates (or would generate) and all of the gains that it would generate (if sold at a gain) are ECI. Since the proposed § 1.882–5 regulations were issued in 1992, the regulations under § 1.884–1 were amended and released in final form. In light of those new regulations, the inclusions and exclusions enumerated in the proposed regulations were largely eliminated, so that the final § 1.882–5 regulations now closely conform to the § 1.884–1(d) definition of a U.S. asset.

Section 1.882–5(b)(3) of the final regulations continues the requirement that a foreign corporation must value its U.S. assets at the most frequent, regular intervals for which data are reasonably available. However, the rule is applied separately with respect to each U.S. asset. Paragraph (b)(3) specifies that the value of a U.S. asset must be computed at least monthly by a large bank and at least semi-annually by other taxpayers.

Many questions have been raised about how § 1.882–5 applies to partnership interests held by foreign corporations. With the elimination of § 1.861–9T(e)(7)(i) by these regulations, § 1.884–1(d)(3) and § 1.882–5 now provide the exclusive rules for determining a foreign corporation's interest expense allocable to an interest in a partnership. The new regulations under § 1.884–1(d)(3) provide that a foreign corporation determines its U.S. assets by reference to its basis in the partnership, and expand the methods available for determining the portion of its partnership basis that is a U.S. asset.

Numerous commenters were concerned that the provisions of the proposed regulations relating to real estate would treat international banks unfairly, since banks frequently acquire real estate through foreclosure, or own the buildings in which their offices are located. Commenters stated that it is unclear whether such real estate would qualify as a U.S. asset. Commenters also objected to the rule in the proposed regulations that provides that an interest in a U.S. real property holding company, which is not treated as a U.S. asset under § 1.884–1(d), would be treated as a U.S. asset only in the year of disposition. Commenters argued that banks frequently hold property acquired by foreclosure in special purpose subsidiaries in order to limit their exposure to environmental or other liabilities. However, such banks must service the debt they incurred to acquire the real property throughout the period they hold the stock, not merely upon disposition.

In response to these comments, an example is added under § 1.884–1(d)(2) to clarify that U.S. real estate acquired as a result of foreclosure by a bank acting in the ordinary course of its business is generally a U.S. asset, because the property would produce ECI to the bank under section 864(c)(2). Similarly, the building in which a bank's offices are located generally qualifies as a U.S. asset, because gain from the sale of the building generally would constitute effectively connected income under the asset-use test of § 1.864–4(c)(2). In addition, the final regulations specify that a taxpayer may achieve the same result under § 1.882–5 whether it holds foreclosure property or the office building it occupies directly or indirectly through a corporation. Section 1.882–5(b)(1)(iii)(A) provides a look-through rule that treats such real property as a U.S. asset for purposes of § 1.882–5 to the extent that it would have qualified as a U.S. asset if held directly by the taxpayer.

Commenters noted that the rule in the proposed regulations that reduces the value of shares of stock claimed as a U.S. asset by a percentage of the dividends received deduction had the effect of treating all stock as debt-financed under the principles of section 246A. This stock cut-back rule is eliminated from the final § 1.882–5 regulations. The elimination of the rule, however, will affect only those taxpayers whose stock satisfies the business-activities test or the banking, financing or similar-business test of § 1.864–4(c). This is because the final regulations under § 1.864–4, which are being issued contemporaneously with these regulations elsewhere in this issue of the Federal Register, generally eliminate any inference that stock can produce effectively connected income under the asset-use test of § 1.864–4(c)(2).

The final regulations add an anti-abuse rule similar to the rule in § 1.884–1(d)(5)(ii) to prevent taxpayers from artificially increasing the amount of their U.S. assets.

4. Section 1.882–5(c): Determination of Total Amount of U.S. Liabilities for the Taxable Year (Step 2)

Commenters objected to many of the requirements in Step 2 of the proposed regulations on the grounds that the rules effectively prevented foreign banks from using their actual ratio of liabilities to assets by imposing excessive administrative burdens and capping the actual ratio at 96%. Because the IRS and Treasury believe that a taxpayer's interest deduction should be based on the taxpayer's actual ratio of liabilities to assets whenever possible, the final regulations adopt rules that are intended to encourage taxpayers to use their actual ratio. Accordingly, the final regulations drop the 96% cap on the actual ratio that was in the proposed regulations. The final regulations also substantially ease the administrative burden associated with computing the actual ratio.

Many commenters objected to the requirement in the proposed regulations that a taxpayer's worldwide liabilities to assets ratio be computed strictly in accordance with U.S. tax principles, citing the substantial burden that such a calculation would entail. In light of these comments, the final regulations require that only the classification of assets and liabilities must be strictly in accordance with U.S. tax principles. The value of worldwide assets and the amount of worldwide liabilities need only be substantially in accordance with U.S. tax principles. Examples of how these requirements apply are provided. With regard to material items, however, the final regulations specify that a foreign corporation must compute the value of U.S. assets and the amount of worldwide liabilities in Steps 1 and 2 in a consistent manner.

The proposed regulations would have required that a foreign bank compute its actual ratio monthly. Commenters were concerned that the burden of this rule would be excessive. In response, the final regulations decrease the required frequency of the computations of the actual ratio to semi-annually for large banks, and to annually for other taxpayers.

Commenters also were concerned that the rules in the proposed regulation

requiring basis adjustments for 20% owned subsidiaries would be too burdensome. These rules, which serve a somewhat different purpose in section 864(e)(4), have been removed from the final regulations.

Commenters pointed out that the election provided by the proposed regulations to compute the actual ratio of a bank on the basis of a hypothetical tax year ending six months prior to the beginning of the actual year does not serve its intended purpose. The six month lagging ratio election has therefore been eliminated.

Section 1.882–5(c)(3) of the final regulations provides that the district director or the Assistant Commissioner (International) may make appropriate adjustments to prevent the artificial increase of a corporation's actual ratio. This rule, in conjunction with more specific anti-abuse rules in Steps 1 and 3, replaces the general anti-abuse rule in § 1.882–5(e) of the proposed regulations.

Commenters criticized the 93% fixed ratio for banks as too low, and disagreed with the reasons provided in the preamble to the proposed regulations supporting the 93% ratio. The final regulations, however, retain the elective fixed ratio at 93%. In conjunction with the more relaxed rules regarding the computation of a foreign corporation's actual ratio, Treasury believes that a 93% fixed ratio, which remains purely elective, represents an appropriate safe harbor for banks.

Section 1.882–5(c)(4) also modifies the definition of a bank for these purposes to clarify the previous definition and to limit the 93% fixed ratio to the intended class of businesses.

5. Section 1.882–5(d): Determination of Amount of Interest Expense Allocable to ECI (Step 3)

Commenters were concerned that Step 3 of the proposed regulations failed to reflect business realities, increased administrative costs and created uncertainty. In particular, they objected to the rules that eliminated certain high interest rate liabilities and certain liabilities denominated in a non-functional currency from the definition of *booked liabilities*, and the rules that prescribed an interest rate applicable to the extent that a taxpayer's U.S.-connected liabilities exceed booked liabilities (*excess liabilities*).

As noted above, the IRS and Treasury believe that the calculation of a taxpayer's interest deduction should reflect, to the greatest extent possible, the taxpayer's economic interest expense. Accordingly, these comments have been largely accepted.

The final regulations eliminate the fixed interest rates assigned to excess liabilities, and instead require that taxpayers compute their actual interest rate outside the United States. The IRS anticipates issuing regulations under section 6038C describing the records needed to verify the taxpayer's actual interest rate, among other things.

The final regulations also respond to commenters' requests for simplification and clarification in the Step 3 calculation. Under § 1.882–5(d)(2), a liability is a U.S. booked liability if the liability is properly reflected on the books of the U.S. trade or business. The final regulations set out two standards, one for non-banks and another for banks, to determine whether a liability is properly reflected on the foreign corporation's U.S. books. In general, the final regulations use a facts and circumstances test to determine whether a liability is properly booked in the United States. In response to requests from commenters for additional guidance on the requirement that the booking of a liability be ''reasonably contemporaneous'' with the time that the liability is incurred, the regulations specify that a bank is generally required to book a liability before the end of the day in which the liability is incurred. Section 1.882–5(d)(2)(iii)(B) provides a relief rule, however, for a situation where, due to inadvertent error, a bank fails to book a liability that otherwise would meet the criteria for a booked liability. The special rules for banks in the proposed regulations have otherwise been eliminated.

In response to comments, the computation of the scaling ratio that applies to taxpayers with excess liabilities has also been simplified, and its application has been reduced in scope. Under the final regulations, the scaling ratio is computed by simply dividing U.S.-connected liabilities by U.S. booked liabilities, and multiplying that fraction by the interest paid or accrued by the foreign corporation. The final regulations also delete the provision in the proposed regulations that applied the scaling ratio to section 988 exchange gain or loss from an unhedged liability. The amount and source of exchange gain or loss from a section 988 transaction will therefore continue to be determined under section 988, without any reduction as a result of the scaling ratio in § 1.882–5.

The rules in the proposed regulations relating to high interest rate liabilities and nonfunctional currency liabilities have been replaced in the final regulations by a simpler anti-abuse rule that provides that U.S. booked liabilities will not include a liability if one of the principal purposes of incurring or holding the liability is to increase artificially the interest expense on U.S. booked liabilities. Factors relevant to that determination are whether the interest rate on a liability is excessive and whether, from an economic standpoint, the currency denomination of U.S. booked liabilities matches the currency denomination of U.S. assets.

6. Section 1.882–5(e): Separate Currency Pools Method

Most commenters argued for retaining the separate currency pools method, which was deleted from Step 3 in the proposed regulations. After considering the comments, the IRS and Treasury agree that taxpayers should be permitted to use a methodology that looks to worldwide interest rates in all relevant currencies. Because the separate currency pools rate in the 1981 regulations ignored the currency denomination of U.S. assets and was based instead on the currency denomination of U.S. booked liabilities, however, it was subject to manipulation. The new separate currency pools method in § 1.882–5(e) of the final regulations allows taxpayers to treat their U.S. assets in each currency as funded by the worldwide liabilities of the taxpayer in that same currency. This new separate currency pools method, which is elective, is an alternative to the Step 3 approach based on U.S. booked liabilities in § 1.882–5(d). To prevent distortions, taxpayers that have more than 10% of their U.S. assets denominated in a hyperinflationary currency are precluded from using the separate currency pools method.

The anti-abuse rule of proposed regulation § 1.882–5(e) has been replaced by three separate rules that appear under each of the three steps of this section.

Special Analyses

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

Drafting Information

Several persons from the Office of Chief Counsel and the Treasury Department participated in drafting these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

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

Section 1.882–5 also issued under 26 U.S.C. 882, 26 U.S.C. 864(e), 26 U.S.C. 988(d), and 26 U.S.C. 7701(l). * * *

§ 1.861–9T [Amended]

Par. 2. Section 1.861–9T, paragraph (e)(7) is amended as follows:

1. Paragraph (e)(7)(i) is removed.

2. The heading in paragraph (e)(7)(ii) is removed.

3. Paragraph (e)(7)(ii) is redesignated as the text of paragraph (e)(7).

Par. 3. Section 1.882–0 is added to read as follows:

§ 1.882–0 Table of contents.

This section lists captions contained in §§ 1.882–1, 1.882–2, 1.882–3, 1.882–4 and 1.882–5.

Par. 4. Section 1.882–5 is revised to read as follows:

§ 1.882–5 Determination of interest deduction.

(a) *Rules of general application*—(1) *Overview*—(i) *In general.* The amount of interest expense of a foreign corporation that is allocable under section 882(c) to income which is (or is treated as)

effectively connected with the conduct of a trade or business within the United States (ECI) is the sum of the interest paid or accrued by the foreign corporation on its liabilities booked in the United States, as adjusted under the three-step process set forth in paragraphs (b), (c), and (d) of this section and the specially allocated interest expense determined under section (a)(1)(ii) of this section. The provisions of this section provide the exclusive rules for allocating interest expense to the ECI of a foreign corporation. Under the three-step process, the total value of the U.S. assets of a foreign corporation is first determined under paragraph (b) of this section (Step 1). Next, the amount of U.S.-connected liabilities is determined under paragraph (c) of this section (Step 2). Finally, the amount of interest paid or accrued on liabilities booked in the United States, as determined under paragraph (d)(2) of this section, is adjusted for interest expense attributable to the difference between U.S.-connected liabilities and U.S.-booked liabilities (Step 3). Alternatively, a foreign corporation may elect to determine its interest rate on U.S.-connected liabilities by reference to its U.S. assets, using the separate currency pools method described in paragraph (e) of this section.

(ii) *Direct allocations*—(A) *In general.* A foreign corporation that has a U.S. asset and indebtedness that meet the requirements of § 1.861–10T (b) and (c), as limited by § 1.861–10T(d)(1), may directly allocate interest expense from such indebtedness to income from such asset in the manner and to the extent provided in § 1.861–10T. For purposes of paragraph (b)(1) or (c)(2) of this section, a foreign corporation that allocates its interest expense under the direct allocation rule of this paragraph (a)(1)(ii)(A) shall reduce the basis of the asset that meets the requirements of § 1.861–10T (b) and (c) by the principal amount of the indebtedness that meets the requirements of § 1.861– 10T (b) and (c). The foreign corporation shall also disregard any indebtedness that meets the requirements of § 1.861–10T (b) and (c) in determining the amount of the foreign corporation's liabilities under paragraphs (c)(2) and (d)(2) of this section, and shall not take into account any interest expense paid or accrued with respect to such a liability for purposes of paragraph (d) or (e) of this section.

(B) *Partnership interest.* A foreign corporation that is a partner in a partnership that has a U.S. asset and indebtedness that meet the requirements of § 1.861–10T (b) and (c), as limited by § 1.861–10T(d)(1), may directly allocate its distributive share of interest expense from that indebtedness to its distributive share of income from that asset in the manner and to the extent provided in § 1.861–10T. A foreign corporation that allocates its distributive share of interest expense under the direct allocation rule of this paragraph (a)(1)(ii)(B) shall disregard any partnership indebtedness that meets the requirements of § 1.861–10T (b) and (c) in determining the amount of its distributive share of partnership liabilities for purposes of paragraphs (b)(1), (c)(2)(vi), and (d)(2)(vii) or (e)(1)(ii) of this section, and shall not take into account any partnership interest expense paid or accrued with respect to such a liability for purposes of paragraph (d) or (e) of this section. For purposes of paragraph (b)(1) of this section, a foreign corporation that directly allocates its distributive share of interest expense under this paragraph (a)(1)(ii)(B) shall—

(*1*) Reduce the partnership's basis in such asset by the amount of such indebtedness in allocating its basis in the partnership under § 1.884–1(d)(3)(ii); or

(*2*) Reduce the partnership's income from such asset by the partnership's interest expense from such indebtedness under § 1.884–1(d)(3)(iii).

(2) *Coordination with tax treaties.* The provisions of this section provide the exclusive rules for determining the interest expense attributable to the business profits of a permanent establishment under a U.S. income tax treaty.

(3) *Limitation on interest expense.* In no event may the amount of interest expense computed under this section exceed the amount of interest on indebtedness paid or accrued by the taxpayer within the taxable year (translated into U.S. dollars at the weighted average exchange rate for each currency prescribed by § 1.989(b)–1 for the taxable year).

(4) *Translation convention for foreign currency.* For each computation required by this section, the taxpayer shall translate values and amounts into the relevant currency at a spot rate or a weighted average exchange rate consistent with the method such taxpayer uses for financial reporting purposes, provided such method is applied consistently from year to year. Interest expense paid or accrued, however, shall be translated under the rules of § 1.988–2. The district director or the Assistant Commissioner (International) may require that any or all computations required by this section be made in U.S. dollars if the functional currency of the taxpayer's home office is a hyperinflationary currency, as defined in § 1.985–1, and the computation in U.S. dollars is necessary to prevent distortions.

(5) *Coordination with other sections.* Any provision that disallows, defers, or capitalizes interest expense applies after determining the amount of interest expense allocated to ECI under this section. For example, in determining the amount of interest expense that is disallowed as a deduction under section 265 or 163(j), deferred under section 163(e)(3) or 267(a)(3), or capitalized under section 263A with respect to a United States trade or business, a taxpayer takes into account only the amount of interest expense allocable to ECI under this section.

(6) *Special rule for foreign governments.* The amount of interest expense of a foreign government, as defined in § 1.892–2T(a), that is allocable to ECI is the total amount of interest paid or accrued within the taxable year by the United States trade or business on U.S.-booked liabilities (as defined in paragraph (d)(2) of this section). Interest expense of a foreign government, however, is not allocable to ECI to the extent that it is incurred with respect to U.S.-booked liabilities that exceed 80 percent of the total value of U.S. assets for the taxable year (determined under paragraph (b) of this section). This paragraph (a)(6) does not apply to controlled commercial entities within the meaning of § 1.892–5T.

(7) *Elections under § 1.882–5*—(i) *In general.* A corporation must make each election provided in this section on the corporation's Federal income tax return for the first taxable year beginning on or after the effective date of this section. An amended return does not qualify for this purpose, nor shall the provisions of § 301.9100–1 of this chapter and any guidance promulgated thereunder apply. Each election under this section, whether an election for the first taxable year or a subsequent change of election, shall be made by the corporation calculating its interest expense deduction in accordance with the methods elected. An elected method must be used for a minimum period of five years before the taxpayer may elect a different method. To change an election before the end of the requisite five-year period, a taxpayer must obtain the consent of the Commissioner or her delegate. The Commissioner or her delegate will generally consent to a taxpayer's request to change its election only in rare and unusual circumstances.

(ii) *Failure to make the proper election.* If a taxpayer, for any reason, fails to make an election provided in

this section in a timely fashion, the district director or the Assistant Commissioner (International) may make any or all of the elections provided in this section on behalf of the taxpayer, and such elections shall be binding as if made by the taxpayer.

(8) *Examples.* The following examples illustrate the application of paragraph (a) of this section:

Example 1. Direct allocations. (i) *Facts: FC* is a foreign corporation that conducts business through a branch, *B*, in the United States. Among *B*'s U.S. assets is an interest in a partnership, *P*, that is engaged in airplane leasing solely in the U.S. *FC* contributes 200× to *P* in exchange for its partnership interest. *P* incurs qualified nonrecourse indebtedness within the meaning of § 1.861–10T to purchase an airplane. *FC*'s share of the liability of *P*, as determined under section 752, is 800×.

(ii) *Analysis:* Pursuant to paragraph (a)(1)(ii)(B) of this section, *FC* is permitted to directly allocate its distributive share of the interest incurred with respect to the qualified nonrecourse indebtedness to *FC*'s distributive share of the rental income generated by the airplane. A liability the interest on which is allocated directly to the income from a particular asset under paragraph (a)(1)(ii)(B) of this section is disregarded for purposes of paragraphs (b)(1), (c)(2)(vi), and (d)(2)(vii) or (e)(1)(ii) this section. Consequently, for purposes of determining the value of *FC*'s assets under paragraphs (b)(1) and (c)(2)(vi) of this section, *FC*'s basis in *P* is reduced by the 800× liability as determined under section 752, but is not increased by the 800× liability that is directly allocated under paragraph (a)(1)(ii)(B) of this section. Similarly, pursuant to paragraph (a)(1)(ii)(B) of this section, the 800× liability is disregarded for purposes of determining *FC*'s liabilities under paragraphs (c)(2)(vi) and (d)(2)(vii) of this section.

Example 2. Limitation on interest expense—(i) *FC* is a foreign corporation that conducts a real estate business in the United States. In its 1997 tax year, *FC* has no outstanding indebtedness, and therefore incurs no interest expense. *FC* elects to use the 50% fixed ratio under paragraph (c)(4) of this section.

(ii) Under paragraph (a)(3) of this section, *FC* is not allowed to deduct any interest expense that exceeds the amount of interest on indebtedness paid or accrued in that taxable year. Since *FC* incurred no interest expense in taxable year 1997, *FC* will not be entitled to any interest deduction for that year under § 1.882–5, notwithstanding the fact that *FC* has elected to use the 50% fixed ratio.

Example 3. Coordination with other sections—(i) *FC* is a foreign corporation that is a bank under section 585(a)(2) and a financial institution under section 265(b)(5). *FC* is a calendar year taxpayer, and operates a U.S. branch, *B*. Throughout its taxable year 1997, *B* holds only two assets that are U.S. assets within the meaning of paragraph (b)(1) of this section. *FC* does not make a fair-market value election under paragraph (b)(2)(ii) of this section, and, therefore, values its U.S. assets according to their bases under paragraph (b)(2)(i) of this section. The first asset is a taxable security with an adjusted basis of $100. The second asset is an obligation the interest on which is exempt from federal taxation under section 103, with an adjusted basis of $50. The tax-exempt obligation is not a qualified tax-exempt obligation as defined by section 265(b)(3)(B).

(ii) *FC* calculates its interest expense under § 1.882–5 to be $12. Under paragraph (a)(5) of this section, however, a portion of the interest expense that is allocated to *FC*'s effectively connected income under § 1.882–5 is disallowed in accordance with the provisions of section 265(b). Using the methodology prescribed under section 265, the amount of disallowed interest expense is $4, calculated as follows:

$$\$12 \times \frac{\$50 \text{ Tax-exempt U.S. assets}}{\$150 \text{ Total U.S. assets}} = \$4$$

(iii) Therefore, *FC* deducts a total of $8 ($12–$4) of interest expense attributable to its effectively connected income in 1997.

Example 4. Treaty exempt asset—(i) *FC* is a foreign corporation, resident in Country X, that is actively engaged in the banking business in the United States through a permanent establishment, *B*. The income tax treaty in effect between Country X and the United States provides that *FC* is not taxable on foreign source income earned by its U.S. permanent establishment. In its 1997 tax year, *B* earns $90 of U.S. source income from U.S. assets with an adjusted tax basis of $900, and $12 of foreign source interest income from U.S. assets with an adjusted tax basis of $100. *FC*'s U.S. interest expense deduction, computed in accordance with § 1.882–5, is $500.

(ii) Under paragraph (a)(5) of this section, *FC* is required to apply any provision that disallows, defers, or capitalizes interest expense after determining the interest expense allocated to ECI under § 1.882–5. Section 265(a)(2) disallows interest expense that is allocable to one or more classes of income that are wholly exempt from taxation under subtitle A of the Internal Revenue Code. Section 1.265–1(b) provides that income wholly exempt from taxes includes both income excluded from tax under any provision of subtitle A and income wholly exempt from taxes under any other law. Section 894 specifies that the provisions of subtitle A are applied with due regard to any relevant treaty obligation of the United States. Because the treaty between the United States and Country X exempts foreign source income earned by B from U.S. tax, *FC* has assets that produce income wholly exempt from taxes under subtitle A, and must therefore allocate a portion of its § 1.882–5 interest expense to its exempt income. Using the methodology prescribed under section 265, the amount of disallowed interest expense is $50, calculated as follows:

$$\$500 \times \frac{\$100 \text{ Treaty-exempt U.S. assets}}{\$1000 \text{ Total U.S. assets}} = \$50$$

(iii) Therefore, *FC* deducts a total of $450 ($500–$50) of interest expense attributable to its effectively connected income in 1997.

(b) *Step 1: Determination of total value of U.S. assets for the taxable year*—(1) *Classification of an asset as a U.S. asset*—(i) *General rule.* Except as otherwise provided in this paragraph (b)(1), an asset is a U.S. asset for purposes of this section to the extent that it is a U.S. asset under § 1.884–1(d). For purposes of this section, the term *determination date*, as used in § 1.884–1(d), means each day for which the total value of U.S. assets is computed under paragraph (b)(3) of this section.

(ii) *Items excluded from the definition of U.S. asset.* For purposes of this section, the term *U.S. asset* excludes an asset to the extent it produces income or gain described in sections 883 (a)(3) and (b).

(iii) *Items included in the definition of U.S. asset.* For purposes of this section, the term *U.S. asset* includes—

(A) U.S. real property held in a wholly-owned domestic subsidiary of a foreign corporation that qualifies as a bank under section 585(a)(2)(B) (without regard to the second sentence thereof), provided that the real property would qualify as used in the foreign corporation's trade or business within the meaning of § 1.864–4(c) (2) or (3) if held directly by the foreign corporation and either was initially acquired through foreclosure or similar proceedings or is U.S. real property occupied by the foreign corporation (the value of which shall be adjusted by the amount of any indebtedness that is reflected in the value of the property);

(B) An asset that produces income treated as ECI under section 921(d) or 926(b) (relating to certain income of a FSC and certain dividends paid by a FSC to a foreign corporation);

(C) An asset that produces income treated as ECI under section 953(c)(3)(C) (relating to certain income of a captive insurance company that a corporation elects to treat as ECI) that is not otherwise ECI; and

(D) An asset that produces income treated as ECI under section 882(e) (relating to certain interest income of possessions banks).

(iv) *Interbranch transactions.* A transaction of any type between separate offices or branches of the same taxpayer does not create a U.S. asset.

(v) *Assets acquired to increase U.S. assets artificially.* An asset shall not be treated as a U.S. asset if one of the principal purposes for acquiring or using that asset is to increase artificially the U.S. assets of a foreign corporation on the determination date. Whether an asset is acquired or used for such

purpose will depend upon all the facts and circumstances of each case. Factors to be considered in determining whether one of the principal purposes in acquiring or using an asset is to increase artificially the U.S. assets of a foreign corporation include the length of time during which the asset was used in a U.S. trade or business, whether the asset was acquired from a related person, and whether the aggregate value of the U.S. assets of the foreign corporation increased temporarily on or around the determination date. A purpose may be a principal purpose even though it is outweighed by other purposes (taken together or separately).

(2) *Determination of the value of a U.S. asset*—(i) *General rule.* The value of a U.S. asset is the adjusted basis of the asset for determining gain or loss from the sale or other disposition of that item, further adjusted as provided in paragraph (b)(2)(iii) of this section.

(ii) *Fair-market value election*—(A) *In general.* A taxpayer may elect to value all of its U.S. assets on the basis of fair market value, subject to the requirements of § 1.861–9T(g)(1)(iii), and provided the taxpayer uses the methodology prescribed in § 1.861–9T(h). Once elected, the fair market value must be used by the taxpayer for both Step 1 and Step 2 described in paragraphs (b) and (c) of this section, and must be used in all subsequent taxable years unless the Commissioner or her delegate consents to a change.

(B) *Adjustment to partnership basis.* If a partner makes a fair market value election under paragraph (b)(2)(ii) of this section, the value of the partner's interest in a partnership that is treated as an asset shall be the fair market value of his partnership interest, increased by the fair market value of the partner's share of the liabilities determined under paragraph (c)(2)(vi) of this section. See § 1.884–1(d)(3).

(iii) *Reduction of total value of U.S. assets by amount of bad debt reserves under section 585*—(A) *In general.* The total value of loans that qualify as U.S. assets shall be reduced by the amount of any reserve for bad debts additions to which are allowed as deductions under section 585.

(B) *Example.* The following example illustrates the provisions of paragraph (b)(2)(iii)(A) of this section:

Example. Foreign banks; bad debt reserves. FC is a foreign corporation that qualifies as a bank under section 585(a)(2)(B) (without regard to the second sentence thereof), but is not a large bank as defined in section 585(c)(2). *FC* conducts business through a branch, *B*, in the United States. Among *B*'s U.S. assets are a portfolio of loans with an adjusted basis of $500. *FC* accounts for its bad debts for U.S. federal income tax purposes under the reserve method, and *B* maintains a deductible reserve for bad debts of $50. Under paragraph (b)(2)(iii) of this section, the total value of *FC*'s portfolio of loans is $450 ($500 − $50).

(iv) *Adjustment to basis of financial instruments.* [Reserved]

(3) *Computation of total value of U.S. assets.* The total value of U.S. assets for the taxable year is the average of the sums of the values (determined under paragraph (b)(2) of this section) of U.S. assets. For each U.S. asset, value shall be computed at the most frequent, regular intervals for which data are reasonably available. In no event shall the value of any U.S. asset be computed less frequently than monthly by a large bank (as defined in section 585(c)(2)) and semi-annually by any other taxpayer.

(c) *Step 2: Determination of total amount of U.S.-connected liabilities for the taxable year*—(1) *General rule.* The amount of U.S.-connected liabilities for the taxable year equals the total value of U.S. assets for the taxable year (as determined under paragraph (b)(3) of this section) multiplied by the actual ratio for the taxable year (as determined under paragraph (c)(2) of this section) or, if the taxpayer has made an election in accordance with paragraph (c)(4) of this section, by the fixed ratio.

(2) *Computation of the actual ratio*—(i) *In general.* A taxpayer's actual ratio for the taxable year is the total amount of its worldwide liabilities for the taxable year divided by the total value of its worldwide assets for the taxable year. The total amount of worldwide liabilities and the total value of worldwide assets for the taxable year is the average of the sums of the amounts of the taxpayer's worldwide liabilities and the values of its worldwide assets (determined under paragraphs (c)(2) (iii) and (iv) of this section). In each case, the sums must be computed semi-annually by a large bank (as defined in section 585(c)(2)) and annually by any other taxpayer.

(ii) *Classification of items.* The classification of an item as a liability or an asset must be consistent from year to year and in accordance with U.S. tax principles.

(iii) *Determination of amount of worldwide liabilities.* The amount of a liability must be determined consistently from year to year and must be substantially in accordance with U.S. tax principles. To be substantially in accordance with U.S. tax principles, the principles used to determine the amount of a liability must not differ from U.S. tax principles to a degree that will materially affect the value of taxpayer's worldwide liabilities or the taxpayer's actual ratio.

(iv) *Determination of value of worldwide assets.* The value of an asset must be determined consistently from year to year and must be substantially in accordance with U.S. tax principles. To be substantially in accordance with U.S. tax principles, the principles used to determine the value of an asset must not differ from U.S. tax principles to a degree that will materially affect the value of the taxpayer's worldwide assets or the taxpayer's actual ratio. The value of an asset is the adjusted basis of that asset for determining the gain or loss from the sale or other disposition of that asset, adjusted in the same manner as the basis of U.S. assets are adjusted under paragraphs (b)(2) (ii) through (iv) of this section.

(v) *Hedging transactions.* [Reserved]

(vi) *Treatment of partnership interests and liabilities.* For purposes of computing the actual ratio, the value of a partner's interest in a partnership that will be treated as an asset is the partner's adjusted basis in its partnership interest, reduced by the partner's share of liabilities of the partnership as determined under section 752 and increased by the partner's share of liabilities determined under this paragraph (c)(2)(vi). If the partner has made a fair market value election under paragraph (b)(2)(ii) of this section, the value of its interest in the partnership shall be increased by the fair market value of the partner's share of the liabilities determined under this paragraph (c)(2)(vi). For purposes of this section a partner shares in any liability of a partnership in the same proportion that it shares, for income tax purposes, in the expense attributable to that liability for the taxable year. A partner's adjusted basis in a partnership interest cannot be less than zero.

(vii) *Computation of actual ratio of insurance companies.* [Reserved]

(viii) *Interbranch transactions.* A transaction of any type between separate offices or branches of the same taxpayer does not create an asset or a liability.

(ix) *Amounts must be expressed in a single currency.* The actual ratio must be computed in either U.S. dollars or the functional currency of the home office of the taxpayer, and that currency must be used consistently from year to year. For example, a taxpayer that determines the actual ratio annually using British pounds converted at the spot rate for financial reporting purposes must translate the U.S. dollar values of assets and amounts of liabilities of the U.S. trade or business into pounds using the spot rate on the last day of its taxable year. The district director or the

Assistant Commissioner (International) may require that the actual ratio be computed in dollars if the functional currency of the taxpayer's home office is a hyperinflationary currency, as defined in § 1.985–1, that materially distorts the actual ratio.

(3) *Adjustments.* The district director or the Assistant Commissioner (International) may make appropriate adjustments to prevent a foreign corporation from intentionally and artificially increasing its actual ratio. For example, the district director or the Assistant Commissioner (International) may offset a loan made from or to one person with a loan made to or from another person if any of the parties to the loans are related persons, within the meaning of section 267(b) or 707(b)(1), and one of the principal purposes for entering into the loans was to increase artificially the actual ratio of a foreign corporation. A purpose may be a principal purpose even though it is outweighed by other purposes (taken together or separately).

(4) *Elective fixed ratio method of determining U.S. liabilities.* A taxpayer that is a bank as defined in section 585(a)(2)(B)(without regard to the second sentence thereof) may elect to use a fixed ratio of 93 percent in lieu of the actual ratio. A taxpayer that is neither a bank nor an insurance company may elect to use a fixed ratio of 50 percent in lieu of the actual ratio.

(5) *Examples.* The following examples illustrate the application of paragraph (c) of this section:

Example 1. Classification of item not in accordance with U.S. tax principles. Bank *Z*, a resident of country *X*, has a branch in the United States through which it conducts its banking business. In preparing its financial statements in country *X*, *Z* treats an instrument documented as perpetual subordinated debt as a liability. Under U.S. tax principles, however, this instrument is treated as equity. Consequently, the classification of this instrument as a liability for purposes of paragraph (c)(2)(iii) of this section is not in accordance with U.S. tax principles.

Example 2. Valuation of item not substantially in accordance with U.S. tax principles. Bank *Z*, a resident of country *X*, has a branch in the United States through which it conducts its banking business. Bank *Z* is a large bank as defined in section 585(c)(2). The tax rules of country *X* allow Bank *Z* to take deductions for additions to certain reserves. Bank *Z* decreases the value of the assets on its financial statements by the amounts of the reserves. The additions to the reserves under country *X* tax rules cause the value of Bank *Z*'s assets to differ from the value of those assets determined under U.S. tax principles to a degree that materially affects the value of taxpayer's worldwide assets. Consequently, the valuation of Bank *Z*'s worldwide assets under country *X* tax principles is not substantially in accordance with U.S. tax principles. Bank *Z* must increase the value of its worldwide assets under paragraph (c)(2)(iii) of this section by the amount of its country *X* reserves.

Example 3. Valuation of item substantially in accordance with U.S. tax principles. Bank *Z*, a resident of country *X*, has a branch in the United States through which it conducts its banking business. In determining the value of its worldwide assets, Bank *Z* computes the adjusted basis of certain non-U.S. assets according to the depreciation methodology provided under country *X* tax laws, which is different than the depreciation methodology provided under U.S. tax law. If the depreciation methodology provided under country *X* tax laws does not differ from U.S. tax principles to a degree that materially affects the value of Bank *Z*'s worldwide assets or Bank *Z*'s actual ratio as computed under paragraph (c)(2) of this section, then the valuation of Bank *Z*'s worldwide assets under paragraph (c)(2)(iv) of this section is substantially in accordance with U.S. tax principles.

Example 4. [Reserved]

Example 5. Adjustments. FC is a foreign corporation engaged in the active conduct of a banking business through a branch, *B*, in the United States. *P*, an unrelated foreign corporation, deposits $100,000 in the home office of *FC.* Shortly thereafter, in a transaction arranged by the home office of *FC, B* lends $80,000 bearing interest at an arm's length rate to *S*, a wholly owned U.S. subsidiary of *P.* The district director or the Assistant Commissioner (International) determines that one of the principal purposes for making and incurring such loans is to increase *FC*'s actual ratio. For purposes of this section, therefore, *P* is treated as having directly lent $80,000 to S. Thus, for purposes of paragraph (c) of this section (Step 2), the district director or the Assistant Commissioner (International) may offset *FC*'s liability and asset arising from this transaction, resulting in a net liability of $20,000 that is not a booked liability of *B.* Because the loan to *S* from *B* was initiated and arranged by the home office of *FC,* with no material participation by *B*, the loan to *S* will not be treated as a U.S. asset.

(d) *Step 3: Determination of amount of interest expense allocable to ECI under the adjusted U.S. booked liabilities method*—(1) *General rule.* The adjustment to the amount of interest expense paid or accrued on U.S. booked liabilities is determined by comparing the amount of U.S.-connected liabilities for the taxable year, as determined under paragraph (c) of this section, with the average total amount of U.S. booked liabilities, as determined under paragraphs (d)(2) and (3) of this section. If the average total amount of U.S. booked liabilities equals or exceeds the amount of U.S.-connected liabilities, the adjustment to the interest expense on U.S. booked liabilities is determined under paragraph (d)(4) of this section. If the amount of U.S.-connected liabilities exceeds the average total amount of U.S. booked liabilities, the adjustment to the amount of interest expense paid or accrued on U.S. booked liabilities is determined under paragraph (d)(5) of this section.

(2) *U.S. booked liabilities*—(i) *In general.* A liability is a *U.S. booked liability* if it is properly reflected on the books of the U.S. trade or business, within the meaning of paragraph (d)(2)(ii) or (iii) of this section.

(ii) *Properly reflected on the books of the U.S. trade or business of a foreign corporation that is not a bank*—(A) *In general.* A liability, whether interest bearing or non-interest bearing, is properly reflected on the books of the U.S. trade or business of a foreign corporation that is not a bank as described in section 585(a)(2)(B) (without regard to the second sentence thereof) if—

(*1*) The liability is secured predominantly by a U.S. asset of the foreign corporation;

(*2*) The foreign corporation enters the liability on a set of books relating to an activity that produces ECI at a time reasonably contemporaneous with the time at which the liability is incurred; or

(*3*) The foreign corporation maintains a set of books and records relating to an activity that produces ECI and the District Director or Assistant Commissioner (International) determines that there is a direct connection or relationship between the liability and that activity. Whether there is a direct connection between the liability and an activity that produces ECI depends on the facts and circumstances of each case.

(B) *Identified liabilities not properly reflected.* A liability is not properly reflected on the books of the U.S. trade or business merely because a foreign corporation identifies the liability pursuant to § 1.884–4(b)(1)(ii) and (b)(3).

(iii) *Properly reflected on the books of the U.S. trade or business of a foreign corporation that is a bank*—(A) *In general.* A liability, whether interest bearing or non-interest bearing, is properly reflected on the books of the U.S. trade or business of a foreign corporation that is a bank as described in section 585(a)(2)(B) (without regard to the second sentence thereof) if—

(*1*) The bank enters the liability on a set of books relating to an activity that produces ECI before the close of the day on which the liability is incurred; and

(*2*) There is a direct connection or relationship between the liability and that activity. Whether there is a direct connection between the liability and an activity that produces ECI depends on

the facts and circumstances of each case.

(B) *Inadvertent error.* If a bank fails to enter a liability in the books of the activity that produces ECI before the close of the day on which the liability was incurred, the liability may be treated as a U.S. booked liability only if, under the facts and circumstances, the taxpayer demonstrates a direct connection or relationship between the liability and the activity that produces ECI and the failure to enter the liability in those books was due to inadvertent error.

(iv) *Liabilities of insurance companies.* [Reserved]

(v) *Liabilities used to increase artificially interest expense on U.S. booked liabilities.* U.S. booked liabilities shall not include a liability if one of the principal purposes for incurring or holding the liability is to increase artificially the interest expense on the U.S. booked liabilities of a foreign corporation. Whether a liability is incurred or held for the purpose of artificially increasing interest expense will depend upon all the facts and circumstances of each case. Factors to be considered in determining whether one of the principal purposes for incurring or holding a liability is to increase artificially the interest expense on U.S. booked liabilities of a foreign corporation include whether the interest expense on the liability is excessive when compared to other liabilities of the foreign corporation denominated in the same currency and whether the currency denomination of the liabilities of the U.S. branch substantially matches the currency denomination of the U.S. branch's assets. A purpose may be a principal purpose even though it is outweighed by other purposes (taken together or separately).

(vi) *Hedging transactions.* [Reserved]

(vii) *Amount of U.S. booked liabilities of a partner.* A partner's share of liabilities of a partnership is considered a booked liability of the partner provided that it is properly reflected on the books (within the meaning of paragraph (d)(2)(ii) of this section) of the U.S. trade or business of the partnership.

(viii) *Interbranch transactions.* A transaction of any type between separate offices or branches of the same taxpayer does not result in the creation of a liability.

(3) *Average total amount of U.S. booked liabilities.* The *average total amount* of U.S. booked liabilities for the taxable year is the average of the sums of the amounts (determined under paragraph (d)(2) of this section) of U.S. booked liabilities. The amount of U.S. booked liabilities shall be computed at the most frequent, regular intervals for which data are reasonably available. In no event shall the amount of U.S. booked liabilities be computed less frequently than monthly by a large bank (as defined in section 585(c)(2)) and semi-annually by any other taxpayer.

(4) *Interest expense where U.S. booked liabilities equal or exceed U.S. liabilities*—(i) *In general.* If the average total amount of U.S. booked liabilities (as determined in paragraphs (d)(2) and (3) of this section) exceeds the amount of U.S.-connected liabilities (as determined under paragraph (c) of this section (Step 2)), the interest expense allocable to ECI is the product of the total amount of interest paid or accrued within the taxable year by the U.S. trade or business on U.S. booked liabilities and the scaling ratio set out in paragraph (d)(4)(ii) of this section. For purposes of this section, the reduction resulting from the application of the scaling ratio is applied pro-rata to all interest expense paid or accrued by the foreign corporation. A similar reduction in income, expense, gain, or loss from a hedging transaction (as described in paragraph (d)(2)(vi) of this section) must also be determined by multiplying such income, expense, gain, or loss by the scaling ratio. If the average total amount of U.S. booked liabilities (as determined in paragraph (d)(3) of this section) equals the amount of U.S.-connected liabilities (as determined under *Step 2*), the interest expense allocable to ECI is the total amount of interest paid or accrued within the taxable year by the U.S. trade or business on U.S. booked liabilities.

(ii) *Scaling ratio.* For purposes of this section, the scaling ratio is a fraction the numerator of which is the amount of U.S.-connected liabilities and the denominator of which is the average total amount of U.S. booked liabilities.

(iii) *Special rules for insurance companies.* [Reserved]

(5) *U.S.-connected interest rate where U.S. booked liabilities are less than U.S.-connected liabilities*—(i) *In general.* If the amount of U.S.-connected liabilities (as determined under paragraph (c) of this section (Step 2)) exceeds the average total amount of U.S. booked liabilities, the interest expense allocable to ECI is the total amount of interest paid or accrued within the taxable year by the U.S. trade or business on U.S. booked liabilities, plus the excess of the amount of U.S.-connected liabilities over the average total amount of U.S. booked liabilities multiplied by the interest rate determined under paragraph (d)(5)(ii) of this section.

(ii) *Interest rate on excess U.S.-connected liabilities.* The applicable interest rate on excess U.S.-connected liabilities is determined by dividing the total interest expense paid or accrued for the taxable year on U.S.-dollar liabilities shown on the books of the offices or branches of the foreign corporation outside the United States by the average U.S.-dollar denominated liabilities (whether interest-bearing or not) shown on the books of the offices or branches of the foreign corporation outside the United States for the taxable year.

(6) *Examples.* The following examples illustrate the rules of this section:

Example 1. Computation of interest expense; actual ratio—(i) *Facts.* (A) *FC* is a foreign corporation that is not a bank and that actively conducts a real estate business through a branch, *B*, in the United States. For the taxable year, *FC*'s balance sheet and income statement is as follows (assume amounts are in U.S. dollars and computed in accordance with paragraphs (b)(2) and (b)(3) of this section):

	Value	
Asset 1	$2,000	
Asset 2	2,500	
Asset 3	5,500	
	Amount	Interest
Liability 1	$800	56
Liability 2	3,200	256
Capital	6,000	0

(B) Asset 1 is the stock of *FC*'s wholly-owned domestic subsidiary that is also actively engaged in the real estate business. Asset 2 is a building in the United States producing rental income that is entirely ECI to *FC*. Asset 3 is a building in the home country of *FC* that produces rental income. Liabilities 1 and 2 are loans that bear interest at the rates of 7% and 8%, respectively. Liability 1 is a booked liability of B, and Liability 2 is booked in *FC*'s home country. Assume that *FC* has not elected to use the fixed ratio in Step 2.

(ii) *Step 1.* Under paragraph (b)(1) of this section, Assets 1 and 3 are not U.S. assets, while Asset 2 qualifies as a U.S. asset. Thus, under paragraph (b)(3) of this section, the total value of U.S. assets for the taxable year is $2,500, the value of Asset 2.

(iii) *Step 2.* Under paragraph (c)(1) of this section, the amount of *FC*'s U.S.-connected liabilities for the taxable year is determined by multiplying $2,500 (the value of U.S. assets determined under Step 1) by the actual ratio for the taxable year. The actual ratio is the average amount of *FC*'s worldwide liabilities divided by the average value of *FC*'s worldwide assets. The amount of Liability 1 is $800, and the amount of Liability 2 is $3,200. Thus, the numerator of the actual ratio is $4,000. The average value of worldwide assets is $10,000 (Asset 1 + Asset 2 + Asset 3). The actual ratio, therefore, is 40% ($4,000/$10,000), and the amount of U.S.-connected liabilities for the taxable year is $1,000 ($2,500 U.S. assets × 40%).

(iv) *Step 3.* Because the amount of *FC*'s U.S.-connected liabilities ($1,000) exceeds the average total amount of U.S. booked liabilities of *B* ($800), *FC* determines its interest expense in accordance with paragraph (d)(5) of this section by adding the interest paid or accrued on U.S. booked liabilities, and the interest expense associated with the excess of its U.S.-connected liabilities over its average total amount of U.S. booked liabilities. Under paragraph (d)(5)(ii) of this section, *FC* determines the interest rate attributable to its excess U.S.-connected liabilities by dividing the interest expense paid or accrued by the average amount of U.S.-dollar denominated liabilities, which produces an interest rate of 8% ($256/$3200). Therefore, *FC*'s allocable interest expense is $72 ($56 of interest expense from U.S. booked liabilities plus $16 ($200 × 8%) of interest expense attributable to its excess U.S.-connected liabilities).

Example 2. Computation of interest expense; fixed ratio—(i) The facts are the same as in *Example 1,* except that *FC* makes a fixed ratio election under paragraph (c)(4) of this section. The conclusions under Step 1 are the same as in *Example 1.*

(ii) *Step 2.* Under paragraph (c)(1) of this section, the amount of U.S.-connected liabilities for the taxable year is determined by multiplying $2,500 (the value of U.S. assets determined under Step 1) by the fixed ratio for the taxable year, which, under paragraph (c)(4) of this section is 50 percent. Thus, the amount of U.S.-connected liabilities for the taxable year is $1,250 ($2,500 U.S. assets × 50%).

(iii) *Step 3.* As in *Example 1,* the amount of *FC*'s U.S.-connected liabilities exceed the average total amount of U.S. booked liabilities of *B*, requiring *FC* to determine its interest expense under paragraph (d)(5) of this section. In this case, however, *FC* has excess U.S.-connected liabilities of $450 ($1,250 of U.S.-connected liabilities—$800 U.S. booked liabilities). *FC* therefore has allocable interest expense of $92 ($56 of interest expense from U.S. booked liabilities plus $36 ($450 x 8%) of interest expense attributable to its excess U.S.-connected liabilities).

Example 3. Scaling ratio.—(i) *Facts.* Bank *Z*, a resident of country *X*, has a branch in the United States through which it conducts its banking business. For the taxable year, *Z* has U.S.-connected liabilities, determined under paragraph (c) of this section, equal to $300. *Z*, however, has U.S. booked liabilities of $300 and *U*500. Therefore, assuming an exchange rate of the *U* to the U.S. dollar of 5:1, *Z* has U.S. booked liabilities of $400 ($300 + (*U*500 ÷ 5)).

(ii) *U.S.-connected liabilities.* Because *Z*'s U.S. booked liabilities of $400 exceed its U.S.-connected liabilities by $100, all of *Z*'s interest expense allocable to its U.S. trade or business must be scaled back pro-rata. To determine the scaling ratio, *Z* divides its U.S.-connected liabilities by its U.S. booked liabilities, as required by paragraph (d)(4) of this section. *Z*'s interest expense is scaled back pro rata by the resulting ratio of ¾ ($300 ÷ $400). *Z*'s income, expense, gain or loss from hedging transactions described in paragraph (d)(2)(vi) of this section must be similarly reduced.

Example 4. [Reserved]

(e) *Separate currency pools method*—(1) *General rule.* If a foreign corporation elects to use the method in this paragraph, its total interest expense allocable to ECI is the sum of the separate interest deductions for each of the currencies in which the foreign corporation has U.S. assets. The separate interest deductions are determined under the following three-step process.

(i) *Determine the value of U.S. assets in each currency pool.* First, the foreign corporation must determine the amount of its U.S. assets, using the methodology in paragraph (b) of this section, in each currency pool. The foreign corporation may convert into U.S. dollars any currency pool in which the foreign corporation holds less than 3% of its U.S. assets. A transaction (or transactions) that hedges a U.S. asset shall be taken into account for purposes of determining the currency denomination and the value of the U.S. asset.

(ii) *Determine the U.S.-connected liabilities in each currency pool.* Second, the foreign corporation must determine the amount of its U.S.-connected liabilities in each currency pool by multiplying the amount of U.S. assets (as determined under paragraph (b)(3) of this section) in the currency pool by the foreign corporation's actual ratio (as determined under paragraph (c)(2) of this section) for the taxable year or, if the taxpayer has made an election in accordance with paragraph (c)(4) of this section, by the fixed ratio.

(iii) *Determine the interest expense attributable to each currency pool.* Third, the foreign corporation must determine the interest expense attributable to each currency pool by multiplying the U.S.-connected liabilities in each currency pool by the prescribed interest rate as defined in paragraph (e)(2) of this section.

(2) *Prescribed interest rate.* For each currency pool, the prescribed interest rate is determined by dividing the total interest expense that is paid or accrued for the taxable year with respect to the foreign corporation's worldwide liabilities denominated in that currency, by the foreign corporation's average worldwide liabilities (whether interest bearing or not) denominated in that currency. The interest expense and liabilities are to be stated in that currency.

(3) *Hedging transactions.* [Reserved]

(4) *Election not available if excessive hyperinflationary assets.* The election to use the separate currency pools method of this paragraph (e) is not available if the value of the foreign corporation's U.S. assets denominated in a hyperinflationary currency, as defined in § 1.985–1, exceeds ten percent of the value of the foreign corporation's total U.S. assets. If a foreign corporation made a valid election to use the separate currency pools method in a prior year but no longer qualifies to use such method pursuant to this paragraph (e)(4), the taxpayer must use the method provided by paragraphs (b) through (d) of this section.

(5) *Examples.* The separate currency pools method of this paragraph (e) is illustrated by the following examples:

Example 1. Separate currency pools method—(i) *Facts.* (A) Bank *Z*, a resident of country *X*, has a branch in the United States through which it conducts its banking business. For its 1997 taxable year, *Z* has U.S. assets, as defined in paragraph (b) of this section, that are denominated in U.S. dollars and in *U*, the country *X* currency. Accordingly, *Z*'s U.S. assets are as follows:

	Average value
U.S. Dollar Assets	$20,000
U Assets	*U* 5,000

(B) *Z*'s worldwide liabilities are also denominated in U.S. Dollars and in *U*. The average interest rates on *Z*'s worldwide liabilities, including those in the United States, are 6% on its U.S. dollar liabilities, and 12% on its liabilities denominated in *U*. Assume that *Z* has properly elected to use its actual ratio of 95% to determine its U.S.-connected liabilities in Step 2, and has also properly elected to use the separate currency pools method provided in paragraph (e) of this section.

(ii) *Determination of interest expense. Z* determines the interest expense attributable to its U.S.-connected liabilities according to the steps described below.

(A) First, *Z* separates its U.S. assets into two currency pools, one denominated in U.S. dollars ($20,000) and the other denominated in *U* (*U*5,000).

(B) Second, *Z* multiplies each pool of assets by the applicable ratio of worldwide liabilities to assets, which in this case is 95%. Thus, Z has U.S.-connected liabilities of $19,000 ($20,000 x 95%), and *U*4750 (*U*5000 x 95%).

(C) Third, *Z* calculates its interest expense by multiplying each pool of its U.S.-connected liabilities by the relevant interest rates. Accordingly, *Z*'s allocable interest expense for the year is $1140 ($19,000 x 6%), the sum of the expense associated with its U.S. dollar liabilities, plus *U*570 (*U*4750 x 12%), the interest expense associated with its liabilities denominated in *U*. *Z* must translate its interest expense denominated in *U* in accordance with the rules provided in section 988, and then must determine whether it is subject to any other provision of the Code that would disallow or defer any portion of its interest expense so determined.

Example 2. [Reserved]

(f) *Effective date*—(1) *General rule.* This section is effective for taxable years beginning on or after June 6, 1996.

(2) *Special rules for financial products.* [Reserved]

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: February 28, 1996.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 96–5262 Filed 3–5–96; 8:45 am]

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26 CFR Parts 1 and 602

[TD 8657]

RIN 1545–AQ58

Regulations on Effectively Connected Income and the Branch Profits Tax

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final Income Tax Regulations relating to the determination of effectively connected income under section 864 and final and temporary Income Tax Regulations relating to the branch profits tax and branch-level interest tax under section 884 of the Internal Revenue Code of 1986 (Code). Section 884 was added to the Code by section 1241 of the Tax Reform Act of 1986. This document also contains conforming changes to sections 861, 871 and 897.

EFFECTIVE DATE: June 6, 1996.

FOR FURTHER INFORMATION CONTACT: Gwendolyn A. Stanley, (202) 622- 3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1070.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated annual burden per respondent is .25 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may be material in the administration of any internal revenue law. Generally, tax returns and tax information are confidential, as required by 26 U.S.C. 6103.

Background

On September 2, 1988, proposed and temporary regulations (TD 8223 and INTL–934–86 [1988–2 C.B. 825]) under section 884 were published in the Federal Register (53 FR 34045). Written comments were received on the proposed amendments. On September 11, 1992, temporary regulations under § 1.884–2T were amended and final regulations (1992 final regulations) (TD 8432 [1992–2 C.B. 157]) under section 884 of the Code were published in the Federal Register (57 FR 41644). Proposed amendments (1992 proposed regulations) (INTL–0003–92 [1992–2 C.B. 752]) to the Income Tax Regulations (26 CFR part 1) under sections 864 and 884 of the Internal Revenue Code were published in the Federal Register (57 FR 41707) on the same day. Written comments were received on the proposed amendments. After consideration of all the comments, § 1.884–2(a)(2)(ii) and § 1.884–2(c)(2)(iii) of the 1988 proposed regulations and the 1992 proposed regulations are adopted as final regulations as amended by this Treasury decision. The revisions and conforming changes are discussed below.

Explanation of the Provisions

I. Section 864 Stock Rule

The proposed regulations under section 864 provided that stock of a corporation shall not be treated as an asset used in, or held for use in, the conduct of a U.S. trade or business. Accordingly, the regulations proposed to delete the example of stock acquired and held to assure a constant source of supply as an asset that satisfies the asset-use test under § 1.864–4(c)(2). Commenters criticized this rule and cited to the legislative history to the Foreign Investors Tax Act of 1966 as contemplating that stock may satisfy the asset-use test. The IRS and Treasury continue to believe, however, that stock does not satisfy the asset-use test. Therefore § 1.864–4(c)(2)(iii) adopts the rule contained in the proposed regulations.

In response to our request for comments on whether insurance companies require an exception to the stock rule for their portfolio stock, one commenter suggested that foreign life insurance companies be permitted to refer to the National Association of Insurance Commissioners (NAIC) Annual Statement to determine whether their assets are used in, or held for use in, the conduct of a U.S. trade or business. The IRS and Treasury will continue to consider whether modifications to the regulations under section 864 are appropriate for foreign insurance companies and reserve on the treatment of stock held by a foreign insurance company.

Conforming changes have been made to regulations under section 864, as well as regulations under sections 871 and 897 to reflect the clarification of § 1.864–4(c)(2). The effective date of the changes to sections 871 and 897 corresponds to the effective date of the changes to section 864.

II. Branch Profits Tax

A. *Interest in a partnership.* Currently, a foreign corporation engaged in a U.S. trade or business through a partnership applies different rules to determine its U.S. assets depending on whether the determination is for purposes of section 884 or § 1.882–5. For purposes of computing its interest expense under § 1.882–5, the rules of § 1.861–9T(e)(7) apply. Therefore a foreign corporation takes into account either its pro rata share of partnership assets and liabilities or applies the rules of § 1.882–5 as if the partnership were a foreign corporation, depending on the nature of its interest in the partnership. In contrast, for purposes of section 884, a foreign corporation generally takes into account its adjusted basis in its partnership interest as a starting point for determining its U.S. assets.

Final regulations under section 882 published elsewhere in this issue of the Federal Register remove the temporary regulations under § 1.861–9T(e)(7)(i). These final regulations provide a new U.S. asset rule for partnership interests for purposes of determining the U.S. assets of a foreign corporate partner under sections 882 and 884. The final regulations under § 1.882–5 contain a corresponding rule to determine the value of a partnership interest held by a foreign corporation for purposes of computing its worldwide assets.

In the event that a partnership derives any income that is not effectively connected with a U.S. trade or business, or otherwise holds non-U.S. assets, the rules in § 1.884–1(d)(3) continue to provide a rule that allocates the basis in

the partnership interest between U.S. and non-U.S. assets. However, the allocation rule is more flexible than the rule contained in either the 1992 final regulations or the proposed regulations under section 884. The rule allows a foreign corporation to use either an income method or an asset method to determine the proportionate share of its partnership interest that is a U.S. asset, regardless of its ownership interest in the partnership. This is a change from the previous 1992 final regulations, which required all foreign corporate partners to use an income method, and from the 1992 proposed regulations, which required more than 10% partners to use the asset method.

Based on commenters' suggestions, other clarifying changes have been made to the asset method. For example, the final regulations clarify that the adjusted bases of partnership assets reflect any adjustment under section 754 with respect to a foreign corporate partner.

B. *Interest in a trust or estate.* The rules applicable to interests in a trust or estate in § 1.884–1(d)(4) are finalized as proposed.

C. *Nonrecourse indebtedness and integrated financial transactions.* Because the final regulations under § 1.882–5 incorporate the special allocation rules of § 1.861–10T, certain changes to the final regulations under § 1.884–1(e) are needed to maintain the proper U.S. net equity of a foreign corporation that elects to directly allocate any portion of its interest expense. These regulations include a conforming change that provides that liabilities giving rise to such interest will be considered U.S. liabilities for purposes of section 884, notwithstanding that such liabilities are not taken into account in Step 2 of § 1.882–5.

In addition, a new provision has been added in § 1.884–4(b) so that branch interest continues to include interest paid with respect to liabilities that are subject to the special allocation rules, notwithstanding that such liabilities are not considered U.S. booked liabilities for purposes of Step 3 of the § 1.882–5 calculation.

D. *Structural changes to conform branch interest rules to final regulations under § 1.882–5.* These regulations adopt the changes made by the 1992 proposed regulations under § 1.884–4(b), and thus incorporate the rules in § 1.882–5(d)(2) (relating to U.S. booked liabilities) in defining the term branch interest of a foreign corporation. Although certain changes were made to the definition of U.S. booked liabilities in the final regulations under § 1.882– 5, the manner in which a foreign corporation computes its branch interest and excess interest remains substantially unchanged.

E. *Excess interest—definition of a foreign bank.* A foreign corporation that is a foreign bank may treat a minimum of 85% of its excess interest as interest on deposits, regardless of its actual ratio of deposits to interest bearing liabilities. The IRS and Treasury believe this rule should be applicable only to a foreign bank engaging in substantial deposit-taking activities, taking into account its activities in the United States as well as other countries in which it operates. The definition used in the 1992 final regulations did not clearly convey this limitation. Thus, § 1.884–4(a)(2)(iii) now defines a foreign bank by reference to section 585(a)(2)(B) of the Code, but also requires that a substantial part of its business consists of receiving deposits and making loans and discounts.

III. Complete termination rules

The rules in § 1.884–2T(a)(5), applicable to a foreign corporation whose beneficial interest in a trust terminates, are finalized as proposed by the 1992 regulations. In addition the waiver provisions contained in § 1.884–2 of the 1988 proposed regulations are finalized as amended by this Treasury decision.

Special Analyses

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

Drafting Information

The principal author of these regulations is Gwendolyn A. Stanley, Office of Associate Chief Counsel (International), within the Office of Chief Counsel, IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805.

Section 1.884–2 also issued under 26 U.S.C. 884(g).

Par. 2. Section 1.864–4 is amended as follows:

1. The third sentence in paragraph (c)(2)(i) is revised.
2. Paragraph (c)(2)(ii) is revised.
3. Paragraphs (c)(2)(iii) and (c)(2)(iv) are redesignated as (c)(2)(iv) and (c)(2)(v) respectively.
4. New paragraph (c)(2)(iii) is added.
5. Newly designated paragraph (c)(2)(v) is amended by:
a. Revising the introductory text.
b. Removing *Example (2)* through *Example (4).*
c. Redesignating ''*Example (5)*'' as ''*Example (2)*''.
d. Amending newly designated *Example (2)* by:
i. Revising the fifth and sixth sentences.
ii. Removing the date ''1968'' and adding the date ''1997'' where it appears in the second, third, and eighth sentences.
6. The last sentence of paragraph (c)(6)(i) is removed.
7. Paragraph (c)(7) is added.

The additions and revisions read as follows:

§ 1.864–4 U.S. source income effectively connected with U.S. business.

* * * * *

(c) * * *

(2) * * *

(i) * * * The asset-use test is of primary significance where, for example, interest income is derived from sources within the United States by a nonresident alien individual or foreign corporation that is engaged in the business of manufacturing or selling goods in the United States. * * *

(ii) *Cases where applicable.* Ordinarily, an asset shall be treated as used in, or held for use in, the conduct

of a trade or business in the United States if the asset is—

(*a*) Held for the principal purpose of promoting the present conduct of the trade or business in the United States; or

(*b*) Acquired and held in the ordinary course of the trade or business conducted in the United States, as, for example, in the case of an account or note receivable arising from that trade or business; or

(*c*) Otherwise held in a direct relationship to the trade or business conducted in the United States, as determined under paragraph (c)(2)(iv) of this section.

(iii) *Application of asset-use test to stock*—(*a*) *In general.* Except as provided in paragraph (c)(2)(iii)(*b*) of this section, stock of a corporation (whether domestic or foreign) shall not be treated as an asset used in, or held for use in, the conduct of a trade or business in the United States.

(*b*) *Stock held by foreign insurance companies.* [Reserved]

* * * * *

(v) *Illustration.* The application of paragraph (iv) may be illustrated by the following examples:

* * * * *

Example (2). * * * During 1997, the branch office derives from sources within the United States interest on these securities, and gains and losses resulting from the sale or exchange of such securities. Since the securities were acquired with amounts generated by the business conducted in the United States, the interest is retained in that business, and the portfolio is managed by personnel actively involved in the conduct of that business, the securities are presumed under paragraph (c)(2)(iv)(*b*) of this section to be held in a direct relationship to that business. * * *

* * * * *

(7) *Effective date.* Paragraphs (c)(2) and (c)(6)(i) of this section are effective for taxable years beginning on or after June 6, 1996.

* * * * *

Par. 3. In § 1.871–12, paragraph (d) is amended by:

1. Revising the paragraph heading and introductory text.

2. Removing *Example 1.*

3. Removing the designation *''(2)''* in *Example (2).*

The revision reads as follows:

§ 1.871–12 Determination of tax on treaty income.

* * * * *

(d) *Illustration.* The application of this section may be illustrated by the following example:

* * * * *

Par. 4. Section 1.884–0(b) is amended by revising the entries for §§ 1.884–1(d)(4), 1.884–2T(a)(5), 1.884–4(b)(1), and 1.884–4(b)(2) and adding entries for §§ 1.884–1(i)(4), 1.884–2T(a)(6), 1.884–4(e)(1) and 1.884–4(e)(2) to read as follows:

§ 1.884–0 Overview of regulation provisions for section 884.

* * * * *

(b) * * *

§ 1.884–1 Branch profits tax.

* * * * *

(d) * * *

(4) Interest in a trust or estate.

* * * * *

(i) * * *

(4) Special rule for certain U.S. assets and liabilities.

§ 1.884–2T Special Rules for termination or incorporation of a U.S. trade or business or liquidation or reorganization of a foreign corporation or its domestic subsidiary (temporary).

(a) * * *

(5) Special rule if a foreign corporation terminates an interest in a trust. [Reserved]

(6) Coordination with second-level withholding tax.

* * * * *

§ 1.884–4 Branch-level interest tax.

* * * * *

(b) * * *

(1) Definition of branch interest.

(2) [Reserved]

(3) * * *

(4) [Reserved]

* * * * *

(e) * * *

(1) General rule.

(2) Special rule.

* * * * *

Par. 5. Section 1.884–1 is amended as follows:

1. Paragraph (c)(2) is amended as follows:

a. The text of paragraph (c)(2) is redesignated as paragraph (c)(2)(i) and a paragraph heading for (c)(2)(i) is added.

b. New paragraph (c)(2)(ii) is added.

2. In paragraph (d)(2)(xi), *Example 2* through *Example 4* are redesignated *Example 3* through *Example 5*, respectively, and new *Example 2* is added.

3. Paragraph (d)(3) is revised.

4. The text of paragraph (d)(4) is added.

5. Paragraph (d)(5)(iii) is revised.

6. In Paragraph (d)(6)(iii) the reference to ''(d)(3)(iv)'' is removed and ''(d)(3)(vi)'' is added in its place.

7. Paragraph (d)(6)(v) is redesignated as paragraph (d)(6)(vi).

8. New paragraph (d)(6)(v) is added and reserved.

9. Paragraph (e)(2) is amended as follows:

a. The paragraph heading and text of paragraph (e)(2) are redesignated as paragraph (e)(2)(i).

b. In newly designated paragraph (e)(2)(i) the language ''(e)(2)'' is removed and ''(e)(2)(i)'' is added in its place.

c. A new paragraph heading for paragraph (e)(2) is added.

d. Paragraph (e)(2)(ii) is added.

10. Paragraph (e)(3)(ii) is revised.

11. Paragraph (e)(5) is amended as follows:

a. The second sentence in *Example 1* is revised.

b. In the list below, for each sentence in *Example 1* indicated in the left column, remove the language in the middle column and add the language in the right column:

Sentence	Remove	Add
First and third sentence.	1993	1997.
First sentence.	§ 1.882–5(b) .	§ 1.882–5(c).
Fourth and fifth sentence.	§ 1.882–5(b)(2).	§ 1.882–5(c)(2)
Seventh sentence.	Amount	Value.
Seventh sentence.	§ 1.882–5(b)(1).	§ 1.882–5(b)(2).

c. The second sentence in paragraph (i) of *Example 2* is revised.

d. In the list below, for each paragraph in *Example 2* indicated in the left column, remove the language in the middle column and add the language in the right column:

Paragraph	Remove	Add
(i) First sentence	1993	1997
(i) Third and fifth sentence	1994	1998
(ii) First, second, and third sentence	1995	1999
(ii) Second sentence	1994	1998
(iii) First sentence	1995	1999
(iii) Last sentence	1994	1998

12. Paragraph (i)(4) is added.

The additions and revisions read as follows:

§ 1.884–1 Branch profits tax.

* * * * *

(c) * * *

(2) * * * (i) *In general.* * * *

(ii) *Bad debt reserves.* A bank described in section 585(a)(2)(B) (without regard to the second sentence thereof) that uses the reserve method of accounting for bad debts for U.S. federal income tax purposes shall decrease the amount of loans that qualify as U.S. assets by any reserve that is permitted under section 585.

(d) * * *

(2) * * *
(xi) * * *

Example 2. U.S. real property interest connected to a U.S. business. FC is a foreign corporation that is a bank, within the meaning of section 585(a)(2)(B) (without regard to the second sentence thereof), and is engaged in the business of taking deposits and making loans through its branch in the United States. In 1996, FC makes a loan in the ordinary course of its lending business in the United States, securing the loan with a mortgage on the U.S. real property being financed by the borrower. In 1997, after the borrower has defaulted on the loan, FC takes title to the real property that secures the loan. On December 31, 1997, FC continues to hold the property, classifying it on its financial statement as *Other Real Estate Owned*. Because all income and gain from the property would be ECI to FC under the principles of section 864(c)(2), the U.S. real property constitutes a U.S. asset within the meaning of paragraph (d) of this section.

* * * * *

(3) *Interest in a partnership*—(i) *In general.* A foreign corporation that is a partner in a partnership must take into account its interest in the partnership (and not the partnership assets) in determining its U.S. assets. For purposes of determining the proportion of the partnership interest that is a U.S. asset, a foreign corporation may elect to use either the asset method described in paragraph (d)(3)(ii) of this section or the income method described in paragraph (d)(3)(iii) of this section.

(ii) *Asset method*—(A) *In general.* A partner's interest in a partnership shall be treated as a U.S. asset in the same proportion that the sum of the partner's proportionate share of the adjusted bases of all partnership assets as of the determination date, to the extent that the assets would be treated as U.S. assets if the partnership were a foreign corporation, bears to the sum of the partner's proportionate share of the adjusted bases of all partnership assets as of the determination date. Generally a partner's proportionate share of a partnership asset is the same as its proportionate share of all items of income, gain, loss, and deduction that may be generated by the asset.

(B) *Non-uniform proportionate shares.* If a partner's proportionate share of all items of income, gain, loss, and deduction that may be generated by a single asset of the partnership throughout the period that includes the taxable year of the partner is not uniform, then, for purposes of determining the partner's proportionate share of the adjusted basis of that asset, a partner must take into account the portion of the adjusted basis of the asset that reflects the partner's economic interest in that asset. A partner's economic interest in an asset of the partnership must be determined by applying the following presumptions. These presumptions may, however, be rebutted if the partner or the Internal Revenue Service shows that the presumption is inconsistent with the partner's true economic interest in the asset during the corporation's taxable year.

(*1*) If a partnership asset ordinarily generates directly identifiable income, a partner's economic interest in the asset is determined by reference to its proportionate share of income that may be generated by the asset for the partnership's taxable year ending with or within the partner's taxable year.

(*2*) If a partnership asset ordinarily generates current deductions and ordinarily generates no directly identifiable income, for example because the asset contributes equally to the generation of all the income of the partnership (such as an asset used in general and administrative functions), a partner's economic interest in the asset is determined by reference to its proportionate share of the total deductions that may be generated by the asset for the partnership's taxable year ending with or within the partner's taxable year.

(*3*) For other partnership assets not described in paragraph (d)(3)(ii)(B) (*1*) or (*2*) of this section, a partner's economic interest in the asset is determined by reference to its proportionate share of the total gain or loss to which it would be entitled if the asset were sold at a gain or loss in the partnership's taxable year ending with or within the partner's taxable year.

(C) *Partnership election under section 754.* If a partnership files an election in accordance with section 754, then for purposes of this paragraph (d)(3)(ii), the basis of partnership property shall reflect adjustments made pursuant to sections 734 (relating to distributions of property to a partner) and 743 (relating to the transfer of an interest in a partnership). However, adjustments made pursuant to section 743 may be made with respect to a transferee partner only.

(iii) *Income method.* Under the income method, a partner's interest in a partnership shall be treated as a U.S. asset in the same proportion that its distributive share of partnership ECI for the partnership's taxable year that ends with or within the partner's taxable year bears to its distributive share of all partnership income for that taxable year.

(iv) *Manner of election*—(A) *In general.* In determining the proportion of a foreign corporation's interest in a partnership that is a U.S. asset, a foreign corporation must elect one of the methods described in paragraph (d)(3) of this section on a timely filed return for the first taxable year beginning on or after the effective date of this section. An amended return does not qualify for this purpose, nor shall the provisions of § 301.9100–1 of this chapter and any guidance promulgated thereunder apply. An election shall be made by the foreign corporation calculating its U.S. assets in accordance with the method elected. An elected method must be used for a minimum period of five years before the foreign corporation may elect a different method. To change an election before the end of the requisite five-year period, a foreign corporation must obtain the consent of the Commissioner or her delegate. The Commissioner or her delegate will generally consent to a foreign corporation's request to change its election only in rare and unusual circumstances. A foreign corporation that is a partner in more than one partnership is not required to elect to use the same method for each partnership interest.

(B) *Elections with tiered partnerships.* If a foreign corporation elects to use the asset method with respect to an interest in a partnership, and that partnership is a partner in a lower-tier partnership, the foreign corporation may apply either the asset method or the income method to determine the proportion of the upper-tier partnership's interest in the lower-tier partnership that is a U.S. asset.

(v) *Failure to make proper election.* If a foreign corporation, for any reason, fails to make an election to use one of the methods required by paragraph (d)(3) of this section in a timely fashion, the district director or the Assistant Commissioner (International) may make the election on behalf of the foreign corporation and such election shall be binding as if made by that corporation.

(vi) *Special rule for determining a partner's adjusted basis in a partnership interest.* For purposes of paragraphs (d)(3) and (6) of this section, a partner's adjusted basis in a partnership interest shall be the partner's basis in such interest (determined under section 705) reduced by the partner's share of the liabilities of the partnership determined under section 752 and increased by a proportionate share of each liability of the partnership equal to the partner's proportionate share of the expense, for income tax purposes, attributable to such liability for the taxable year. A partner's adjusted basis in a partnership interest cannot be less than zero.

(vii) *E&P basis of a partnership interest.* See paragraph (d)(6)(iii) of this section for special rules governing the

calculation of a foreign corporation's E&P basis in a partnership interest.

(viii) The application of this paragraph (d)(3) is illustrated by the following examples:

Example 1. General rule—(i) *Facts.* Foreign corporation, FC, is a partner in partnership ABC, which is engaged in a trade or business within the United States. FC and ABC are both calendar year taxpayers. ABC owns and manages two office buildings located in the United States, each with an adjusted basis of $50. ABC also owns a non-U.S. asset with an adjusted basis of $100. ABC has no liabilities. Under the partnership agreement, FC has a 50 percent interest in the capital of ABC and a 50 percent interest in all items of income, gain, loss, and deduction that may be generated by the partnership's assets. FC's adjusted basis in ABC is $100. In determining the proportion of its interest in ABC that is a U.S. asset, FC elects to use the asset method described in paragraph (d)(3)(ii) of this section.

(ii) *Analysis.* FC's interest in ABC is treated as a U.S. asset in the same proportion that the sum of FC's proportionate share of the adjusted bases of all ABC's U.S. assets (50% of $100), bears to the sum of FC's proportionate share of the adjusted bases of all of ABC's assets (50% of $200). Under the asset method, the amount of FC's interest in ABC that is a U.S. asset is $50 ($100 × $50/$100).

Example 2. Special allocation of gain with respect to real property—(i) *Facts.* The facts are the same as in *Example 1,* except that under the partnership agreement, FC is allocated 20 percent of the income from the partnership property but 80 percent of the gain on disposition of the partnership property.

(ii) *Analysis.* Assuming that the buildings ordinarily generate directly identifiable income, there is a rebuttable presumption under paragraph (d)(3)(ii)(B)(*1*) of this section that FC's proportionate share of the adjusted basis of the buildings is FC's proportionate share of the income generated by the buildings (20%) rather than the total gain that it would be entitled to under the partnership agreement (80%) if the buildings were sold at a gain on the determination date. Thus, the sum of FC's proportionate share of the adjusted bases in ABC's U.S. assets (the buildings) is presumed to be $20 [(20% of $50) + (20% of $50)]. Assuming that the non-U.S. asset is not income-producing and does not generate current deductions, there is a rebuttable presumption under paragraph (d)(3)(ii)(B)(*3*) of this section that FC's proportionate share of the adjusted basis of that asset is FC's interest in the gain on the disposition of the asset (80%) rather than its proportionate share of the income that may be generated by the asset (20%). Thus, FC's proportionate share of the adjusted basis of ABC's non-U.S. asset is presumed to be $80 (80% of $100). FC's proportionate share of the adjusted bases of all of the assets of ABC is $100 ($20 + $80). The amount of FC's interest in ABC that is a U.S. asset is $20 ($100 × $20/$100).

Example 3. Tiered partnerships (asset method)—(i) *Facts.* The facts are the same as in *Example 1,* except that FC's adjusted basis in ABC is $175 and ABC also has a 50 percent interest in the capital of partnership DEF. DEF owns and operates a commercial shopping center in the United States with an adjusted basis of $200 and also owns non-U.S. assets with an adjusted basis of $100. DEF has no liabilities. ABC's adjusted basis in its interest in DEF is $150 and ABC has a 50 percent interest in all the items of income, gain, loss and deduction that may be generated by the assets of DEF.

(ii) *Analysis.* Because FC has elected to use the asset method described in paragraph (d)(3)(ii) of this section, it must determine what proportion of ABC's partnership interest in DEF is a U.S. asset. As permitted by paragraph (d)(3)(iv)(B) of this section, FC also elects to use the asset method with respect to ABC's interest in DEF. ABC's interest in DEF is treated as a U.S. asset in the same proportion that the sum of ABC's proportionate share of the adjusted bases of all DEF's U.S. assets (50% of $200), bears to the sum of ABC's proportionate share of the adjusted bases of all of DEF's assets (50% of $300). Thus, the amount of ABC's interest in DEF that is a U.S. asset is $100 ($150 x $100/$150). FC must then apply the rules of paragraph (d)(3)(ii) of this section to all the assets of ABC, including ABC's interest in DEF that is treated in part as a U.S. asset ($100) and in part as a non-U.S. asset ($50). FC's interest in ABC is treated as a U.S. asset in the same proportion that the sum of FC's proportionate share of the adjusted bases of the U.S. assets of ABC (including ABC's interest in DEF), bears to the sum of FC's proportionate share of the adjusted bases of all ABC's assets (including ABC's interest in DEF). Thus, the amount of FC's interest in ABC that is a U.S. asset is $100 (FC's adjusted basis in ABC ($175) multiplied by FC's proportionate share of the sum of the adjusted bases of ABC's U.S. assets ($100)) over FC's proportionate share of the sum of the adjusted bases of ABC's assets ($175)).

Example 4. Tiered partnerships (income method)—(i) *Facts.* The facts are the same as in *Example 3,* except that FC has elected to use the income method described in paragraph (d)(3)(iii) of this section to determine the proportion of its interest in ABC that is a U.S. asset. The two office buildings located in the United States generate $60 of income that is ECI for the taxable year. The non-U.S. asset is not-income producing. In addition ABC's distributive share of income from DEF consists of $40 of income that is ECI and $140 of income that is not ECI.

(ii) *Analysis.* Because FC has elected to use the income method it does need to determine what proportion of ABC's partnership interest in DEF is a U.S. asset. FC's interest in ABC is treated as a U.S. asset in the same proportion that its distributive share of ABC's income for the taxable year that is ECI ($50) ($30 earned directly by ABC + $20 distributive share from DEF) bears to its distributive share of all ABC's income for the taxable year ($55) ($30 earned directly by ABC + $25 distributive share from DEF). Thus, FC's interest in ABC that is a U.S. asset is $159 ($175 x $50/$55).

(4) *Interest in a trust or estate*—(i) *Estates and non-grantor trusts.* A foreign corporation that is a beneficiary of a trust or estate shall not be treated as having a U.S. asset by virtue of its interest in the trust or estate.

(ii) *Grantor trusts.* If, under sections 671 through 678, a foreign corporation is treated as owning a portion of a trust that includes all the income and gain that may be generated by a trust asset (or pro rata portion of a trust asset), the foreign corporation will be treated as owning the trust asset (or pro rata portion thereof) for purposes of determining its U.S. assets under this section.

(5) * * *

(iii) *Interbranch transactions.* A transaction of any type between separate offices or branches of the same taxpayer does not create a U.S. asset.

(6) * * *

(v) *Computation of E&P basis of financial instruments.* [Reserved]

* * * * *

(e) * * *

(2) *Additional liabilities*—(i) * * *

(ii) *Liabilities described in § 1.882–5(a)(1)(ii).* The amount of liabilities determined under this paragraph (e)(2)(ii) is the amount (as of the determination date) of liabilities described in § 1.882–5(a)(1)(ii) (relating to liabilities giving rise to interest expense that is directly allocated to income from a U.S. asset).

(3) * * *

(ii) *Limitation.* For any taxable year, a foreign corporation may elect to reduce the amount of its liabilities determined under paragraph (e)(1) of this section by an amount that does not exceed the excess, if any, of the amount of liabilities in paragraph (e)(1) of this section over the amount, as of the determination date, of U.S. booked liabilities (determined under § 1.882–5(d)(2)) and liabilities described in paragraph (e)(2) of this section.

* * * * *

(5) * * *

Example 1. * * * For purposes of computing its U.S.- connected liabilities under § 1.882–5(c), A must determine the average total value of its assets that are U.S. assets. * * *

Example 2. * * * *A has $800 of liabilities under paragraph (e)(1) of this section and $300 of liabilities properly reflected on the books of its U.S. trade or business under § 1.882–5(d)(2).* * * *

* * * * *

(i) * * *

(4) *Special rules for certain U.S. assets and liabilities.* Paragraphs (c)(2)(i) and (ii), (d)(3), (d)(4), (d)(5)(iii), (d)(6)(iii), (d)(6)(vi), (e)(2), and (e)(3)(ii),

of this section are effective for taxable years beginning on or after June 6, 1996.

Par. 6. § 1.884–2 is added to read as follows:

§ 1.884–2 Special rules for termination or incorporation of a U.S. trade or business or liquidation or reorganization of a foreign corporation or its domestic subsidiary.

(a) through (a)(2)(i) [Reserved] For further information, see § 1.884–2T(a) through (a)(2)(ii).

(a)(2)(ii) *Waiver of period of limitations.* The waiver referred to in § 1.884–2T(a)(2)(i)(D) shall be executed on Form 8848, or substitute form, and shall extend the period for assessment of the branch profits tax for the year of complete termination to a date not earlier than the close of the sixth taxable year following that taxable year. This form shall include such information as is required by the form and accompanying instructions. The waiver must be signed by the person authorized to sign the income tax returns for the foreign corporation (including an agent authorized to do so under a general or specific power of attorney). The waiver must be filed on or before the date (including extensions) prescribed for filing the foreign corporation's income tax return for the year of complete termination. With respect to a complete termination occurring in a taxable year ending prior to June 6, 1996 a foreign corporation may also satisfy the requirements of this paragraph (a)(2)(ii) by applying § 1.884–2T(a)(2)(ii) of the temporary regulations (as contained in the CFR edition revised as of April 1, 1995). A properly executed Form 8848, substitute form, or other form of waiver authorized by this paragraph (a)(2)(ii) shall be deemed to be consented to and signed by a Service Center Director or the Assistant Commissioner (International) for purposes of § 301.6501(c)–1(d) of this chapter.

(a)(3) through (a)(4) [Reserved] For further information, see § 1.884–2T(a)(3) through (a)(4).

(a)(5) *Special rule if a foreign corporation terminates an interest in a trust.* A foreign corporation whose beneficial interest in a trust terminates (by disposition or otherwise) in any taxable year shall be subject to the branch profits tax on ECEP attributable to amounts (including distributions of accumulated income or gain) treated as ECI to such beneficiary in such taxable year notwithstanding any other provision of § 1.884–2T(a).

(b) through (c)(2)(ii) [Reserved] For further information, see § 1.884–2T (b) through (c)(2)(ii).

(c)(2)(iii) *Waiver of period of limitations and transferee agreement.* In the case of a transferee that is a domestic corporation, the provisions of § 1.884–2T(c)(2)(i) shall not apply unless, as part of the section 381(a) transaction, the transferee executes a Form 2045 (Transferee Agreement) and a waiver of period of limitations as described in this paragraph (c)(2)(iii), and files both documents with its timely filed (including extensions) income tax return for the taxable year in which the section 381(a) transaction occurs. The waiver shall be executed on Form 8848, or substitute form, and shall extend the period for assessment of any additional branch profits tax for the taxable year in which the section 381(a) transaction occurs to a date not earlier than the close of the sixth taxable year following the taxable year in which such transaction occurs. This form shall include such information as is required by the form and accompanying instructions. The waiver must be signed by the person authorized to sign Form 2045. With respect to a complete termination occurring in a taxable year ending prior to June 6, 1996 a foreign corporation may also satisfy the requirements of this paragraph (c)(2)(iii) by applying § 1.884–2T(c)(2)(iii) of the temporary regulations (as contained in the CFR edition revised as of April 1, 1995). A properly executed Form 8848, substitute form, or other form of waiver authorized by this paragraph (c)(2)(iii) shall be deemed to be consented to and signed by a Service Center Director or the Assistant Commissioner (International) for purposes of § 301.6501(c)–1(d) of this chapter.

(c)(3) through (f) [Reserved] For further information, see § 1.884–2T (c)(3) through (f).

(g) *Effective dates.* Paragraphs (a)(2)(ii) and (c)(2)(iii) of this section are effective for taxable years beginning after December 31, 1986. Paragraph (a)(5) of this section is effective for taxable years beginning on or after June 6, 1996.

Par. 7. Section 1.884–2T is amended as follows:

1. Paragraph (a)(2)(ii) is revised.

2. Paragraph (a)(5) is redesignated as (a)(6).

3. New paragraph (a)(5) is added.

4. Paragraph (c)(2)(iii) is revised.

The additions and revisions read as follows:

§ 1.884–2T Special rules for termination or incorporation of a U.S. trade or business or liquidation or reorganization of a foreign corporation or its domestic subsidiary (Temporary).

(a) * * *

(2) * * *

(ii) *Waiver of period of limitations.* [Reserved] See § 1.884–2(a)(2)(ii) for rules relating to this paragraph.

* * * * *

(5) *Special rule if a foreign corporation terminates an interest in a trust.* [Reserved] See § 1.884–2(a)(5) for rules relating to this paragraph.

* * * * *

(c) * * *

(2) * * *

(iii) *Waiver of period of limitations and transferee agreement.* [Reserved] See § 1.884–2(c)(2)(iii) for rules relating to this paragraph.

Par. 8. Section 1.884–4 is amended as follows:

1. In paragraph (a)(1), the fifth sentence is revised.

2. Paragraph (a)(2)(iii) is revised.

3. Paragraph (b)(1) is removed and paragraph (b)(2) is revised and reserved.

4. Paragraph (b)(3) is amended by:

a. Removing the reference ''(b)(1)(v)'' and adding the language ''(b)(1)(ii)'' in the following:

i. Paragraph (b)(3)(i), first sentence.

ii. Paragraph (b)(3)(ii), introductory text.

iii. Paragraph (b)(3)(iii), heading and introductory text.

b. Adding a sentence at the end of paragraph (b)(3)(i).

5. Paragraph (b)(4) is removed and reserved.

6. In the list below, for each paragraph indicated in the left column, remove the language in the middle column and add the language in the right column:

Paragraph	Remove	Add
(a)(2)(i)(A)	Apportioned	Allocated or apportioned.
(a)(4) *Example 1* first sentence	(b)(2)	(a)(2)(iii).
(a)(4) *Example 1* first and seventh sentence	Apportioned	Allocated or apportioned.
(a)(4) *Example 1* first, second, and eighth sentence	1993	1997.
(a)(4) *Example 2* first sentence	(b)(2)	(a)(2)(iii).

Paragraph	Remove	Add
(a)(4) Example 2 second and third sentence	1993	1997.
(b)(5)(i) last sentence	Apportioned	Allocated or apportioned.
(b)(5)(ii) *Example* first, fifth, and last sentence	Apportioned	Allocated or apportioned.
(b)(6) paragraph heading	Apportioned	Allocated or apportioned.
(b)(6)(i) first and last sentence	Apportioned	Allocated or apportioned.
(b)(6)(i) second sentence	(b)(1)(v)	(b)(1)(ii).
(b)(6)(ii) first and second sentence	(b)(1)(v)	(b)(1)(ii).
(b)(6)(ii) first and second sentence	Paragraphs (b)(1)(i) through (b)(i)(iv).	Paragraph (b)(1)(i).
(b)(6)(iv) *Example 1* introductory text, paragraphs (i), (iii), and (iv), flush language first, fourth, and seventh sentence.	1993	1997.
(b)(6)(iv) *Example 1* paragraph (ii)	1992	1996.
(b)(6)(iv) *Example 1* flush language second, and sixth sentence	(b)(1)(v)	(b)(1)(ii).
(c)(1)(iv) *Example 1* first sentence	Apportioned	Allocated or apportioned.
(c)(1)(iv) *Example 1* first, second, third, fifth, sixth, and seventh sentence	1993	1997.
(c)(1)(iv) *Example 1* third, fourth, and seventh sentence	1994	1998.
(c)(1)(iv) *Example 2* second sentence	Apportioned	Allocated or apportioned.
(c)(1)(iv) *Example 2* first, second, third, and last sentence	1993	1997.
(c)(1)(iv) *Example 2* second and last sentence	1994	1998.
(c)(2)(i) first sentence	Apportioned	Allocated or apportioned.
(c)(4) *Example* third, fourth, fifth, sixth, and eighth sentence	1993	1997.
(c)(4) *Example* fifth sentence	Allocated	Allocated or apportioned.

7. Paragraph (e) is amended as follows:

a. The text of paragraph (e) is redesignated as paragraph (e)(1) and a paragraph heading for (e)(1) is added.

b. The first sentence of newly designated paragraph (e)(1) is revised.

8. Paragraph (e)(2) is added.

The revisions and additions read as follows:

§ 1.884–4 Branch-level interest tax.

(a) * * * (1) * * * For purposes of this section, a foreign corporation also shall be treated as engaged in trade or business in the United States if, at any time during the taxable year, it owns an asset taken into account under § 1.882–5(a)(1)(ii) or (b)(1) for purposes of determining the amount of the foreign corporation's interest expense allocated or apportioned to ECI. * * *

(2) * * *

(iii) *Treatment of a portion of the excess interest of banks as interest on deposits.* A portion of the excess interest of a foreign corporation that is a bank (as defined in section 585(a)(2)(B) without regard to the second sentence thereof) provided that a substantial part of its business in the United States, as well as all other countries in which it operates, consists of receiving deposits and making loans and discounts, shall be treated as interest on deposits (as described in section 871(i)(3)), and shall be exempt from the tax imposed by section 881(a) as provided in such section. The portion of the excess interest of the foreign corporation that is treated as interest on deposits shall equal the product of the foreign corporation's excess interest and the greater of—

(A) The ratio of the amount of interest bearing deposits, within the meaning of section 871(i)(3)(A), of the foreign corporation as of the close of the taxable year to the amount of all interest bearing liabilities of the foreign corporation on such date; or

(B) 85 percent.

* * * * *

(b) *Branch interest*—(1) *Definition of branch interest.* For purposes of this section, the term ''branch interest'' means interest that is—

(i) Paid by a foreign corporation with respect to a liability that is—

(A) A U.S. booked liability within the meaning of § 1.882–5(d)(2) (other than a U.S. booked liability of a partner within the meaning of § 1.882–5(d)(2)(vii)); or

(B) Described in § 1.884–1(e)(2) (relating to insurance liabilities on U.S. business and liabilities giving rise to interest expense that is directly allocated to income from a U.S. asset); or

(ii) In the case of a foreign corporation other than a corporation described in paragraph (a)(2)(iii) of this section, a liability specifically identified (as provided in paragraph (b)(3)(i) of this section) as a liability of a U.S. trade or business of the foreign corporation on or before the earlier of the date on which the first payment of interest is made with respect to the liability or the due date (including extensions) of the foreign corporation's income tax return for the taxable year, provided that—

(A) The amount of such interest does not exceed 85 percent of the amount of interest of the foreign corporation that would be excess interest before taking into account interest treated as branch interest by reason of this paragraph (b)(1)(ii);

(B) The requirements of paragraph (b)(3)(ii) of this section (relating to notification of recipient of interest) are satisfied; and

(C) The liability is not described in paragraph (b)(3)(iii) of this section (relating to liabilities incurred in the ordinary course of a foreign business or secured by foreign assets) or paragraph (b)(1)(i) of this section.

(2) [Reserved]

(3)(i) * * * A foreign corporation that is subject to this section may identify a liability under paragraph (b)(1)(ii) of this section whether or not it is actually

engaged in the conduct of a trade or business in the United States. * * *

* * * * *

(4) [Reserved]

* * * * *

(e) *Effective dates*—(1) *General rule.* Except as provided in paragraph (e)(2) of this section, this section is effective for taxable years beginning October 13, 1992, and for payments of interest described in section 884(f)(1)(A) made (or treated as made under paragraph (b)(7) of this section) during taxable years of the payor beginning after such date. * * *

(2) *Special rule.* Paragraphs (a)(1), (a)(2)(i)(A), (a)(2)(iii), (b)(1), (b)(3), (b)(5)(i), (b)(6)(i), (b)(6)(ii), and (c)(2)(i) of this section are effective for taxable years beginning on or after June 6, 1996.

Par. 9. In § 1.884–5, paragraphs (e)(4)(ii) and (g) are revised to read as follows:

§ 1.884–5 Qualified resident.

* * * * *

(e) * * *

(4) * * *

(ii) *Presumption for banks.* A U.S. trade or business of a foreign corporation that is described in § 1.884–4(a)(2)(iii) shall be presumed to be an integral part of an active banking business conducted by the foreign country in its country of residence provided that a substantial part of the business of the foreign corporation in both its country of residence and the United States consists of receiving deposits and making loans and discounts. This paragraph shall be effective for taxable years beginning on or after June 6, 1996.

* * * * *

(g) * * * Except as provided in paragraph (e)(4)(ii) of this section, this section is effective for taxable years beginning on or after October 13, 1992. * * *

* * * * *

Par. 10. Section 1.897–1 is amended as follows:

1. In paragraph (f)(1)(iii) the language ''stock,'' is removed.

2. Paragraph (f)(2)(i) is revised to read as follows:

§ 1.897–1 Taxation of foreign investments in United States real property interests, definition of terms.

* * * * *

(f) * * *

(2) * * *

(i) Held for the principal purpose of promoting the present conduct of the trade or business,

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 11. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 12. In § 602.101, the table in paragraph (c) is amended by adding in numerical order ''§ 1.884–2 * * * 1545–1070''.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: February 28, 1996.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 96–5261 Filed 3–5–96; 8:45 am]

BILLING CODE 4830–01–U

Office of Foreign Assets Control

31 CFR Part 500

Foreign Assets Control Regulations; Humanitarian Donations to North Korea

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule; amendments.

SUMMARY: This rule amends the Foreign Assets Control Regulations to authorize by general license all transactions with respect to the donation of funds to the United Nations and the American and International Red Cross for humanitarian assistance in the Democratic People's Republic of Korea, as well as all transactions incident to the donation of goods to meet basic human needs to the Democratic People's Republic of Korea from third countries by persons subject to U.S. jurisdiction.

EFFECTIVE DATE: March 5, 1996.

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

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document is available as an electronic file on *The Federal Bulletin Board* the day of publication in the Federal Register. By modem, dial 202/512–1387 and type ''/GO FAC,'' or call 202/512–1530 for disks or paper copies. This file is available for downloading without charge in WordPerfect, ASCII, and Adobe Acrobat™ readable (*.PDF) formats. The document is also accessible for downloading without charge in ASCII format from Treasury's Electronic Library (''TEL'') in the ''Business, Trade and Labor Mall'' of the FedWorld bulletin board. By modem dial 703/321–3339, and select the appropriate self–expanding file in TEL. For Internet access, use one of the following protocols: Telnet = fedworld.gov (192.239.93.3); World Wide Web (Home Page) = http://www.fedworld.gov; FTP = ftp.fedworld.gov (192.239.92.205).

Background

As part of the October 21, 1994 United States–Democratic People's Republic of Korea (''DPRK'') Agreed Framework, the United States undertook to ease economic sanctions against the DPRK. Since that time, the DPRK has experienced severe flooding and is in need of emergency disaster assistance. As a separate measure, to facilitate the provision of humanitarian aid to the DPRK by private and nongovernmental persons, the Treasury Department is amending the Foreign Assets Control Regulations, 31 CFR part 500 (the ''Regulations''), by amending § 500.573 to authorize, by general license, the donation of funds for humanitarian assistance to the United Nations, related UN programs and specialized agencies, the American Red Cross and the International Committee of the Red Cross. Amended § 500.573 also authorizes by general license transactions incident to the donation to the DPRK from third countries of goods to meet basic human needs by persons subject to U.S. jurisdiction. Goods meeting basic human needs are defined by reference to § 773.5 and supplement no. 7 to part 773 of the Commerce Department's Export Administration Regulations, 15 CFR parts 768–799.

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

List of Subjects in 31 CFR Part 500

Administrative practice and procedure, Banks, banking, Cambodia, Exports, Fines and penalties, Finance, Foreign investment in the United States, Foreign trade, Imports, Information and informational materials, International organizations, North Korea, Reporting and recordkeeping requirements,

Securities, Services, Travel restrictions, Trusts and estates, Vietnam.

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

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

T4Authority: 50 U.S.C. App. 1–44; E.O. 9193, 7 FR 5205, 3 CFR, 1938–1943 Comp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748.

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

2. Section 500.573 is revised to read as follows:

§ 500.573 Certain donations of funds and goods to meet basic human needs authorized.

(a) The donation of funds for the purpose of contributing to the provision of humanitarian assistance to victims of natural disasters in North Korea is authorized, provided that such donations may only be made through the United Nations, related UN programs and specialized agencies, the American Red Cross and the International Committee of the Red Cross.

(b) With respect to transactions not within the scope of the general license contained in § 500.533 of this part, all transactions incident to the donation to North Korea of goods to meet basic human needs are authorized. For purposes of this section, *goods to meet basic human needs* shall be defined by reference to the Humanitarian License Procedure set forth in 15 CFR 773.5 (c) and (d) and supplement no. 7 to part 773 of the Export Administration Regulations.

(c) Note: Exports from the United States to North Korea or reexports to North Korea of U.S.–origin goods, or foreign goods containing U.S.–origin content or produced from U.S.–origin technical data, to meet basic human needs in North Korea may require authorization from the U.S. Department of Commerce.

Dated: February 28, 1996.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: February 29, 1996.

Dennis M. O'Connell

Acting Deputy Assistant Secretary (Regulatory, Tariff & Law Enforcement).

[FR Doc. 96–5487 Filed 3–5–96; 9:32 am]

BILLING CODE 4810–25–F

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 23

RIN 0790–AF87

Grants and Agreements—Military Recruiting on Campus

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: The Department of Defense (DoD) adopts this final rule to implement Section 558 of the National Defense Authorization Act for Fiscal Year 1995, as it applies to grants. Section 558 states that funds available to the Department of Defense may not be provided by grant or contract to any institution of higher education that has a policy of denying, or which effectively prevents, the Secretary of Defense from obtaining for military recruiting purposes: entry to campuses; access to students on campuses; or access to directory information pertaining to students. The rule implements the law, as it applies to grants, by requiring inclusion of a clause in DoD grants with institutions of higher education. It also extends the requirement, as a matter of policy, to DoD cooperative agreements, because they are very similar to grants.

DATES: This final rule is effective on April 8, 1996.

FOR FURTHER INFORMATION CONTACT: Mark Herbst, ODDR&E(R), 3080 Defense Pentagon, Washington, DC 20301–3080. Telephone (703) 614–0205.

SUPPLEMENTARY INFORMATION:

Responses to Comments

This final rule revises 32 CFR part 23, which was adopted as an interim-final rule on January 24, 1995 (at 60 FR 4544). In response to the publication of the interim-final rule, DoD received written comments from two associations and some telephonic comments. The responses to the comments are:

Comment 1: The clause is in the interim-final rule referred to ''procedures established by the Secretary of Defense to implement section 558 of Public Law 103–337.'' It should refer to DoD's implementation of section 558, at 32 CFR part 216..

Response 1: Agree. At the time the interim-rule on grants and cooperative agreements was published 32 CFR part 216 had not been updated to implement section 558. Now that it has been updated (published elsewhere in the issue of the Federal Register), the clause in the final 32 CFR part 23 refers to it. The final rule also includes more background and policy discussion, and more coverage on the grants officer's responsibilities, than did the interim-final rule—most of that discussion and coverage is based on 32 CFR part 216.

Comment 2: In implementing an earlier law that is similar to section 558, DoD recognized that it might, in some cases, find a subordinate element of an institution of higher education to be restricting military recruiters' access, but not the institution as a whole. In those cases, DoD established a policy (in 32 CFR part 216, before its recent update) that the subordinate element, but not the parent institution, would be denied DoD funds. If that policy is continued in 32 CFR part 216 when it is updated to implement section 558, the grants and cooperative agreements clause should be amended by adding:

(1) The following sentence after the first sentence of the clause: ''A recipient will not be deemed to be such an institution if a subordinate element of the institution, but not the institution as a whole, has a policy of preventing or effectively prevents military recruiting of students;'' and

(2) At the end of the clause the following two sentences: ''If the Secretary determines that a subordinate element of an institution, but not the institution as a whole, has a policy of preventing or effectively prevents military recruiting of students, DoD may cease payment under, suspend, or terminate grants and agreements that relate solely to the relevant subordinate element, but may not take such action with respect to grant and agreements involving other elements of the institution or the institution as a whole.''

Response 2: Adding the commenter's proposed sentences to the clause isn't necessary, for two reasons:

- The clause in the final rule has been amended to refer to ''institution of higher education (as defined in 32 CFR part 216).'' The definition in 32 CFR part 216 (which also appears in the final rule] incorporates the concept of the subordinate element of an institution of higher education that the comment sought to incorporate; and
- The final rule includes an expanded policy section that refers to the policy in 32 CFR part 216 concerning subordinate elements of institutions of higher education.

Comment 3: Under the interim-final rule, DoD will cease payments under existing grants and agreements, if a recipient is determined to have a policy of restricting military recruiters' access. This is unreasonable, since the institution already will have committed funds for personnel and other project

expenses. DoD instead should cease payments beginning with the next year.

Response 3: The restriction on providing by grant any funds available to DoD is a statutory requirement, and not a matter within DoD's regulatory discretion. To comply, payments on existing awards must cease promptly, once an institution is identified pursuant to 32 CFR part 216.

Comment 4: The interim-final rule's requirement for grants officers to include language in program solicitations seems an unnecessary, added burden.

Response 4: Agree. The requirement has been deleted from the final rule.

Comment 5: The interim-final rule doesn't state whether recipient of grants and cooperative agreements must include the clause in their subawards to institutions of higher education.

Response 5: Agree. That's clarified in the final rule.

Executive Order 12866

This rule is not a ''significant regulatory action,'' as defined by Executive Order 12866. The Department of Defense believes that it will not: (1) 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; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Regulatory Flexibility Act of 1980 [5 U.S.C. 605(b)]

This regulatory action will not have a significant adverse impact on a substantial number of small entities.

Paperwork Reduction Act of 1995 (44 U.S.C., Chapter 35)

This regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects in 32 CFR Part 23

Grants programs.

Accordingly, Title 32 of the Code of Federal Regulations, part 23 is revised to read as follows.

PART 23—GRANTS AND AGREEMENTS—MILITARY RECRUITING ON CAMPUS

Sec.
23.1 Military recruiting on campus.

Authority: 5 U.S.C. 301.

§ 23.1 Military recruiting on campus.

(a) *Purpose.* The purpose of this section is to implement section 558 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337), as it specifically affects grants and cooperative agreements (note that section 558 appears as a note to 10 U.S.C. 503). This section thereby supplements DoD's primary implementation of section 558, in 32 part 216, ''Military Recruiting at Institutions of Higher Education.''

(b) *Definitions specific to this section.* In this section:

(1) *Directory information* has the following meaning, given in section 558(c) of Public Law 103–337. It means, with respect to a student, the student's name, address, telephone listing, date and place of birth, level of education, degrees received, and the most recent previous educational institution enrolled in by the student.

(2) *Institution of higher education* has the following meaning, given at 32 CFR 216.3(b). The term:

(i) Means a domestic college, university, or subelement of a university providing postsecondary school courses of study, including foreign campuses of such institutions. A subelement of a university is a discrete (although not necessarily autonomous) organizational entity that establishes policy or practices affecting military recruiting and related actions covered by 32 CFR part 216. For example, a subelement may be an undergraduate school, a law school, medical school, or graduate school of arts and sciences.

(ii) Includes junior colleges, community colleges, and institutions providing courses leading to undergraduate and post-graduate degrees.

(iii) Does not include entities that operate exclusively outside the United States, its territories, and possessions.

(c) *Statutory requirement.* No funds available to the Department of Defense may be provided by grant to any institution of higher education that either has a policy of denying or that effectively prevents the Secretary of Defense from obtaining, for military recruiting purposes, entry to campuses or access to students on campuses or access to directory information pertaining to students.

(d) *Policy.*—(1) *Applicability to subordinate elements of institutions of higher education.* 32 CFR part 216, DoD's primary implementation of section 558, establishes procedures by which the Department of Defense identifies institutions of higher education that have a policy or practice described in paragraph (c) of this section. In cases where those procedures lead to a determination that specific subordinate elements of an institution of higher education have such a policy or practice, rather than the institution as a whole, 32 CFR part 216 provides that the prohibition on use of DoD funds applies only to those subordinate elements.

(2) *Applicability to cooperative agreements.* As a matter of DoD policy, the restriction of section 558, as implemented by 32 CFR part 216, apply to cooperative agreements, as well as grants.

(3) *Deviations.* Grants officers may not deviate from any provision of this section without obtaining the prior approval of the Director of Defense Research and Engineering. Requests for deviations shall be submitted, through appropriate channels, to: Director for Research, ODDR&E(R), 3080 Defense Pentagon, Washington, D.C. 20301–3080.

(e) *Grants officers' responsibilities.* A grants officer shall:

(1) Not award any grant or cooperative agreement to an institution of higher education that has been identified pursuant to the procedures of 32 CFR part 216. Such institutions are identified on the Governmentwide ''List of Parties Excluded from Federal Procurement and Nonprocurement Programs,'' as being ineligible to receive awards of DoD funds [note that 32 CFR 25.505(d) requires the grants officer to check the list prior to determining that a recipient is qualified to receive an award].

(2) Not consent to any subaward of DoD funds to such an organization, under a grant or cooperative agreement to any recipient, if such subaward requires the grants officer's consent.

(3) Include the clause in paragraph (f) of this section in each grant or cooperative agreement with an institution of higher education. Note that this requirement does not flow down (i.e., recipients are not required to include the clause in subawards).

(4) If an institution of higher education refuses to accept the clause in paragraph (f):

(i) Determine that the institution is not qualified with respect to the award. The grants officer may award to an alternative recipient.

(ii) Transmit the name of the institution, through appropriate channels, to the Director for Accession

Policy, Office of the Assistant Secretary of Defense for Force Management Policy, OASD (FMP), 4000 Defense Pentagon, Washington, D.C. 20301–4000. This will allow OASD (FMP) to decide whether to initiate an evaluation of the institution under 32 CFR part 216, to determine whether it is an institution that has a policy or practice described in paragraph (c) of this section.

(f) *Clause for award documents.* The following clause is to be included in grants and cooperative agreements with institutions of higher education:

As a condition for receipt of funds available to the Department of Defense (DoD) under this award, the recipient agrees that it is not an institution of higher education (as defined in 32 CFR part 216) that has a policy of denying, and that it is not an institution of higher education that effectively prevents, the Secretary of Defense from obtaining for military recruiting purposes: (A) entry to campuses or access to students on campuses; or (B) access to directory information pertaining to students. If the recipient is determined, using the procedures in 32 CFR part 216, to be such an institution of higher education during the period of performance of this agreement, and therefore to be in breach of this clause, the Government will cease all payments of DoD funds under this agreement and all other DoD grants and cooperative agreements to the recipient, and it may suspend or terminate such grants and agreements unilaterally for material failure to comply with the terms and conditions of award.

Dated: March 4, 1996.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–5556 Filed 3–7–96; 8:45 am]

BILLING CODE 5000–04–M

32 CFR Part 216

[DoD Directive 1322.13]

RIN 0790–AG13

Military Recruiting at Institutions of Higher Education

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: The Department of Defense adopts this final rule to implement the National Defense Authorization Act for Fiscal Year 1995. It updates policy, procedures, and responsibilities for identifying and taking action against any institution of higher education that has a policy of denying, or that effectively prevents, the Secretary of Defense from obtaining for military recruiting purposes entry to campuses, access to students on campuses, or access to student directory information. No funds available to the Department of Defense (DoD) may be provided by grant or contract to any such institution. The new law allows no basis for waivers.

EFFECTIVE DATE: January 26, 1996.

FOR FURTHER INFORMATION CONTACT: Ronald G. Liveris, Accession Policy, Room 2B271, Office of the Assistant Secretary of Defense for Force Management Policy, 4000 Defense Pentagon, Washington, DC 20301–4000. Telephone: (703) 697–9268.

SUPPLEMENTARY INFORMATION:

Responses to Comments

This final rule revises the interim-final rule adopted by DoD on May 30, 1995 (60 FR 28050). The Department of Defense received four comments on the interim-final rule. Each comment was reviewed and given careful consideration.

Two commenters favored the interim-rule. One of these commenters asked whether the interm-rule prohibits DoD contract and grant awards at institutions of higher education that have a policy against Reserve Officer Training Corps (ROTC) programs. 10 U.S.C. 503 note does not address policy and practices affecting ROTC programs. The final rule only applies to institutions that have a policy of denying, or that effectively prevent, entry to campuses, access to students on campuses, or access to student directory information for military recruiting purposes.

The other commenter in favor of the interim-rule specifically supported the provision that restricts the prohibition on the use of DoD funds to subelements of an institution of higher education that have a policy of denying, or that effectively prevent military recruiters access to campuses, access to students, or access to student directory information. A third commenter took the opposite view, arguing that the prohibition on the use of DoD funds should apply to an entire institution when the institution or any of its subelements are determined to have such a policy or practice. The final rule retains the provision that restricts the prohibition on DoD funds to subelements that deny access. Subordinate elements of an institution of higher education that administer their own placement policies to permit recruiting will not be subject to a prohibition on receiving DoD funds. This reflects DoD's interpretation of the law and its legislative history and DoD's intent to avoid entanglement with the internal decisionmaking processes of institutions of higher education.

The fourth commenter stated that to protect individual privacy and ''since the Department of Defense discriminates against gays in the military,'' that the Department should not have any access to students on campus or to student directory information. DoD policies concerning gays in the military are the result of implementing 10 U.S.C. chapter 37, section 654 concerning homosexual conduct in the Armed Forces.

This final rule implements 10 U.S.C. 503 note, as added by section 558 of the National Defense Authorization Act for Fiscal Year 1995 (Pub. L. 103–337).

Executive Order 12866

This final rule is not a ''significant regulatory action,'' as defined by Executive Order 12866. The Department of Defense believes that it will not: (1) 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; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Regulatory Flexibility Act

This regulatory action will not have a significant adverse impact on a substantial number of small entities.

Paperwork Reduction Act

This regulatory action will not impose any additional reporting or record keeping requirements under the Paperwork Reduction Act.

List of Subjects in 32 CFR Part 216

Armed Forces, Colleges and universities, Recruiting personnel.

Accordingly, 32 CFR Part 216 is revised to read as follows:

PART 216—MILITARY RECRUITING AT INSTITUTIONS OF HIGHER EDUCATION

Sec.

Authority: 10 U.S.C. 503 note.

§ 216.1 Purpose.

This part:

(a) Implements 10 U.S.C. 503 note.

(b) Updates policy and responsibilities for identifying and taking action on institutions of higher education that either have a policy of denying, or that effectively prevents military recruiting personnel from entry to their campuses, from access to their students, or from access to student directory information.

§ 216.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Unified Combatant Commands, the Uniformed Services University of Health Sciences, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as ''the DoD Components''). The term ''Military Services,'' as used herein, refers to the Army, the Navy, the Air Force, and the Marine Corps.

§ 216.3 Definitions.

(a) *Directory information.* Referring to a student means the student's name, address, telephone listing, date and place of birth, level of education, degrees received, and the most recent previous educational institution enrolled in by the student.

(b) *Institution of higher education.* A domestic college, university, or subelement of a university providing post-secondary school courses of study, including foreign campuses of such domestic institutions. That includes junior colleges, community colleges, and institutions providing courses leading to undergraduate and post-graduate degrees. That term does not include entities that operate exclusively outside the United States, its territories, and possessions. A subelement of a university is a discrete (although not necessarily autonomous) organizational entity that establishes policy or practices affecting military recruiting and related actions covered by 10 U.S.C. 503 note and this part. For example, a subelement may be an undergraduate school, a law school, medical school, or graduate school of arts and sciences.

(c) *Student.* An individual who is 17 years of age or older and enrolled in an institution of higher education.

§ 216.4 Policy.

It is DoD policy that:

(a) Under 10 U.S.C. 503 note, no funds available to the Department of Defense may be provided by grant or contract to any institution of higher education that either has a policy of denying, or that effectively prevents, the Secretary of Defense from obtaining, for military recruiting purposes, entry to campuses, access to students on campuses, or access to directory information on students. That prohibition on use of DoD funds applies only to subelements of an institution of higher education that are determined to have such a policy or practice.

(b) An evaluation to determine whether an institution of higher education has a policy of denying, or is effectively preventing, the Secretary of Defense from obtaining entry to campuses, access to students on campuses, or access to student directory information shall be undertaken when:

(1) Military recruiting personnel cannot obtain permission to recruit on the premises of the institution or when they are refused directory information. Military recruiting personnel shall accommodate an institution's reasonable preferences as to times and places for scheduling on-campus recruiting, if any such restrictions are not based on the policies or practices of the Department of Defense and that the Military Services are provided entry to the campus and access to students on campus and to directory information; or,

(2) The institution is unwilling to declare in writing as a prerequisite to an education and training award that the institution does not have a policy of denying, and that it does not effectively prevent, the Secretary of Defense from obtaining for military recruiting purposes entry to campuses, access to students on campuses, or access to student directory information.

(3) The institution does not accept terms or conditions of a DoD contract or grant specified under § 216.5(b)(2).

(c) A determination that military recruiting personnel are denied access shall not be made when the institution does the following:

(1) Excludes all employers from recruiting on the premises of the institution.

(2) Permits employers to recruit on the premises of the institution only in response to an expression of student interest, and the institution:

(i) Provides the Military Services with the same opportunities to inform the students of military recruiting activities as are available to other employers.

(ii) Certifies that too few students have expressed an interest to warrant accommodating military recruiters, applying the same criteria that are applicable to other employers.

(3) When not providing any directory information, certifies that such information is not collected by the institution.

(4) When not providing directory information for specific students, certifies that each student concerned (or his or her parent, if a 17-year-old) has formally requested the institution to withhold providing this information from military recruiting personnel for military recruiting purposes.

§ 216.5 Responsibilities.

(a) The Assistant Secretary of Defense for Force Management Policy, under the Under Secretary of Defense for Personnel and Readiness, shall:

(1) Not later than 30 days after receipt of the name(s) of institutions of higher education under paragraphs (d)(2) and (e)(1) of this section:

(i) Make a final determination about the eligibility of each such institution to receive funds available to the Department of Defense by grant or contract under 10 U.S.C. 503 note, and this part.

(ii) Notify each institution determined under paragraph (a)(1)(i) of this section, that it is ineligible to receive DoD funds under 10 U.S.C. 503 note, and this part. Such notification shall reflect the basis of that determination.

(iii) Disseminate the names of institutions of higher education identified under paragraph (a)(1)(i) of this section to all the DoD Components and to the General Services Administration (GSA) for inclusion in the Federal list of parties excluded from Federal procurement or nonprocurement programs.

(iv) Inform each applicable institution identified under paragraph (d)(2) or (e)(1) of this section, that its eligibility to receive DoD funds may be restored upon the institution providing sufficient new information to enable the Assistant Secretary of Defense for Force Management Policy (ASD(FMP)) to determine that the institution provides entry to its campus(es), access to students on the campus(es), and access to directory information on students.

(2) Not later than 45 days after receipt of an institution's request to restore its eligibility:

(i) Determine whether the institution is qualified to receive DoD funds under 10 U.S.C. 503 note, and this part.

(ii) Inform the institution of that determination.

(iii) Provide the DoD Components and GSA with the name of that institution if its eligibility has been restored.

(3) Provide policy and procedures to:

(i) Cease education and training awards of DoD funds (other than those made by procurement grant or contract under paragraph (b)(1) of this section) to institutions identified as ineligible under paragraph (a)(1)(i) of this section.

(ii) Identify institutions unwilling to declare in writing, as a prerequisite to such an award of DoD funds for education and training, that the institution does not have a policy of denying, and that it does not effectively prevent, the Secretary of Defense from obtaining for military recruiting purposes entry to campuses, access to students on campuses, or access to student directory information.

(4) Notify the Defense Finance and Accounting Service of institutions, under paragraph (a)(1)(i) of this section, that either lose or regain eligibility to receive DoD funds under 10 U.S.C. 503 note and this part.

(b) The Under Secretary of Defense for Acquisition and Technology shall establish policy and procedures to:

(1) Deny DoD grant and contract awards to all institutions identified as ineligible under paragraph (a)(1)(i) of this section.

(2) Include terms or conditions in DoD grants and contracts awarded to institutions of higher education to make payments of DoD funds under such awards contingent on the institution's not being one so identified.

(c) The Under Secretary of Defense (Comptroller)/Chief Financial Officer shall establish and promulgate financial management policies and procedures to stop or reactivate payment of DoD funds through contracts, grants, and other agreements made by the Department of Defense or other Federal Agencies to institutions identified as ineligible under paragraph (a)(1)(i) of this section.

(d) The Secretaries of the Military Departments shall:

(1) Identify institutions that, by policy or practice, deny military recruiting personnel entry to the campus(es) of those institutions, access to students, or access to student directory information. When repeated requests to schedule recruiting visits or to obtain directory information are unsuccessful, the Military Service concerned shall seek written confirmation of the institution's present policy from the head of the institution through a letter of inquiry. The sample letter in Appendix A to the part shall be followed as closely as possible. If written confirmation cannot be obtained, oral policy statements or attempts to obtain such statements from an appropriate official of the institution shall be documented.

(2) Evaluate the responses to the letter of inquiry and of such other evidence obtained in accordance with this part and submit to the ASD(FMP) the names and addresses of institutions of higher education that are recommended to be declared ineligible to receive funds available to the Department of Defense under 10 U.S.C. 503 note and this part. Full documentation shall be furnished to the ASD(FMP) for each such institution, including the institution's formal response to the letter of inquiry, or oral response or evidence showing attempts to obtain written confirmation or an oral statement of the institution's policies.

(e) The Heads of the DoD Components shall:

(1) Provide the ASD(FMP) with the names and addresses of institutions:

(i) Identified as ineligible as a result of implementing policies and procedures promulgated under paragraph (a)(3)(ii) of this section.

(ii) That do not accept terms or conditions of a DoD grant or contract specified under paragraph (b)(2) of this section.

(2) Take immediate action to deny DoD funds to institutions identified as ineligible under paragraph (a)(1)(i) of this section and to restore eligibility of institutions identified under paragraph (a)(2)(i) of this section.

Appendix A to Part 216—Sample Letter of Inquiry

Dr. John Doe
President
XYZ College
Anywhere, USA 12345–0123

Dear Dr. Doe: I understand that military recruiting personnel are unable to recruit on the campus of XYZ College and have been refused directory information on XYZ College students for military recruiting by official policy of the college. Title 10 U.S.C. 503 note, prohibits grant and contract awards of DoD funds to any institution of higher education that has a policy of denying, or that effectively prevents, military recruiting personnel entry to campuses, access to students on campuses, or access to directory information on students. DoD Directive 1322.13, ''Military Recruiting at Institutions of Higher Education,'' (January 26, 1996) codified at 32 CFR part 216, implements 10 U.S.C. 503 note. A copy of 10 U.S.C. 503 note, and of DoD Directive 1322.13 are enclosed.

Under DoD Directive 1322.13, this letter provides you an opportunity to clarify your institution's policy on military recruiting on the campus of XYZ College. In that regard, I request the official written policy of the institution regarding visits of civilian employers (public or private) and military recruiting personnel to the campus for recruiting college students, and access to directory information on students.

Based on this information, a determination shall be made by the Assistant Secretary of Defense for Force Management Policy as to your institution's eligibility to receive DoD funds by grant or contract. Should it be determined that XYZ College is not qualified to receive such funds, all current programs requiring payment to XYZ College shall be stopped, and it shall be ineligible to receive future payments of DoD funds through grants, contracts, and other applicable agreements.

I regret that this action may have to be taken. Successful recruiting requires that DoD recruiters have reasonable access to students on the campuses of colleges and universities, and at the same time to have effective relationships with the officials and student bodies of those institutions. I hope it will be possible for military recruiters to schedule recruiting visits at XYZ College in the near future. I am available to answer any questions.

Sincerely,

Enclosures

[Note: DoD Directive 1322.13 is available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. This note is not a part of the sample letter of inquiry.]

Dated: March 4, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer.

[FR Doc. 96–5555 Filed 3–7–96; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD07–96–013]

RIN 2115–AA97

Security Zone; Coast Waters Adjacent to South Florida

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Pursuant to Presidential Proclamation No. 6867, declaring a national emergency, the Coast Guard is establishing a security zone, restricting the operation of vessels within the internal waters and territorial seas of the United States, adjacent to or within the coastal waters around southern Florida. The Coast Guard Captain of the Port (COTP) may exercise complete control over all vessel operations and movements within the security zone. Private, noncommercial vessels of less than 50 meters (165 feet) in length, may not depart the security zone with the intent to enter Cuban territorial waters, absent express authorization from the COTP. These vessel control measures are necessary to provide for the safety of United States citizens and residents and to prevent threatened disturbance of the international relations of the United States.

EFFECTIVE DATE: This rule is effective from 5:30 p.m., March 1996 and will terminate when the National Emergency as declared by the President in

Presidential Proclamation No. 6867, terminates. The Coast Guard will publish a separate document in the Federal Register announcing termination of this rule.

ADDRESSES: Permission of the COTP to depart the security zone with the intent of entering Cuban territorial waters may be obtained from the following U.S. Coast Guard units: Marine Safety Office Miami, 51 S.W. First Avenue, Miami, FL 33130, ph. (305) 536–5693; Marine Safety Office Tampa, 155 Columbia Drive, Tampa, FL 33603, ph. (813) 228–2195; Station Miami Beach, 100 MacArthur Causeway, Miami Beach, FL 33139, ph. (305) 535–4368; Station Fort Lauderdale, 7000 N. Ocean Dr., FL 33004, ph. (305) 927–1611; Station Marathon, 1800 Overseas Highway, Marathon, FL 33050, ph. (305) 743–1945; Station Islamorada, PO Box 547, 183 Palermo Dr., Islamorada, FL 33036, ph. (305) 292–8862; Station Key West, Key West, FL 33040, ph. (305) 292–8862; Station Fort Myers Beach, 719 San Carlos Drive, Fort Myers Beach, FL 33931, ph. (813) 463–5754. Additional locations may be established.

FOR FURTHER INFORMATION CONTACT: Chief, Marine Safety Division, Seventh Coast Guard District, 909 SE First Avenue, Brickell Plaza Federal Building, Miami, FL 33931, Phone (305) 536–5651.

SUPPLEMENTARY INFORMATION: On March 1, 1996, the President of the United States signed a Proclamation declaring a national emergency. To secure the rights and obligations of the United States and to protect its citizens and residents from the use of excessive force upon them by foreign powers, the Coast Guard is establishing a temporary security zone. In the Proclamation, the President authorized the Secretary of transportation to regulate the anchorage and movement of domestic and foreign vessels. This authority has been delegated to the Commander, Seventh Coast Guard District, Captain of the Port, Miami FL and Captain of the Port, Tampa FL, by Order of the Secretary of Transportation dated March 1, 1996. The Coast Guard is establishing a security zone pursuant to its normal regulatory authority in 50 U.S.C. § 191 and as supplemented by the authority delegated to the Secretary of Transportation in the Presidential Proclamation. This authority was re-delegated to the Commandant of the Coast Guard, as well as to appropriate District Commanders and Captains of the Port. The security zone includes the internal waters and territorial seas of the United States, adjacent to or within the State of Florida south of 26° 19′ N latitude and extending seaward three nautical miles from the baseline from which the territorial sea is measured.

The Coast Guard has determined that control of the departure of private noncommercial vessels less than 50 meters in length from the security zone, with the intent to enter Cuban territorial waters (hereinafter ''subject vessels''), is necessary to protect the safety of United States citizens and residents and national security. Maintaining such control of vessel movement will necessitate some temporary limitations on traditional freedoms of navigation. Efforts will be made to keep these limitations to a minimum.

The COTP may control the launching, anchorage, docking, mooring, operation, and movement of all vessels within the security zone. Additionally, the COTP may remove all persons not specifically authorized by the COTP to go or remain on board the subject vessel, may place guards on the subject vessel and may take full or partial possession or control of any such vessel or part thereof. Such actions to be taken are in the discretion of the COTP as deemed necessary to ensure compliance with the provisions of the security zone or any other order issued under the authority of the COTP.

Under the special regulations included in this rule, subject vessels may not depart from the security zone without express authorization from the COTP. Authorization may be requested in person or in writing. If the request is approved, the COTP will issue a written authorization. For the reasons discussed below, commercial vessels 50 meters or greater in length are exempt from these security zone departure control regulations.

Past experiences, including the 13 July 1995 Flotilla and the 2 September 1995 attempted Flotilla, did not involve vessels outside the subject class of vessels.

Any private noncommercial vessel less than 50 meters in length found to have departed from the security zone, with the intent to enter Cuban territorial waters, without having express authorization from the COTP will be in violation of the security zone. Failure to comply with the regulations or orders issued under the authority of the COTP may result in seizure and forfeiture of the vessel, suspension or revocation of Coast Guard licenses, and/or criminal fines and imprisonment.

This rule is published as a temporary final rule, which is effective upon the signing of this rule. It is based upon a Presidential declaration of a national emergency.This rule remains in effect for the duration of the national emergency. Immediate action is needed to protect the safety of lives and property at sea and to prevent threatened disturbance of the international relations of the United States. For this reason, the Coast Guard finds good cause, under 5 U.S.C. 553 (b) and (d), that notice and public comment on the rule before the effective date of this rule are, impractical, unnecessary, contrary to the public interest and this rule should be made effective in less than 30 days after publication.

Regulatory Process Matters

This final rule, designed under the emergency conditions, is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. Therefore a regulator evaluation is not included. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The USCG certifies that this rule 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. This rule does not impose unfounded mandates or contain reporting or record Keeping requirements that require approval under the Paperwork Reduction Act.

Collection of Information

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

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2.B.2 of Commandant Instruction M16475.1B. this proposal is categorically excluded from further environmental documentation.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rule will not have sufficient federalism implication to warrant preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Security measures and Waterways.

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 USC 1231; 50 USC 191; 33 CFR 1.05–1(g). 6.04–1 6.04–6, and 160.5; 49 CFR 1.46.

2. Section 165.T07–013 is added to read as follows:

§ 165.T07–013 Security Zone: Territorial waters adjacent to Florida south of 26°19′ N latitude.

(a) *Location.* The following area is established as a security zone: All U.S. territorial waters adjacent to the State of Florida south of 26°19′ N latitude. In general, these are the U.S. territorial seas adjacent to Collier, Dade, Monroe and Broward Counties of the State of Florida.

(b) *Applicability.* For the purpose of this section, this section applies to private noncommercial vessels less than 50 meters in length departing the security zone with intent to enter Cuban territorial waters. Any vessel operating without current documentation of commercial status issued by the United States, a State or territory of the United States, or a foreign government is considered to be a noncommercial vessel for the purposes of this section.

(c) *Regulations.* (1) The general regulations in § 165.33 of this part do not apply to this security zone.

(2) Private noncommercial vessels less than 50 meters in length may not depart from the security zone with the intent to enter Cuban territorial waters without express authorization from one of the following designated officials or their designees; Commander, Seventh Coast Guard District; the Captain of the Port Miami; or the Captain of the Port Tampa.

(3) Express authorization to depart from the security zone may be obtained from any designated official or designee.

(4) The owner/operator or person in charge of the vessel shall maintain the express authorization on board the vessel.

(d) *Enforcement.* Vessels and or persons violating this section may be subject to:

(1) Seizure and forfeiture of the vessel;

(2) A monetary penalty of not more than $10,000; and

(3) Imprisonment for not more than 10 years.

(e) This section implements Presidential Proclamation No. 6867. This section is issued under the authority delegated in Department of Transportation Order dated March 1, 1996.

Dated: March 1, 1996.

R.T. Rufe, Jr.,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 96–5741 Filed 3–6–96; 2:43 pm]

BILLING CODE 4910–14–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–5435–2]

Approval and Promulgation of Implementation Plans; Utah; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This document corrects an error in the Code of Federal Regulations for Utah. An amendment to 40 CFR 52.2320 at 59 FR 64330, on December 14, 1994, added a second paragraph to (c)(26). This second paragraph should be (c)(27).

EFFECTIVE DATE: This action is effective March 8, 1996.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, 8ART–AP, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, (303) 312–6445.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Environmental protection, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 15, 1996.

Patricia D. Hull,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart TT—Utah

§ 52.2320 [Corrected]

2. Section 52.2320(c) is revised by redesignating the second paragraph of (c)(26) as (c)(27).

[FR Doc. 96–5455 Filed 3–7–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[PP 4F4354/R2196; FRL–4993–5]

RIN 2070–AB78

Pesticide Tolerance; Avermectin B_1 and Its Delta-8,9-Isomer

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for combined residues of the insecticide avermectin B_1 and its delta-8,9-isomer in or on the raw agricultural commodities cucurbit vegetables group (cucumbers, melons, and squashes). The regulation to establish a maximum permissible level for residues of the insecticide was requested in a petition submitted by the Merck Research Laboratories.

EFFECTIVE DATE: This regulation becomes effective March 8, 1996.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 4F4354/R2196], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the docket 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. 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.

An electronic copy of objections and hearing requests filed with the Hearing Clerk may be submitted to OPP by sending electronic mail (e-mail) to:

opp-docket@epamail.epa.gov

Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket number [PP 4F4354/R2196]. No Confidential Business Information (CBI) should be submitted through e-mail.

Copies of electronic 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 LaRocca, Product Manager (PM) 13, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 204, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-305-6100; e-mail: larocca.george@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the Federal Register of November 2, 1994 (59 FR 54911), and September 28, 1994 (59 FR 49392), which announced that Merck Research Laboratories had submitted pesticide petition (PP) 4F4354 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 a tolerance for combined residues of the insecticide avermectin B_1 and its delta-8,9-isomer, in or on the raw agricultural commodities (RACs) cucurbit vegetables group (cucumbers, melons, and squashes) at 0.005 part per million (ppm). No comments were 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 this tolerance are discussed in detail in related documents published in the Federal Register of May 31, 1989 (54 FR 23209, cottonseed) and August 2, 1989 (54 FR 31836, citrus).

The Agency used a two-generation rat reproduction study with an uncertainty factor of 300 to establish a Reference Dose (RfD). The 300-fold uncertainty factor was utilized for (1) inter- and intraspecies differences, (2) the extremely serious nature (pup death) observed in the reproduction study, (3) maternal toxicity (lethality) no-observable-effect level (NOEL) (0.05 mg/kg body weight(bwt) /day), and (4) cleft palate in the mouse developmental toxicity study with isomer (NOEL = 0.06 mg/kg bwt/day). Thus, based on a NOEL of 0.12 mg/kg bwt/day from the two-generation rat reproduction and an uncertainty factor of 300, the RfD is 0.0004 mg/kg/ bwt/day.

A chronic dietary exposure/risk assessment has been performed for avermectin B_1 using the above RfD. Available information on anticipated residues and 100% crop treated was incorporated into the analysis to estimate the Anticipated Residue Contribution (ARC). The ARC is generally considered a more realistic estimate than an estimate based on the tolerance level residues. The ARC for established tolerances and the current action is estimated at 0.000013 mg/kg/bwt/day and utilizes 3.2% of the RfD for the U.S. population. For nonnursing infants less than 1-year old (the subgroup population with the highest exposure level) the ARC for established tolerances and the current action is estimated at 0.000018 mg/kg bwt/day and utilizes 4.5% of the RfD. Generally speaking, the Agency has no cause for concern if anticipated residues contribution for all published and proposed tolerances is less than the RfD.

Because of the developmental effects seen in animal studies, the Agency used the mouse teratology study (with a NOEL of 0.06 mg/kg/day for developmental toxicity for the delta-8,9 isomer) to assess acute dietary exposure and determine a margin of exposure (MOE) for the overall U.S. population and certain subgroups. Since the toxicological end-point pertains to developmental toxicity, the population group of interest for this analysis is women aged 13 years and above, the subgroup which most closely approximates women of child-bearing age. The MOE is calculated as the ratio of the NOEL to the exposure. For this analysis, the Agency calculated the MOE for the high-end exposures for women ages 13 years and above. The MOE is 150. Generally speaking, MOEs greater than 100 for developmental toxicity do not raise concerns.

The metabolism of the chemical in plants and animals for the use is adequately understood. Secondary residues occurring in livestock and their by-products are not expected since there are no known animal feed stock uses for cucurbits. An adequate analytical method (HPLC-Fluorescence Method) is available for enforcement purposes.The enforcement methodology has been submitted to the Food and Drug Administration for publication in the *Pesticide Analytical Manual, Vol. II* (PAM II). Because of the long lead time for publication of the method in PAM II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when required from Calvin Furlow, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, U.S. 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.

The tolerances established by amending 40 CFR part 180 will be adequate to cover residues in or on cucurbits (cucumbers, melons, and squashes). There are currently no actions pending against the continued registration of this chemical. The pesticide is considered useful for the purpose for which it is intended.

Based on the information and data considered, the Agency has determined that the tolerance established by amending 40 CFR part 180 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 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 the docket number [PP 4F4354/R2196] (including any comments and data submitted electronically). 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 22202.

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 copies of 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 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.

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: February 23, 1996.

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 § 180.449, by amending the table in paragraph (b) by adding alphabetically an entry for cucurbits, to read as follows:

§ 180.449 Avermectin B_1 and its delta-8,9-isomer; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million
* * * * *	
Cucurbits (cucumbers, mellons, and squashes)	0.005
* * * * *	

[FR Doc. 96–5540 Filed 3–7–96; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[PP 9F3796, 5E4479, 4F4343, 0F3890, 0F3860 and 1F3950/R2212; FRL–5353–4]

RIN 2070–AB78

Pesticide Tolerances for Sulfonium, trimethyl-salt with N-(phosphonomethyl)glycine (1:1)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes permanent tolerances for residues of the herbicide sulfonium, trimethyl-salt with *N*-(phosphonomethyl)glycine (1:1) [formerly glyphosate-trimesium/sulfosate] in or on the raw agricultural commodities almond hulls, imported bananas, the citrus fruit group, grapes and the tree nut group. In addition, this regulation establishes a two year time-limited tolerance for residues of this herbicide on the raw agricultural commodities corn, and animals. The regulations to establish a maximum permissible level for residues of the herbicide was requested in several petitions submitted by Zeneca AG Products.

EFFECTIVE DATE: This regulation becomes effective March 8, 1996.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 9F3796, 5E4479, 4F4343, 0F3890, 0F3860 and 1F3950/R2212], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. 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. 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.

An electronic copy of objections and hearing requests filed with the Hearing Clerk may be submitted to OPP by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov

Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket number [PP 9F3796, 5E4479, 4F4343, 0F3890, 0F3860 and 1F3950/R2212]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic 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 J. Taylor, Product Manager (PM) 25, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 241, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703)

305-6027; e-mail: taylor.robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued the following notices (PF-643; FRL–4986–8), published in the Federal Register of November 15, 1995, (60 FR 57422) which announced that Zeneca AG Products, 1800 Concord Pike, P.O. Box 15458, Wilmington, DE 19850-5458, had submitted pesticide petitions 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 a tolerance for the residues of the herbicide sulfonium, trimethyl-salt with *N*-(phosphonomethyl)glycine (1:1) [formerly glyphosate-trimesium/ sulfosate, in or on certain raw agricultural commodities:

1. PP 0F3890. Originaly published in the Federal Register of January 16, 1991 (56 FR 1632), the notice proposed establishing a regulation to permit residues of the herbicide sulfonium, trimethyl-salt with *N*-(phosphonomethyl)glycine (1:1) in or on the citrus fruit group at 0.5 ppm. The November 15, 1995 notice amended this petition by proposing a regulation to permit residues in or on the raw agricultural commodities citrus fruits at 0.05 ppm.

2. PP 1F3950. Originally published in the Federal Register of April 3, 1991 (56 FR 13642), the notice proposed establishing a regulation to permit residues of the herbicide sulfonium, trimethy-salt with *N*-(phosphonomethyl)glycine (1:1) in or on grapes at 0.2 ppm. The November 15, 1995 notice amended the petition by proposing to establish a regulation to permit the residues of the herbicide in or on raw agricultural commodity grapes at 0.1 ppm.

3. PP 4F4343. Proposed establishing a regulation to permit residues of the herbicide sulfonium, trimethyl-salt with *N*-(phosphonomethyl)glycine (1:1) in or on the tree nut group at 0.05 ppm and almond hulls at 2.00 ppm (of which no more than 0.5 ppm is trimethylsulfonium). However, based on the available residue data, the appropriate tolerance for almond hulls is 1.0 ppm (of which no more than 0.3 ppm is trimethylsulfonium). Zeneca AG Products have resubmitted a revised Section F for this petition.

4. *PP 9F3796*. Published in the Federal Register of April 12, 1990, (55 FR 13829), the notice proposed establishing a regulation to permit residues of the herbicide sulfonium, trimethyl-salt with *N*-(phosphonomethyl)glycine (1:1) in or on corn grain at 0.1 parts per million (ppm) and corn forage and corn fodder at 0.2 ppm.

5. PP 5E4479. Proposed establishing a regulation to permit residues of the herbicide sulfonium, trimethyl-salt with *N*-(phosphonomethyl)glycine (1:1) in or on imported bananas at 0.05 parts per million (ppm).

6. *PP 9F3796*. Originally published in the Federal Register of April 12, 1990, (55 FR 13829), the notice proposed establishing a regulation to permit residues of the herbicide sulfonium, trimethyl-salt with *N*-(phosphonomethyl)glycine (1:1) in or on corn grain at 0.1 parts per million (ppm) and corn forage and corn fodder at 0.2 ppm. This petition was amended by the November 15, 1995 notice by proposing to establish tolerances in or on corn grain at 0.2 ppm (of which no more than 0.10 is trimethylsulfonium); corn fodder at 0.3 ppm (of which no more than 0.20 is trimethylsulfonium); and corn forage at 0.1 ppm.

7. *PP 0F3860*. Published in the Federal Register of November 15, 1995 (60 FR 57423), the notice proposed establishing a regulation to permit residues of the herbicide sulfonium, trimethyl-salt with *N*-(phosphonomethyl)glycine (1:1) in or on the raw agricultural commodities for animals as part of the soybean petition for milk and meat at 0.2 ppm, meat by-products at 1.00 ppm, fat at 0.10 ppm of cattle, goats, hogs, horses and sheep; eggs at 0.02 ppm, poultry fat, poultry liver and poultry meat at 0.05 ppm; and poultry meat by-products (except liver) at 0.10 ppm.

There were no comments or requests for referral to an advisory committee received in response to these notices 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 toxicology studies placing technical grade sulfonium, trimethyl-salt with *N*-(phosphonomethyl)glycine (1:1) in Toxicity Category III and Toxicity Category IV.

2. A subchronic feeding study with dogs fed dosage levels of 0, 2, 10 and 50 milligrams/kilogram/day (mg/kg/day) with no observable effect level (NOEL) of 10 mg/kg/day.

3. A chronic feeding/carcinogenicity study in male and female rats fed dosage levels of 0, 100, 500 and 1000 ppm (0, 4.2, 21.2 or 41.8 mg/kg/day in males and 0, 5.4, 27.0 or 55.7 mg/kg/day in females) with no carcinogenic effects observed under the conditions of the study at dose levels up to and including the 1000 ppm highest dose tested (HDT) and a systemic NOEL of 1000 ppm. There were no biologically significant effects observed in the study. The study was considered to be acceptable because the highest dose level tested was approaching one half of what would be considered an adequate dose level for carcinogenicity testing and because there was no indication of any carcinogenic response to warrant repeat of the study. This assessment was based on toxic effects observed in the subchronic and reproductive toxicity studies in rats at higher dose levels.

4. A chronic feeding/carcinogenicity study in male and female mice fed dosage levels of 0, 100, 1000 and 8,000 ppm (0, 11.7, 118 or 991 mg/kg/day in males and 0, 16, 159 or 1,341 mg/kg/day in females) with no carcinogenic effects observed under the conditions of the study at dose levels up to and including the 8000 ppm HDT (highest dose may have been excessive) and systemic NOEL of 1000 ppm based on decreases in body weight and feed consumption (both sexes), increases in the incidences of white matter degeneration in the lumbar spinal cord (males only), and increased incidences of duodenal epithelial hyperplasia (females only).

5. A developmental toxicity study in rats given doses of 0, 30, 100 and 333 mg/kg/day with a developmental NOEL of 100 mg/kg/day based on significant decreases in fetal body weight, and a maternal NOEL of 100 mg/kg/day based on undetermined deaths of 2 dams at HDT; decreases in body weight, body weight gain and feed intake; and increased salivation, chromorhinorrhea and lethargy (HDT).

6. A developmental toxicity study in rabbits given doses of 0, 10, 40 and 100 mg/kg/day with a developmental NOEL of 40 mg/kg/day based on 4 abortions and a reduction in the number of live fetuses/doe. In addition, there were only 7 litters available for examination. This was not a sufficiently high number of animals to absolutely conclude that no developmental toxicity was occuring at the highest dose level. The maternal NOEL was 40 mg/kg/day based on 6 deaths/17 pregnant does, 4 abortions in 11 survivors and decreased body weight, body weight gain, food consumption.

7. A two generation reproduction study in rats fed dosage rates of 0, 150, 800 and 2,000 ppm (0, 6.1, 35.0 or 88.5 mg/kg/day in males and 0, 8.0, 41.0 or 98.0 mg/kg/day in females) with a reproductive/developmental NOEL of 150 ppm based on decreased litter size in the F0a and F1b litters at 2,000 ppm and on decreased mean pup weights during lactation in the second litters at

800 ppm and in all litters at 2000 ppm; and a systemic NOEL of 150 ppm based on reduced feed intake, body weights and body weight gains and reduced absolute and sometimes relative thymus, heart, liver and kidney weights.

8. Mutagenicity data included two Ames tests with *Salmonella typhimurium*; a sex linked recessive lethal test with *Drosophila melanoga*; a forward mutation (mouse lymphoma) test; an *in vivo* bone marrow cytogenetics test in rats; a micronucleus assay in mice; an *in vitro* chromosomal aberration test in Chinese hamster ovary cells (CHO) (no aberrations were observed either with or without S9 activation and there were no increases in sister chromatid exchanges); and a morphological transformation test in mice (all negative).

The reference dose (RfD) based on a chronic dog feeding study (NOEL of 10 mg/kg body weight (bwt)/day) and using a hundred-fold safety factor is calculated to be 0.1 mg/kg bwt/day. The theoretical maximum residue contribution (TMRC) for all proposed tolerances (almond hulls; imported bananas; citrus fruit group; corn; eggs; grapes; fat/meat by-products/meat of cattle, goats, hogs, horses and sheep; pome fruit group; poultry fat,liver, meat by-products and meat; soybeans; stone fruit group; tree nut group; and wheat; and food additive regulations (prunes, raisins and soybean hulls) is 0.019825 mg/kg/day or 19.825 percent of the RfD for the overall U.S. population. For U.S. subgroup populations, nonnursing infants and children 1 to 6 years of age, the current action, previously proposed tolerances and food additive regulations utilize a total of 0.044625 mg/kg/day and 44.625 percent of the RfD, assuming that residue levels are at the established tolerance levels and that 100 percent of the crop is treated.

The RfD/Peer Review Committee, in a consensus review dated July 26, 1994, classified sulfonium, trimethyl-salt with *N*-(phosphonomethyl)glycine (1:1) as a Group E carcinogen based on no evidence of carcinogenicity in rat and mouse studies.

An adequate analytical method, gas chromatography for the cation and liquid chromatography for the anion and its metabolite AMPA, is available for enforcement purposes and will be published in the *Pesticide Analytical Manual* (PAM), Vol. II.

There are presently 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 part 180 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 the docket number [PP 9F3796, 5E4479, 4F4343, 0F3890, 0F3860 and 1F3950/R2212] (including any comments and data submitted electronically). 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 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.

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 copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rule-making 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.

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. 9–354, 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: February 23, 1996.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.489, is added to subpart C to read as follows:

§ 180.489 Sulfonium, trimethyl-salt with N-(phosphonomethyl)glycine (1:1); tolerances for residues.

(a) Tolerances are established for residues of the herbicideSulfonium, trimethyl-salt with *N*-(phosphonomethyl)glycine (1:1)in or on the following raw agricultural products:

Commodities	Parts per million
Almond, hulls, (of which no more than 0.3 ppm is trimethylsulfonium)	1.00
Bananas (imported only)[a]	0.05
Citrus fruit group,	0.05
Grapes,	0.10
Tree nut group,	0.05

[a] There are no U.S. registrations as of the date of publication of the tolerance in the FEDERAL REGISTER.

(b) Time-limited tolerances to expire March 9, 1998, are established for the residues of the herbicide sulfonium, trimethyl-salt with *N*-(phosphonomethyl)glycine (1:1) in or on the following raw agricultural commodities:

Commodities	Parts per million
Cattle, fat	0.10
Cattle, mbyp	1.00
Cattle, meat	0.20
Corn, fodder (of which no more than 0.20 ppm is trimethylsulfonium)	0.30
Corn, forage	0.10
Corn, grain (of which no more than 0.10 is trimethylsulfonium)	0.20
Eggs	0.02
Goats, fat	0.10
Goats, mbyp	1.00
Goats, meat	0.20
Hogs, fat	0.10
Hogs, mbyp	1.00
Hogs, meat	0.20
Horses, fat	0.10
Horses, mbyp	1.00
Horses, meat	0.20
Milk	0.20
Poultry, fat	0.05
Poultry, liver	0.05
Poultry, mbyp	0.10
Poultry, meat	0.05
Sheep, fat	0.10
Sheep, mbyp	1.00
Sheep, meat	0.20

[FR Doc. 96–5537 Filed 3–7–96; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[OPP–300401A; FRL–4993–2]

RIN 2070–AB78

1,2-Ethanediamine, Polymer With Oxirane and Methyloxirane; 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 1,2-ethanediamine, polymer with oxirane and methyloxirane (CAS Reg. No. 26316–40–5) when used as an inert ingredient (surfactant and dispersing agent) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest and to animals, under 40 CFR 180.1001(c) and (e). The BASF Corp. requested this proposed regulation pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA).

EFFECTIVE DATE: This regulation becomes effective March 8, 1996.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [OPP–300401A], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. 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 a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. 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. An electronic copy of objections and hearing requests filed with the Hearing Clerk may be submitted to OPP by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov.

Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket number [OPP–300401A] . No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic 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: Bipin Gandhi, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, North Tower, 6th Floor, Arlington, VA 22202, (703)–308–8380; e-mail: gandhi.bipin@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the Federal Register of November 15, 1995 (60 FR 57377), which announced that the BASF Corp., 3000 Continental Drive-North, Mount Olive, NJ 07828–1234, had submitted a pesticide petition, PP 5E04579, to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(c) and (e) by exempting 1,2-ethanediamine, polmer with oxirane and methyloxirane (CAS Reg. No. 26316–40–5) when used as an inert ingredient (surfactant and dispersing agent) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest and to animals. These inert ingredients meet the definition of polymers under 40 CFR 723.250(b) and the criteria listed in 40 CFR 723.250(e) that define chemical substances that pose no unreasonable

risks under section 5 of the Toxic Substance Control Act (TSCA).

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

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

The data submitted with the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance exemptions will protect the public health. Therefore, the tolerance exemptions 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).

EPA has established a record for this rulemaking under docket number [OPP–300401A] (including any comments and data submitted electronically). 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 may 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 any copies of 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 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.

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: February 26, 1996.

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 § 180.1001, paragraphs (c) and (e) are amended in the tables therein by adding and alphabetically inserting the following inert ingredient:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredient	Limits	Uses
* * * * * * *		
1,2 Ethanediamine, polymer with oxirane and methyloxirane (CAS Reg. No. 26316–40–5) minimum number average molecular weight 2,800 and the range of number average molecular weight is 2,800 to 10,000 daltons..	.....	Surfactant, dispersing agent
* * * * * * *		

* * * *
*

(e) * * *

Inert ingredient	Limits	Uses
* * * * * * *		
1,2 Ethanediamine, polymer with oxirane and methyloxirane (CAS Reg. No. 26316–40–5) minimum number average molecular weight 2,800 and the range of number average molecular weight is 2,800 to 10,000 daltons..	.....	Surfactant, dispersing agent
* * * * * * *		

[FR Doc. 96–5535 Filed 3–7–96; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 185

[FAP 1H5606/R2211; FRL–5353–3]

RIN 2070–AB78

Food Additive Regulation for Sulfonium, trimethyl-salt with N-(phosphonomethyl)glycine (1:1) (formerly glyphosate-trimesium/ sulfosate)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: These regulations establish a food additive regulation for the residues of the herbicide sulfonium, trimethyl-salt with *N*-(phosphonomethyl)glycine (1:1) (formerly glyphosate-trimesium/ sulfosate) in or on the processed commodity raisins. The regulation to establish maximum permissible levels for residues of the pesticide in or on the commodity was requested in a petition submitted by Zeneca AG Products.

EFFECTIVE DATE: This regulation becomes effective March 8, 1996.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [FAP 1H5606/R2211], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. 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. 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. An electronic copy of objections and hearing requests filed with the Hearing Clerk may be submitted to OPP by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov.

Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket number [FAP 1H5606/R2211] . No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic 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 J. Taylor, Product Manager (PM) 25, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number: Rm. 241, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–6027; e-mail: taylor.robert @epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice (PF–638; FRL–4986–8), published in the Federal Register of November 15, 1995 (60 FR 57422), which announced that Zeneca AG Products, 1800 Concord Pike, P.O. Box 15458, Wilmington, DE 19850–5458, had submitted a food additive petition (FAP) 1H5606 to EPA requesting that the Administrator, pursuant to section 409(e) of the FFDCA (21 U.S.C. 348), amend 40 CFR part 185 by establishing a food additive regulation for the residues of the herbicide sulfonium, trimethyl-salt with *N*-(phosphonomethyl)glycine (1:1) (formerly glyphosate-trimesium/ sulfosate), in or on the processed food commodity raisins at 0.20 ppm (of which no more than 0.05 ppm is trimethylsulfonium).

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 toxicology studies placing technical grade sulfonium, trimethyl-salt with *N*-(phosphonomethyl)glycine (1:1) in Toxicity Category III and Toxicity Category IV.

2. A subchronic feeding study with dogs fed dosage levels of 0, 2, 10 and 50 milligrams/kilogram/day (mg/kg/day) with a no observable effect level (NOEL) of 10 mg/kg/day.

3. A chronic feeding/carcinogenicity study in male and female rats fed dosage levels of 0, 100, 500 and 1,000 parts per million (ppm) (0, 4.2, 21.2 or 41.8 mg/kg/day in males and 0, 5.4, 27.0 or 55.7 mg/kg/day in females) with no carcinogenic effects observed under the conditions of the study at dose levels up to and including the 1,000 ppm highest dose tested (HDT) and a systemic NOEL of 1,000 ppm. There were no biologically significant effects observed in the study. The study was considered to be acceptable because the highest dose level tested was approaching one half of what would be considered an adequate dose level for carcinogenicity testing and because there was no indication of any carcinogenic response to warrant repeat of the study. This assessment was based on toxic effects observed in the subchronic and reproductive toxicity studies in rats at higher dose levels.

4. A chronic feeding/carcinogenicity study in male and female mice fed dosage levels of 0, 100, 1,000 and 8,000 ppm (0, 11.7, 118 or 991 mg/kg/day in males and 0, 16, 159 or 1,341 mg/kg/day in females) with no carcinogenic effects observed under the conditions of the study at dose levels up to and including the 8,000 ppm HDT (highest dose may have been excessive) and systemic NOEL of 1,000 ppm based on decreases in body weight and feed consumption (both sexes), increases in the incidences of white matter degeneration in the lumbar spinal cord (males only), and increased incidences of duodenal epithelial hyperplasia (females only).

5. A developmental toxicity study in rats given doses of 0, 30, 100 and 333 mg/kg/day with a developmental NOEL of 100 mg/kg/day based on significant decreases in fetal body weight, and a maternal NOEL of 100 mg/kg/day based on undetermined deaths of 2 dams at HDT; decreases in body weight, body weight gain and feed intake; and increased salivation, chromorhinorrhea and lethargy (HDT).

6. A developmental toxicity study in rabbits given doses of 0, 10, 40 and 100 mg/kg/day with a developmental NOEL of 40 mg/kg/day based on 4 abortions and a reduction in the number of live fetuses/doe. In addition, there were only 7 litters available for examination. This was not a sufficiently high number of animals to absolutely conclude that no developmental toxicity was occurring at the highest dose level. The maternal NOEL was 40 mg/kg/day based on 6 deaths/17 pregnant does, 4 abortions in 11 survivors and decreased body weight, body weight gain and food consumption.

7. A 2-generation reproduction study with rats fed dosage rates of 0, 150, 800 and 2,000 ppm (0, 6.1, 35 or 88.5) mg/kg/day in males and 0, 8, 41 or 98 mg/kg/day in females) with a reproductive/developmental NOEL of 150 ppm based on decreased litter size in the F0a and F1b litters at 2,000 ppm and on decreased mean pup weights during lactation in the second litters at 800 ppm and in all litters at 2,000 ppm; and a systemic NOEL of 150 ppm based on reduced feed intake, body weights and body weight gains and reduced absolute and sometimes relative thymus, heart, liver and kidney weights.

8. Mutagenicity data included two Ames tests with *Salmonella typhimurium*; a sex linked recessive lethal test with *Drosophila melanoga*; a forward mutation (mouse lymphoma) test; an *in vivo* bone marrow cytogenetics test in rats; a micronucleus assay in mice; an *in vitro* chromosomal aberration test in Chinese hamster ovary cells (CHO) (no aberrations were observed either with or without S9 activation and there were no increases in sister chromatid exchanges); and a morphological transformation test in mice (all negative).

The reference dose (RfD) based on a chronic dog feeding study (NOEL of 10 mg/kg body weight (bwt)/day) and using a hundred-fold safety factor is calculated to be 0.1 mg/kg bwt/day. The theoretical maximum residue contribution (TMRC) for all proposed tolerances (almond hulls; imported bananas; citrus fruit group; corn; eggs; grapes; fat/meat by-products/meat of cattles, goats, hogs, horses and sheep; pome fruit group; poultry fat, liver, meat by-products and meat; soybeans; stone fruit group; tree nut group; and wheat; and food additive regulations (prunes, raisins and soybean hulls) is 0.019760 mg/kg/day or 19.760 percent of the RfD for the overall U.S. population. For U.S. subgroup populations, nonnursing infants and children 1 to 6 years of age, the current action, previously proposed tolerances and food additive regulations utilize a total of 0.044461 mg/kg/day and 44.461 percent of the RfD, assuming that residue levels are at the established tolerance levels and that 100 percent of the crop is treated.

The RfD/Peer Review Committee, in a consensus review dated July 26, 1994, classified sulfonium, trimethyl-salt with *N*-(phosphonomethyl)glycine (1:1) as a Group E carcinogen based on no evidence of carcinogenicity in rat and mouse studies.

An adequate analytical method, gas chromatography for the cation and liquid chromatography for the anion and its metabolite AMPA, is available for enforcement purposes, and the methodology will be published in the *Pesticide Analytical Manual* (PAM), Vol. II.

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

Based on the information and data considered, the Agency has determined that the establishment of a food additive regulation by amending 40 CFR part 185 will be safe. 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 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 the docket number [FAP 1H5606/R2211] (including any comments and data submitted electronically). 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.

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 copies of 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 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.

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 Part 185

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

Dated: February 23, 1996.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, chapter I, part 185 of title 40 of the Code of Federal Regulations is 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 348.

b. By adding § 185.5375, *Sulfonium, trimethyl-salt with N-(phosphonomethyl)glycine (1:1),* to read as follows:

§ 185.5375 Sulfonium, trimethyl-salt with N-(phosphonomethyl)glycine (1:1).

(a) Food additive regulation is established for residues of the herbicide sulfonium, trimethyl-salt with *N*-(phosphonomethyl)glycine (1:1) (formerly glyphosate-trimesium/sulfosate) in or on the following processed commodities:

Commodities	Parts per million
Raisins (of which no more than 0.05 ppm is trimethylsulfonium	0.20

(b) [Reserved]

[FR Doc. 96–5539 Filed 3–7–96; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–159; RM–8711]

Radio Broadcasting Services; Laramie, WY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Rule Communications, allots Channel 244A at Laramie, Wyoming, as the community's fifth local commercial FM transmission service. *See* 60 FR 55822, November 3, 1995. Channel 244A can be allotted to Laramie in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 244A at Laramie are North Latitude 41–18–42 and West Longitude 105–35–06. With this action, this proceeding is terminated.

DATES: Effective April 18, 1996. The window period for filing applications will open on April 18, 1996 and close on May 20, 1996.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 95–159, adopted February 22, 1996, and released March 4, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Sections 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by adding Channel 244A at Laramie.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–5434 Filed 3–7–96; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 89–455; RM–6915, RM–7259]

Radio Broadcasting services; Murdock and Avon Park, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 255A to Murdock, Florida. In addition, this document substitutes Channel 256C3 for Channel 292A at Avon Park, Florida, and modifies the license of Station WWOJ, Avon Park, to specify operation on Channel 256C3. *See* 54 FR 43087, October 20, 1989. The reference coordinates for Channel 255A at Murdock, Florida, are 26–58–00 and 82–16–00. The reference coordinates for Channel 256C3 at Avon Park, Florida, are 27–29–5 and 81–29–23. With this action, the proceeding is terminated.

DATES: Effective April 18, 1996. The window period for filing applications will open on April 18, 1996, and close on May 20, 1996.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order* in MM Docket No. 89–455, adopted February 23, 1996, and released March 4, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 47 U.S.S. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by adding Murdock, Channel 255A.

3. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Channel 292A and adding Channel 256C3 at Avon Park.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–5435 Filed 3–7–96; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 94–101; RM–8510]

Radio Broadcasting Services; Kerman, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 237A to Kerman, California, in lieu of previously proposed Channel 252A, as that community's second local FM transmission service, in response to a petition for rule making filed by Valley Center Broadcasting. *See* 59 FR 48846, September 23, 1994. EBE Limited Partnership, licensee of Station KNAX(FM), Channel 250B, Fresno, California, proposed the allotment of Channel 237A to Kerman to avoid a conflict with its modification application pursuant to the Commission's policy of attempting to resolve conflicts between rulemaking petitions and later-filed FM applications. *See Conflicts Between Applications and Petitions for Rulemaking to Amend the FM Table of Allotments*, 8 FCC Rcd 4743, 4745, n.12. Coordinates used for Channel 237A at Kerman are 36–41–00 and 120–10–48. With this action, the proceeding is terminated.

DATES: Effective April 18, 1996. The window period for filing applications will open on April 18, 1996, and close on May 20, 1996.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the window application filing process for Channel 237A at Kerman, California, should be addressed to the Audio Services Division, FM Branch, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 94–101, adopted February 12, 1996, and released March 4, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, located at 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Channel 237A at Kerman.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–5430 Filed 3–7–96; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

Radio Broadcasting Services; Various Locations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, on its own motion, editorially amends the Table of FM Allotments to specify the actual classes of channels allotted to various communities. The changes in channel classifications have been authorized in response to applications filed by licensees and permittees operating on these channels. This action is taken pursuant to *Revision of Section 73.3573(a)(1) of the Commission's Rules Concerning the Lower Classification of an FM Allotment*, 4 FCC Rcd 2413 (1989), and the *Amendment of the Commission's Rules to Permit FM Channel and Class Modifications [Updates] by Applications*, 8 FCC Rcd 4735 (1993).

EFFECTIVE DATE: March 8, 1996.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, adopted February 20, 1996, and released March 4, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by removing Channel 299A and adding Channel 299C2 at Georgiana.

3. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by removing Channel 229A and adding Channel 231A at Wickenburg.

4. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by removing Channel 296A and adding Channel 296C3 at Aspen.

5. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Channel 230A and adding Channel 230C3 at Greenwood.

6. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 277A and adding Channel 277C3 at Commerce; removing Channel 256A and adding Channel 256C3 at Fairfield; removing Channel 283C3 and adding Channel 284C2 at Ganado; removing Channel 278A and adding Channel 278C2 at New Boston; removing Channel 252C3 at Odem and adding Channel 252C2.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–5437 Filed 3–7–96; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 76

[MM Docket No. 93–215; FCC 95–502]

Cable Television Rate Regulation; Cost of Service Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted the Second Report and Order and First Order on Reconsideration in MM Docket 93–215 to refine existing cost of service rules and to create final rules governing standard cost of service showings filed by cable operators seeking to justify rates for regulated cable services. By refining these rules, the Commission brings greater practicality to cost of service filing procedures and allows operators and regulatory officials increased flexibility in defining the actual costs of providing regulated cable services.

EFFECTIVE DATE: This final rule contains information collection requirements and will not become effective until approval by the Office of Management and Budget, but no sooner than 30 days after publication in the Federal Register. The Commission will publish a document specifying the effective date.

FOR FURTHER INFORMATION CONTACT: Tom Power, Cable Services Bureau, (202) 416–0800.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Second Report and Order, First Order on Reconsideration and Further Notice of Proposed Rulemaking in MM Docket No. 93–215, FCC 95–502, adopted December 15, 1995 and released January 26, 1996.

This Second Report and Order and First Order on Reconsideration contains modified information collections subject to the Paperwork Reduction Act of 1995 (''PRA''), Pub. L. No. 104–13. It has been submitted to the Office of Management and Budget (''OMB'') for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the modified information collections contained in this proceeding.

The complete text of this Second Report and Order, First Order on Reconsideration and Further Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc. (''ITS Inc.'') at (202) 587–3800, 2100 M Street, NW., Suite 140, Washington, DC 20017.

I. Second Report and Order and First Order on Reconsideration

A. Ratebase—Used and Useful Plant and Excess Capacity

1. In general, except as described below, we make permanent our interim rules regarding ratebase issues. We clarify that used and useful plant is plant that is actually used to send signals to customers. Plant which is not currently used and useful, however, is excess capacity, and operators may include this excess capacity in the ratebase only if it is fully constructed plant that will be used to provide regulated service within 12 months. The Commission clarifies that there are two types of excess capacity. First, where plant is being used but not to its full capacity, the portion of the plant allocated to the unused channels is excess capacity. For example, where a system provides programming over 36 channels but is capable of transmitting 48 channels of programming, the plant associated with the 12 channels not currently being used is excess capacity. In other words, in this example, the operator may only include 75% of the cost of the plant in the ratebase as used and useful plant, and may include the other 25% as excess capacity only if the 12 channels will be activated within one year. Second, excess capacity is fully constructed plant that is not being used at all, such as where the cable operator has extended its distribution line into an unserved portion of the franchise area, is ready and able to provide service to that area, but is not yet providing such service. The operator may include such plant in its ratebase to the extent it intends to place the plant into service within 12 months. However, the operator must make a corresponding adjustment to its subscriber count to include a reasonable estimate of the number of subscribers it expects to serve with that plant by the end of the 12 month period.

2. The Commission also clarifies that plant in service must be allocated between regulated and unregulated services based on a reasonable measure of the current usage of that plant. Section 76.922(g)(6)(i) of our rules currently uses the phrase ''used and useful in the provision of cable services,'' but does not specify that such cable services must be regulated cable services. Since our authority to determine cable rates extends only to regulated services as defined by the Communications Act, only plant used and useful in the provision of regulated services should be included in the ratebase. Accordingly, for our final rules, we will make this point explicit

and will amend the interim rule to specify that tangible plant must be used and useful in the provision of regulated cable services in order to be included in the ratebase. This will ensure that the ratebase for regulated cable service only includes plant used for such regulated cable service, and that subscribers to regulated tiers are not forced to subsidize plant that is used solely for premium services.

3. In addition, we recognize that what constitutes a reasonable measure of the current usage of the tangible plant depends on the circumstances. We believe that in many cases a reasonable measure would be a straight channel ratio. In other words, if an operator provides programming over a total of 40 channels, 32 of which are BST and CPST channels and eight of which are premium and pay-per-view channels, the operator must allocate 80% of its plant in service to regulated cable service and 20% to unregulated service. We do not believe, however, that the channel ratio should be weighted by customer. The cost of physical plant is directly related to the provision of cable channels and the amount of channel capacity which exists on a particular cable system. The cost of that plant does not vary depending on how many subscribers receive each channel. It would be inappropriate to weight the channel ratio by subscriber use when such use does not affect the cost of the plant.

4. With regard to the time period within which excess capacity must be used and useful in order to be included in ratebase, we adopt the interim rule of one year as our final rule. For business purposes, operators commonly project how much capacity will be used within the given year as part of their annual operating budgets. We believe that the 12 month period therefore permits plant associated with all reasonably foreseeable improvements in or additions to service to be included in ratebase.

B. Ratebase—Intangibles

5. Previously, we had concluded that one reason we should not rely on acquisition prices for ratemaking was that it appeared that those prices often include an expectation of supra-competitive profits that market power of cable systems not operating in a fully competitive market might expect to generate.

6. We continue to reject the argument that operators are entitled to include 100% of their intangible costs in the ratebase. Exclusion of some amount of these costs from the ratebase does not result in an impermissible taking without just compensation in violation of the Fifth Amendment. We have no constitutional duty to ensure full recovery of these acquisition costs, we must only ensure that the end result of our ratemaking decisions here is reasonable.

7. We continue to believe that the ratebase should not include costs resulting from any expectation of monopoly profits or expectation of a return on emerging and unregulated services, which we believe the presumptive exclusion of such acquisition costs ensures. However, upon further reflection and based upon our review of cost of service filings, we believe this presumption can be modified, without sacrificing this conclusion.

8. Therefore, we have created a new rule, applicable to systems conveyed prior to the effective date of the interim cost rules, with respect to the treatment of intangible assets. We find the model in which 34% of the purchase price of a system is presumed to be attributable to monopoly expectations, to be the one best suited to these goals.

9. Our final rule presumes, rebuttably, that 34% of the purchase price associated with regulated services of systems purchased prior to regulation represents monopoly expectations and must be removed from the regulated ratebase. Put differently, the ratebase presumptively shall not exceed 66% of that portion of the system price allocable to assets used to provide regulated services. The 34% adjustment must be applied to the entire purchase price associated with regulated services, not just the portion of the price allocable to intangibles, because cable operators derive revenues, including monopoly revenues, from the employment of both tangible and intangible assets. Applying the 34% adjustment to all assets associated with regulated services, rather than only to the associated intangibles, should remove all expectations of monopoly profits.

10. As noted, we recognize that this approach necessarily involves the use of industry-wide averages with respect to certain variables that, while reasonable, will not always reflect with perfect accuracy the circumstances of particular operators. To the extent the 34% adjustment is inexact for certain operators, we are particularly concerned that this adjustment could be used to raise rates unreasonably, given our statutory mandate to guard against unreasonable rates. Therefore, we will allow use of the 34% adjustment only for the purpose of justifying rates in effect as of the effective date of these rules. We believe that this represents a reasonable compromise between the overall integrity of the analysis used to arrive at the 34% adjustment and the concern we have that in some cases this adjustment could prove overly generous to operators. Accordingly, in cost of service cases to which the 34% adjustment is applicable, the operator may include in the ratebase up to 66% of the purchase price allocable to assets used to provide regulated services, but only to the extent necessary to justify rates in effect as of the effective date of these rules. If the current rate can be justified by including in the ratebase less than the 66% amount, then in no event shall the operator seek to use a higher percentage for purposes of any cost of service showing.

11. This adjustment shall be applied only to the purchase price of systems sold prior to May 15, 1994, the effective date of the Report and Order and Further Notice of Proposed Rulemaking, MM Docket 93–215, 9 FCC Rcd 4527 (1994) (''Cost Order'' or ''Further Notice''). The interim rule is made permanent with respect to systems sold after this date. Operators who acquired systems after May 15, 1994 were aware of the interim rule strictly limiting the ability to recover the cost of intangible assets. Thus, to the extent such operators recorded substantial intangibles, we presume those intangibles are associated with investment in unregulated services. As such, they cannot be included in the regulated ratebase.

12. Generally, operators using the cost of service to justify current rates for the first time, will be able to do so using the 34% adjustment. In some rare cases, however, this adjustment may not be adequate. For instance, if an operator acquired a system with tangible assets equal to 70% of the purchase price, obviously allowing a ratebase equal to 66% of the purchase price may not allow the operator to recover reasonably incurred costs. Similarly, if the tangible assets represent 64% of the purchase price, the remaining 2% may not adequately compensate the operator for reasonably incurred intangible assets. Therefore, where the tangible assets approach 66% of the purchase price, the operator may justify rates using 100% of the tangible assets and such intangible assets as are permissible using the interim rules.

13. We further believe it appropriate to adjust our interim rule concerning deferred income taxes. We will now require operators to deduct deferred income taxes from the ratebase only to the extent that such taxes accrued after

the date the operator became subject to rate regulation.

C. Ratebase-Start-Up Losses

14. We are persuaded that the treatment of prior year losses in the Cost Order should be amended. We find that we should not prescribe a specific prematurity phase, rather we find that we should define the prematurity phase as the actual period during which expenses exceed revenues. Although we find that the interim rule should be modified, we continue to reject the claims of commenters who argue that the wholesale inclusion of start-up losses in the ratebase is warranted. We also reject the assertion that we should allow deferred earnings into ratebase. To do so would artificially inflate the ratebase.

15. Thus, we find it appropriate to redefine our current definition of prematurity so as to account for the specific circumstances experienced by individual operators rather than continuing to use the FASB 51 standard. We are persuaded by the arguments that limitations on start-up losses should be governed by the history of individual operators. For capitalized start-up losses, build and hold operators should be permitted to recover reasonably incurred cumulative net losses, plus any unrecovered interest expenses connected to funding the regulated ratebase, over the unexpired life of the longest lived asset in the regulated ratebase, commencing with the end of the loss accumulation phase. In most cases, acquired systems will have recorded accumulated start-up losses as goodwill or as some other form of intangibles. To the extent that purchased systems can demonstrate that start-up losses have been recorded as goodwill or some other category of intangibles, these losses shall be allowed just as if they had been recorded as start-up losses and the system must itemize its assets instead of using the 66% purchase price allowance methodology described above. In allowing this however, we must emphasize this should not be interpreted as authority for the wholesale inclusion of goodwill. The burden remains on the operator to demonstrate that any portion of a class of assets is derived from start-up losses.

16. The end of the accumulation phase (i.e., the prematurity phase) will vary from system to system, depending upon the experience of the particular system at issue. By allowing the recovery to occur over the unexpired life of the longest lived asset in the regulated rate base rather than the remainder of the franchise life, the amortization period for purchased systems will realistically reflect the expected period during which the operating losses can be recovered.

D. Ratebase-Tangibles

17. We continue to believe that original cost is a reliable and fair measure of the value of tangible assets. However, our review of cost of service filings reveals that in many instances it could be difficult, if not impossible, to determine the original cost of a tangible asset. To accomodate this reality, for cable systems constructed before May 15, 1994, we will allow operators to use the book value that was recorded as of May 15, 1994, regardless of whether the system was built or acquired by the current operator. We will continue to require that original cost be used for cable systems constructed after May 15, 1994. Also, an operator that acquires individual cable assets, such as converters or remotes, at arms' length after May 15, 1994 may use its original cost for those items, rather than its seller's original cost.

18. An exception may apply to the original cost rule in the case of assets acquired in an arms-length transaction and without subscribership. In such instances, assets may be recorded at fair market value. Thus, where a cable operator sells converters, for example, to an unaffiliated operator to be used in a different franchise location, it is acceptable for the acquiring operator to record such converters at fair market value, that is, at the price the acquiring operator paid for them.

E. Rate of Return

19. In the Cost Order, we established a single overall rate of return for cable cost of service proceedings. The presumptive rate was set at 11.25% after taxes, although operators could seek different rates if they believed their circumstances justified different rates. The burden of such justification is high, however, and local authorities may counter an operator's effort to obtain a higher rate with evidence to justify a rate below 11.25%. The presumptive 11.25% rate was selected over individualized rates of return to avoid the imposition of undue administrative burdens.

20. The Commission will retain this 11.25% presumptive rate. We are guided to this conclusion by the general absence of challenges to the presumptive rate and our continued concern that the effort to set an appropriate rate of return not be overwhelmed by administrative difficulties that individualized rate estimations could entail. We recognize, however, that a unitary presumptive rate does not provide the most accurate estimation of capital costs for the full range of operators seeking to set cable rates in a cost of service filing. The Commission is interested in developing a rate of return formula that better accommodates capital cost differences among cable operators without imposing unreasonable administrative burdens on operators, franchise officials and the Commission. We will therefore proceed with a further notice of proposed rulemaking to solicit input regarding the development of an alternative rate of return formula. An alternative formula, if adopted, would serve as an alternative to the current presumptive rate method. It would not replace it.

F. Depreciation

21. We indicated in the Further Notice that industry practices with respect to depreciation would shape our ultimate resolution of the issue. Since release of the Further Notice, we have had the opportunity to review numerous cost of service filings. These filings demonstrate that some operators often do not follow any industry standards or other specific guidelines in establishing the useful lives of their assets for purposes of depreciation, or with respect to other aspects of their cost of service filings. As a result, the claimed useful life of a particular asset category can vary significantly among cable operators, even though they all use the same type of equipment and hence should be claiming roughly the same useful life in most instances. Some variation in the claimed useful lives is to be expected since, for example, management plans to replace equipment will affect its useful life and will vary among operators. Thus, when we adopted the interim rules with respect to depreciation, we expressly provided for case-by-case review of filings. However, we neither intended nor expected the substantial variations that the Form 1220s reveal. Our experience since adoption of the Cost Order now convinces us that the benefits of standardizing the useful lives of assets underlying depreciation rates outweigh any resulting burdens.

22. The absence of specific standards or guidelines with respect to useful lives creates uncertainty for operators and regulators alike and, at the local level, creates the risk of inconsistent treatment of similarly situated operators, given the varying practices of the operators and the discretion given to franchising authorities. These factors necessitate heightened scrutiny of cost of service cases before the Commission, as our

staff endeavors to ensure that the rates charged for regulated services are the product of reasonable estimations of useful lives. To provide for consistent treatment of these issues and to ease burdens on operators and regulators, we believe it prudent to establish some certainty and uniformity with respect to several issues.

23. *Depreciation schedules.* A staff survey of cost of service filings reveals significant disparities in the useful lives claimed by cable operators with respect to specific assets. Although for each particular asset category there are a substantial number of filers claiming useful lives within a relatively small range, there are also a significant number of outliers whose claimed useful lives appear to be inappropriate. With respect to headends, for example, 22% of filers claimed a useful life of between seven and nine years while 18% claimed between 15 and 16 years. For transmission facilities, 33% of filers set the useful life at five to six years, while 23% claimed lives of between 15 and 16 years.

24. The variations in the useful lives of various assets, as claimed by cable operators, are due in part to the absence of depreciation schedules in the interim cost rules, which forces operators to establish the useful lives of their assets on some other basis. Thus, it appears that operators do not have a great deal of specific guidance from any source in this regard, resulting in the variations described above.

25. Local franchising authorities face a similar lack of guidance when they attempt to determine the reasonableness of the useful lives that their cable operators claim. And the Commission staff that reviews the cost of service filings, in an effort to ensure equal treatment of similarly situated cable operators, must attempt to reconcile the substantial differences reflected in the individual filings.

26. To eliminate the uncertainty described above, and to facilitate more uniform depreciation practice for use in computing rates for regulated cable services, we will adopt a flexible range of useful lives for use by cable operators seeking to justify depreciation rates in cost of service filings. In general, we have used the data available from these filings to develop a range of years defining the useful life of each of the relevant asset categories identified in Section C, Item 9 of Form 1220, as follows:

Category	Useful life (years)
a. Headend	8–13
b. Transmission Facilities and Equipment	6–14
c. Distribution Facilities	10–15
d. Circuit Equipment	7–14
e. Maintenance Facilities	17–35
f. Maintenance Vehicles and Equipment	3–7
g. Buildings	18–33
h. Office Furniture and Equipment	9–11

27. These figures are derived from 600 cost of service filings. Such filings, including the depreciation data, are required to be made in accordance with generally accepted accounting principles (''GAAP''). GAAP does not dictate specific useful lives, but rather provides general guidelines. Thus, the useful lives reported on the cost-of-service filings reflect, to some extent, the subjective judgments of the operators making the filings. To the extent certain aspects of particular filings raise concerns, we have made adjustments accordingly. For example, we excluded from the observation pool as facially unreasonable the filings of a number of systems that claimed a useful life of one year for all of their assets.

28. Having made such adjustments, staff arrived at an average useful life for each asset category. Staff then established a range, by taking one standard deviation from the average useful life for each asset category. Each end of the range was then rounded to the nearest whole number. We have chosen a range of years, rather than dictating the use of a unitary figure, to provide operators with flexibility in determining depreciation rates for their particular systems, although still within reasonable bounds. By prescribing a range of years, we will permit operators to take into account factors that reflect characteristics of their individual systems. For example, the useful life of a cable distribution system might vary depending upon the presence and nature of a competing multichannel video programming distributor (''MVPD''). Depending upon whether the competing MVPD offers interactivity and other advanced features, the cable operator reasonably might determine that these factors will alter the obsolescence, and hence change the depreciation period, of the operator's assets that do have such features. Thus, while the ranges we have prescribed will provide for more consistent depreciation practices between cable operators, we do not believe it is necessary or prudent to deprive cable operators of all discretion to judge the appropriate useful life of their own property. However, operators seeking to establish useful lives that fall outside the prescribed ranges will have to justify such claims on a case-by-case basis.

29. Given the number of filings, the requirements of GAAP, the ability of operators to adjust for their individual circumstances, and the refinements and adjustments made by the staff, we are confident that the survey captures a representative sampling of data and produces a fair and reasonable range of years for each asset category.

30. For any asset category, we will presume the reasonableness of the useful life claimed by an operator if it falls within the range prescribed above. An operator may seek to depreciate assets over a period of time other than that which we have prescribed, but in that case the operator will have the burden of establishing the reasonableness of the period it has chosen. Thus, while furthering the goals of certainty and uniformity in the area of depreciation rates, our approach will be flexible enough to account for those unique circumstances in which an operator can demonstrate the reasonableness of a rate that falls outside of the prescribed range.

31. In addition, we will require the operator to depreciate its assets in accordance with the straight-line methodology. Our review of the Form 1220s on file with the Commission suggests that some operators are using accelerated depreciation methodologies to increase the amount of their depreciation expense and thus to increase rates. While there are contexts in which accelerated deprecation is a legitimate practice, we have been presented with insufficient justification to show that it would be appropriate for purposes of establishing rates under our cable cost of service rules.

32. *Test-year data.* Our cost of service rules establish a maximum permitted rate based on the operator's costs and ratebase as established during the test year, which is the operator's most recent fiscal year. In some instances, an operator will be able to time the filing of its 1220 such that the test year will be one in which unusually high depreciation write-offs were taken. Higher depreciation expenses translate into higher permitted rates, since rates must cover expenses. Thus, to the extent the operator can control the timing of its filing, it can justify rates that are higher than would be permitted were the operator to use data from a more representative 12 month period. The staff review of the Form 1220s suggests that some operators are pursuing precisely this strategy and thus artificially inflating rates.

33. Our new rules prescribing depreciation schedules and requiring straight-line depreciation should help to curb this practice. Where it nevertheless appears that the test-year data include unreasonably high depreciation write-offs, the operator should determine the extent to which the depreciation claimed for the test year exceeds normal depreciation and exclude the excess from the ratebase.

34. *Relevance of Franchise Life in Defining Useful Life of Assets.* The cost of service filings indicate that operators often claim that the useful life of cable system assets cannot exceed the term of the cable franchise, based on the proposition that the termination of the franchise renders the assets useless. However, this presumes that operators generally are unsuccessful at renewing the franchise, a premise for which there is no evidence and which conflicts with the general experience of the industry. Even in the event of a non-renewal, the operator might sell its asset to the new cable franchisee and thereby realize the value associated with its actual remaining life. For these reasons, we will presume that the term of the franchise is not relevant for purposes of determining the useful life of cable system assets, again subject to rebuttal by the operator if it can show, for example, some threat that its franchise will not be renewed and that in the event of non-renewal the operator will not be able to recover the value of its assets.

G. Taxes

35. In the *Cost Order,* we provided for the recovery in income taxes as an expense incurred by operators as a consequence of providing regulated cable services. Commenters have argued that capital structure assumptions used to calculate the tax expense should parallel the capital structure assumptions used to estimate the rate of return.

36. We agree that use of actual capital structures is the appropriate method of estimating the equity portion subject to tax recovery when the actual, or individualized, capital structure of an operator is used to establish the rate of return. Accordingly, if we adopt the proposed alternative to use actual capital structures when calculating the rate of return, we will rely on actual capital structures derived from the rate of return analysis to determine the amount of tax recovery for operators using the alternative to the presumptive 11.25% rate. However, when hypothetical structures are used to set the rate of return under the initial Cost Order method, we will employ the same capital structure assumptions used in such analysis to the tax calculation.

37. With respect to distributions to individual owners of non-Chapter C entities, we will continue to adjust the income calculation for estimating allowed taxes. We recognize that entities other than Chapter C corporations may pass through income directly to the individual owners and that this income may have been derived from the provision of regulated cable services. Nevertheless, we will continue to adhere to the traditional principle of adjusting the income tax amount to ensure that ratepayers do not pay the taxes of individuals who are structurally separate from the entity providing the regulated service.

H. Cost Allocation

38. While our current cost allocation rules require direct assignment of costs, the rules also allow for operator flexibility in determining specific allocators and allocation schemes. Accordingly, we affirm the Commission's current cost allocation requirements, with the exception of our rule which requires cost allocation of non regulated costs to specific non regulated service categories, which we remove. We also clarifiy that, within our current cost allocation methods which are affirmed by the Order, revenues must be matched with underlying expenses between related lines on FCC Form 1220, and that allocators need to be consistent.

39. The general propositions upon which we continue to base our cost allocation requirements are as follows: (1) costs shall be directly assigned among the equipment basket and service cost categories whenever possible; (2) costs that cannot be directly assigned and which no allocator has been specified by the Commission are to be allocated based on direct analysis of the origin of the costs, and where allocation based on direct analysis is not possible, operators must attempt to make a cost causative linkage to other costs directly assigned or allocated to the service cost categories and the equipment basket; and (3) for costs that cannot be directly assigned and for which no indirect measures of cost allocation can be found, such costs shall be allocated to each service cost category based on the ratio of all other costs directly assigned and attributed to a service cost category over total costs directly or indirectly assigned and directly or indirectly attributable.

40. We eliminate cost allocation of non-regulated costs to specific non-regulated service categories. While the requirement may in some limited instances enable us to more readily ascertain the bases for cost allocations to regulated categories, we believe that it would be overly burdensome to continue to include this requirement in our rules. Therefore, we amend our rules to remove the requirement that non-regulated costs must be allocated among the non-regulated programming service categories, other cable activities, and non-cable activities categories, and replace these categories with a single ''all other'' service cost category. Accordingly, operators electing cost of service regulation and cable operators seeking an adjustment to external costs shall allocate costs among the equipment basket and the following service cost categories: (1) BST, (2) CPST, and (3) all other. The ''all other'' service cost category shall include all costs not included in the BST or CPST service cost categories.

41. We decline to adopt a ''weighted channel'' approach to cost allocation. Generally, incremental increases in plant investment are driven by the number of channels added, irrespective of subscribership to BST channels. The number of subscribers does not impact costs in most cable equipment categories. Accordingly, we believe that in most cases, a straight channel ratio would be a reasonable approach to the allocation of plant costs amongst service baskets.

42. We also reject the proposition that advertising revenues and home shopping services be assigned to the ''other cable services'' category. The allocation approach for cost of service showings reflected in FCC Form 1220 indicates that revenues received for advertising and home shopping on a regulated tier should be allocated to that tier, and used as an offset to providing service on that tier. We adopted this approach because advertising and home shopping shown on regulated channels employ regulated assets and, consequently, these revenues should be distributed as offsets to the regulated tier revenue requirements.

I. Accounting Requirements

43. In the *Cost Order,* we stated that we would adopt a uniform system of accounts for those cable operators that elect cost of service regulation. We concluded that until a uniform system of accounts could be finalized, operators electing cost of service regulation should use an interim summary accounting system. Under the interim system that we adopted, operators using FCC Form 1220 identify costs in 55 summary level accounts, and small operators using FCC Form 1225 identify costs in 32 summary level accounts.

Operators are required to identify all amounts associated with each revenue and cost category at the franchise, system, regional and/or company level, depending on the organizational level at which the operator identified revenues and costs for accounting purposes as of April 3, 1993. Local franchising authorities and the Commission may require operators to provide any additional financial data and explanations necessary to substantiate a cost of service filing and may order appropriate disallowances if an operator fails to provide a reasonable response.

44. We now conclude that a uniform system of accounts would be unnecessarily burdensome for cable operators at this time. Our review of the cost of service filings has shown that FCC Forms 1220 and 1225 generally provide a sufficiently detailed basis for evaluating operators' rates. The additional detail provided by a uniform system of accounts would be of limited value since most of the filing defects we have discovered thus far are company-specific and would not have been prevented by a uniform accounting system. Our practice of issuing deficiency letters when questions arise has proved to be an adequate means of clarifying data. Therefore, we agree that investing the time required to develop a uniform system would be counter-productive to achieving our objective to process cases as expeditiously as possible. We are also persuaded that imposing a different accounting system on the relatively few systems filing cost of service justifications may create administrative inefficiencies for cable operators. Therefore, we will not adopt a uniform accounting system but will require operators electing cost of service regulation to follow the accounting standards required by FCC Forms 1220 and 1225, thus making permanent our interim accounting standards.

J. Affiliate Transactions

45. In the Cost Order, we promulgated rules for valuing transactions between cable operators and affiliated companies. These rules were designed to prevent favorable self-dealing between affiliated companies in order to manipulate our rate rules. We defined an affiliated entity as one that shares a 5% or greater ownership interest with the cable system operator. The interim rules require an affiliated transaction to be valued at the ''prevailing company price,'' if the provider has sold the same kind of asset or services to a substantial number of third parties at a generally available price. If the provider has not been engaged in similar transactions with a substantial number of third parties, the rules distinguish between the sale of an asset and the sale of a service (for the purposes of evaluating affiliate transactions, programming is considered an asset). If the transaction involves an asset, the cable operator is required to value the transaction at the higher of cost or fair market value when the cable operator is the seller and the lower of cost or fair market value when the cable operator is the purchaser. If the transaction involves a service and no prevailing company price can be established, the cable operator is required to value the service at the service provider's cost.

46. We reject the argument to permit a window for new services, i.e., until they can market their services to a substantial number of third parties. In a competitive market, programmers would not be able to subsidize new services with higher rates for competitive services. Similarly, in a regulated industry, programmers cannot expect regulated ratepayers to subsidize new programming ventures.

47. We also requested comment on an appropriate method of valuing an asset absent a prevailing company price. Ruling that cable operators are permitted to value services at the provider's cost is consistent with the current rules for telephone companies and there appears to be no reason to distinguish the two industries in this particular context. This is especially true in light of the more liberal definition of prevailing company price in the cable services regulatory scheme.

48. We also find that the current definition of ''affiliate'' is consistent with the definition used elsewhere in the cable services regulatory scheme.

49. Finally, we requested comment as to whether the interim affiliate transaction rules should be incorporated into a uniform system of accounts. Since we have found that no need exists at this time to adopt a uniform system of accounts, this point is moot.

K. Hardship Rate Relief

50. In the Cost Order, we recognized that, in certain extraordinary cases, rate regulation under either the benchmark or cost of service mechanisms would threaten an operator's financial health or ability to provide service. In such situations, an operator may obtain special rate relief by demonstrating that rate regulation using either of the two standard rate-setting options would cause such financial harm that the operator would be unable to attract capital or maintain credit necessary to operate, despite prudent and efficient management. The operator must show that the requested rate relief would not be unreasonable or exploitative of customers. In other words, rates cannot be excessive compared to competitive rates of similarly situated systems. Hardship showings must be made for the MSO level, or the highest level of the operator's cable system organization. Operators that submit an adequate initial showing of facts which, if proved, might warrant special relief, are subsequently given the opportunity to prove the facts alleged in the showing.

51. We now believe that the process could be shortened by eliminating the requirement of an initial showing. We will therefore allow operators to combine the requirements of the initial factual showing and the subsequent evidentiary showing into one pleading.

52. We continue to believe that we are authorized to consider an operator's unregulated revenues when determining eligibility for hardship relief. An evaluation of an operator's financial health that is based on only a portion of the operator's revenues would be incomplete and inaccurate. Similarly, it is appropriate to consider a hardship pleading in light of an operator's revenues measured at the highest level of the operator's organization. Hardship relief is an extraordinary relief measure reserved for operators whose overall financial health would be seriously threatened under the standard rate regulation mechanisms. It is not designed to bail out struggling cable systems that are owned and operated by prosperous MSOs. Lastly, the requirement that rates cannot be excessive compared to competitive rates of similarly situated systems does not mean that rates cannot exceed competitive rates. Rather, we expect operators to show that their rates would not exceed competitive rates to a degree that would be unreasonable.

II. Regulatory Flexibility Analysis

A. Final Regulatory Flexibility Act Analysis for the Second Report and Order and First Order on Reconsideration

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

54. Need and purpose of this action: The Commission, in compliance with Section 3 (b) and (c) of the Cable Television Consumer Protection and Competition Act of 1992 pertaining to rate regulation, adopts rules and procedures intended to ensure cable subscribers of reasonable rates for cable

services with minimum regulatory and administrative burden on cable entities.

55. Summary of issues raised by the public in response to the Initial Regulatory Flexibility Analysis: There were no comments submitted in response to the Initial Regulatory Flexibility Analysis. The Chief Counsel for Advocacy of the United States Small Business Administration filed comments in the original rulemaking order. The Commission addressed these comments in the Rate Order (MM Docket No. 92–266, FCC 93–177, 8 FCC Rcd 5631 (1993)). The Chief Counsel for Advocacy of the United States Small Business Administration also filed comments in response to the Further Notice of Proposed Rulemaking. Those comments are addressed herein.

56. Significant alternatives considered and rejected. Petitioners representing cable interests and franchising authorities submitted several alternatives aimed at minimizing administrative burdens. In this proceeding, the Commission has attempted to accommodate the concerns raised by these parties. For example, the revised rules regarding action on rate complaints within two years of a cost of service showing are designed to reduce burdens on both industry and regulators. In addition, the revised rules also reduce burdens on both industry and regulators by simplifying certain calculations involved in producing and reviewing a cost of service showing.

III. Paperwork Reduction Act

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

IV. Ordering Clauses

58. Accordingly, it is ordered that the Petitions for Reconsideration are granted in part, denied in part, and to the extent that Petitions raise issues unresolved in this order, they will be disposed of in future orders.

59. It Is further ordered that, pursuant to Sections 4(i), 4(j), 623 (b) and (c) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 543(b) and (c) the rules, requirements and policies discussed in this Second Report and Order and First Order on Reconsideration are adopted and Sections 76.922 and 76.924 of the Commission's rules, 47 CFR 76.922 and 76.924, are amended as set forth below.

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

61. It is further ordered that the Secretary shall send a copy of this Second Report and Order, First Order on Reconsideration, and Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. §§ 601 et seq. (1981).

List of Subjects in 47 CFR Part 76

Cable television, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

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

PART 76—CABLE TELEVISION SERVICE

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

Authority: Sections 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 1101; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309; 612, 614–615, 623, 632 as amended, 106 Stat. 1460, 47 U.S.C. 532; 623, as amended, 106 Stat. 1460; 47 U.S.C. 532, 533, 535, 543, 552.

2. Section 76.922 is amended by revising paragraphs (i)(6)(i) and (i)(7), redesignating paragraphs (i)(6)(ii) through (i)(6)(vii) as paragraphs (i)(6)(iii) through (i)(6)(viii) respectively, and adding a new paragraph (i)(6)(ii) to read as follows:

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

* * * * *

(i) * * *

(6) * * *

(i) Prudent investment by a cable operator in tangible plant that is used and useful in the provision of regulated cable services less accumulated depreciation. Tangible plant in service shall be valued at the actual money cost (or the money value of any consideration other than money) at the time it was first used to provide cable service, except that in the case of systems purchased before May 15, 1994 shall be presumed to equal 66% of the total purchase price allocable to assets (including tangible and intangible assets) used to provide regulated services. The 66% allowance shall not be used to justify any rate increase taken after the effective date of this rule. The actual money cost of plant may include an allowance for funds used during construction at the prime rate or the operator's actual cost of funds during construction. Cost overruns are presumed to be imprudent investment in the absence of a showing that the overrun occurred through no fault of the operator.

(ii) An allowance for start-up losses including depreciation, amortization and interest expenses related to assets that are included in the ratebase. Capitalized start-up losses, may include cumulative net losses, plus any unrecovered interest expenses connected to funding the regulated ratebase, amortized over the unexpired life of the franchise, commencing with the end of the loss accumulation phase. However, losses attributable to accelerated depreciation methodologies are not permitted.

* * * * *

(7) Deferred income taxes accrued after the date upon which the operator became subject to regulation shall be deducted from items included in the ratebase.

* * * * *

3. Section 76.924 is amended by revising the section heading, removing paragraphs (e)(1)(iv), (e)(1)(v), (e)(2)(iv) and (e)(2)(v), and revising paragraphs (e)(1)(iii) and (e)(2)(iii) to read as follows:

§ 76.924 Allocation to service cost categories.

* * * * *

(e) * * *

(1) * * *

(iii) All other services cost category. The all other services cost category shall include the costs of providing all other services that are not included the basic service or a cable programming services cost categories as defined in paragraphs (e)(1)(i) and (ii) of this section.

(2) * * *

(iii) The all other services cost category as defined by paragraph (e)(1)(iii) of this section.

* * * * *

[FR Doc. 96–5427 Filed 3–7–96; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 260–267

[Docket No. 960222044–6044–01; I.D. 022096D]

Removal and Revision of Inspection Standards and Regulations

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

ACTION: Final rule.

SUMMARY: In response to the President's Regulatory Reform Initiative, NMFS amends the Code of Federal Regulations (CFR) by removing the product-specific voluntary Inspection Program (Program) standards for grades for fish and fishery products. These standards will be issued as Program policies and be contained in the NMFS Fishery Products Inspection Manual. The remaining regulations on these standards in the CFR are being revised to state the minimum requirements necessary for a grade standard to be issued as a Program policy.

EFFECTIVE DATE: March 8, 1996.

FOR FURTHER INFORMATION CONTACT: Richard V. Cano, Inspection Services Division, (301) 713–2355.

SUPPLEMENTARY INFORMATION: In an effort to reduce the volume of regulations that are maintained in the CFR, the Administration instructed all Departments to review their regulations to determine what could be eliminated, reinvented or consolidated. NMFS determined that it could reduce NOAA's regulatory burden as well as be more responsive to the industry's technological advances and the demands of the marketplace by issuing its voluntary United States Standards for Grades as Program policies instead of publishing them in the CFR. Compliance with a voluntary standard issued as a Program policy does not relieve any party from the responsibility to comply with the provisions of the Federal Food, Drug, and Cosmetic Act or other Federal laws and regulations.

Any notices of application to the Program for a new grade standard will continue to be published in the Federal Register for comment.

Background

NMFS operates a voluntary fee-for-service inspection program so that fishery products may be marketed to the best advantage, trading may be facilitated, and consumers may be able to obtain the quality product they desire. The Program's regulations pertaining to grades of fishery products apply primarily to those who use or advertise the Program's services to demonstrate compliance with established processing requirements and nationally recognized quality criteria. Standards for grades are voluntary standards developed pursuant to delegated authorities of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*). The Program does not require the use of these standards.

Standards for grades are mechanisms for sorting raw and processed fish and fishery products into different levels of quality. Distinctions between levels of quality, or grade categories, are made within single product groups (e.g., fish portions to fish portions) and not across product groups (e.g., fish portions to frozen shrimp). Each level of quality is based on the absence of undesirable attributes or characteristics. Since each product group has different inherent attributes and characteristics, a separate standard for grades is necessary for each product group. For example, breaded fish portions have inherently different defect characteristics, such as blood spots, bones, and scales, than frozen shrimp.

A major function of the Program's voluntary standards for grades is to provide users with a uniform measure of product quality and a common, national, commercial language for trade. Nationally recognized standards for grades facilitate efficient and orderly marketing of fish and fishery products and allow buyers to make informed decisions. Additionally, international traders of fish and fishery products frequently use the criteria in the grade standards as buyer/seller references.

Development or revision of a grade standard is performed at the request of the industry or at the suggestion of NMFS if it is believed that considerable technological changes have occurred in an industry that render the current standard outdated. In either case, there must be adequate interest by affected parties in developing or revising a standard, since it must reflect the needs and capabilities of the industry and users as a whole. The grade standards are developed cooperatively with Government, industry, and users of the standards (i.e., Department of Agriculture, Department of Defense, retailers, restaurateurs, etc.) participating in technical working groups. The draft standard is field-tested and the results collected by NMFS inspectors and industry quality assurance personnel are analyzed to assess the draft standard's performability.

The Program intends to retain the same reasonable and reliable procedures in the development of grade standards but eliminate the inherent delays in formal rulemaking. These time constraints have prevented U.S. processors from obtaining the marketing benefits of the grade marks and also hindered the consumer's ability to identify and choose fishery products of consistent high quality. These delays are particularly aggravating and unnecessary when minimal revisions to standards are necessary to address changing processing conditions, product forms, or market demands. Therefore, NMFS concluded it could better serve Program participants and the public if the standards for grades were issued as Program policy. This action is consistent with the President's Regulatory Reform Initiative to reduce the volume of regulations.

All Program policies are contained within the NMFS Fishery Products Inspection Manual and will no longer appear in the CFR. A new paragraph at § 260.84 will reference the manual.

Classification

Because this rule only removes voluntary standards that have been determined need not be published as regulations, no useful purpose would be served by providing prior notice and opportunity for public comment on this rule. Accordingly, under 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries, NOAA (AA) for good cause, finds that it is unnecessary to provide prior notice and an opportunity for public comment for this rule. Also, because this rule only removes regulations that are no longer needed and the revisions impose no new obligations, the AA, for good cause, finds that no useful purpose would be served by delaying the rule's effective date for 30 days. Therefore, this rule is made effective upon publication.

This final rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects

50 CFR Part 260

Food grades and standards, Food labeling, Seafood.

50 CFR 261–267

Food grades and standards, Frozen foods, Seafood.

Dated: February 29, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Chapter VI is amended as follows:

PART 260—INSPECTION AND CERTIFICATION

1. The authority citation for part 260 continues to read as follows:

Authority: Section 6, 70 Stat. 1122, 16 U.S.C. 742e; secs. 203, 205, 60 Stat. 1087, 1090 as amended; 7 U.S.C. 1622, 1624; Reorganization Plan No. 4 of 1970 (84 Stat. 2090).

2. Section 260.84 is added under the undesignated center heading ''miscellaneous'' to read as follows:

§ 260.84 Policies and procedures.

The policies and procedures pertaining to any of the inspection services are contained within the NMFS Fishery Products Inspection Manual. The policies and procedures are available from the Secretary to any interested party by writing to Document Approval and Supply Services Branch, Inspection Services Division, P.O. Drawer 1207, 3207 Frederic St., Pascagoula, MS 39568–1207.

3. Part 261 is revised to read as follows:

PART 261—UNITED STATES STANDARDS FOR GRADES

Authority: 7 U.S.C. 1621–1630

§ 261.101 Standard description.

A U.S. Standard for Grades authorized under this part is a standard for a fish or fishery product that has been developed and adopted by the voluntary seafood inspection program pursuant to the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*) and other authorities delegated to the U.S. Department of Commerce.

§ 261.102 Publication and removal of U.S. Grade Standards.

(a) The voluntary U.S. Standards for Grades adopted pursuant to this part shall be issued as Program policies and contained within the NMFS Fishery Products Inspection Manual. Compliance with voluntary standards issued as Program policies within the manual shall satisfy the requirements of this part. Compliance with a voluntary standard issued as a Program policy does not relieve any party from the responsibility to comply with the provisions of the Federal Food, Drug, and Cosmetic Act; or other Federal laws and regulations.

(b) Notification of an application for a new grade standard shall be published in the Federal Register. If adopted, the grade standard shall be issued as a Program policy and contained in the NMFS Fishery Products Inspection Manual.

(c) Recision and revision of a U.S. Standard for Grades will be made a Program policy amendment and contained in the NMFS Fishery Products Inspection Manual.

(d) The NMFS Fishery Products Inspection Manual is available to interested parties.

§ 261.103 Basis for determination of a U.S. Standard for Grades.

(a) To address the inherently distinct and dissimilar attributes found in the fishery product groups, each standard for grades should have a different scope and product description, product forms, sample sizes, definition of defects, etc. The Secretary will make the final determination regarding the content of a U.S. Standard for Grades.

(b) A proposal for a new or revised U.S. grade standard may include the following:

(1) *Scope and product description*, which describes the products that are eligible for grading using the standard (e.g., fish portion, fish fillet).

(2) *Product forms*, which describe the types, styles and market forms covered by the standard (e.g., skin-off, tail-on, headless).

(3) *Grade and inspection marks*, which describe the grades and inspection mark criteria for each grade category (e.g., Grade A ≤ 15 points).

(4) *Grade determination*, which describes the means by which the grade is determined (i.e., the factors rated by score points and those that are not). Standards may contain defect grouping limiting rules that contain additional provisions that must be met.

(5) *Sampling*, which describes the method of sampling and sample unit sizes (e.g., 10 portions, 8 ounces, etc.).

(6) *Procedures* that describe the process used to determine the product grade (e.g., label declarations, sensory evaluation).

(7) *Definitions of defects*, which outline the defects associated with the products covered by the standard, defines them, and describes the method of counting or measuring the defects. This section may provide associated defect points or reference a defect table (e.g., bruises, blood spots, bones, black spots, coating defects, 1–inch squares, percent by weight, ratios).

(8) *Defect point assessment*, which describes how to assess points and provides any special guidance that may be necessary to the particular standard (e.g., defect points for certain categories are added together and divided by the weight of the sample unit; the number of instances are counted to determine if it is slight, moderate, or excessive defect).

(9) *Tolerances for lot certification*, which provide the sections from Title 50 CFR that regulate lot certification.

(10) *Hygiene*, which specifies the sections of applicable Federal regulations regulating the safe, wholesome production of food for human consumption.

(11) *Methods of analysis*, which describe the methods of analysis that will be used in the evaluation of the products covered by the standard for grades (e.g., net weight, deglazing, debreading).

(12) *Defect table*, which is the table of defects and associated points to be assessed for each defect.

PARTS 262 THROUGH 267—[REMOVED]

4. Under the authority of 16 U.S.C. 742e and 7 U.S.C. 1622, 1624, parts 262 through 267 are removed.

[FR Doc. 96–5325 Filed 3–7–96; 8:45 am]

BILLING CODE 3510–22–F

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50 CFR Part 351

[Docket No. 960228055–6055–01; I.D. 022396B]

Whaling Provisions; Elimination of Regulations

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

ACTION: Final rule.

SUMMARY: NMFS is eliminating outdated regulations pertaining to whaling. This action will reduce Federal regulations consistent with the President's Regulatory Reinvention Initiative.

EFFECTIVE DATE: March 8, 1996.

FOR FURTHER INFORMATION CONTACT: Dr. Kevin Chu (508)548–5123.

SUPPLEMENTARY INFORMATION:

In March 1995, President Clinton issued a directive to Federal agencies regarding their responsibilities under his Regulatory Reinvention Initiative. This initiative is part of the National Performance Review and calls for immediate, comprehensive regulatory reform. The President directed all agencies to undertake an exhaustive review of all their regulations, with an

emphasis on eliminating or modifying those that are obsolete, duplicative, or otherwise in need of reform. This final rule is intended to carry out the President's directive with respect to the regulations implementing the Whaling Convention Act of 1949 (U.S.C. 916 *et seq.*).

Based on its review, NMFS is removing 50 CFR part 351, which pertains to the regulation of whaling. Part 351 contains the 1984 regulations of the International Whaling Commission (IWC). No portion of part 351 is relevant to the management of whaling within the United States today. Most of part 351 deals with regulations pertaining to commercial whaling, which is illegal in the United States. The sections of part 351 dealing with aboriginal whaling, which is permitted under some circumstances in the United States, regulated only the 1984 and 1985 whale hunt and are, therefore, no longer necessary.

Aboriginal whaling within the United States remains regulated under 50 CFR part 230. Part 230 also contains certain outdated material, which will be revised and updated through another rulemaking to be published in the Federal Register.

The elimination of 50 CFR part 351 by this final rule is intended to reduce the volume and publication costs of the regulations.

Classification

This final rule has been determined to be not significant for the purposes of E.O. 12866.

Because this rule only eliminates regulations that are no longer applicable to anyone, no useful purpose would be served by providing notice and the opportunity for public comment. Accordingly, the Assistant Administrator for Fisheries, NOAA (AA), under 5 U.S.C. 553(b)(B), for good cause finds that providing notice and opportunity for public comment is unnecessary. For the same reason, the AA, under 5 U.S.C. 553(d), for good cause finds that a 30-day delay in their elimination is unnecessary.

List of Subjects in 50 CFR Part 351

Fisheries, Marine mammals, Reporting and recordkeeping requirements, Treaties.

Dated: March 1, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, under authority of Article 5, 62 Stat. 1718, sec. 2–14, 64 Stat. 421–425; 16 U.S.C. 916 *et seq.*, 50 CFR part 351 is removed and subchapter B is reserved.

[FR Doc. 96–5482 Filed 3–7–96; 8:45 am]

BILLING CODE 3510–22–F

50 CFR Part 675

[Docket No. 960129019–6019–01; I.D. 030496E]

Groundfish of the Bering Sea and Aleutian Islands Area; Pacific Ocean Perch in the Eastern Aleutian District

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

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for Pacific ocean perch in the Eastern Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the specification of Pacific ocean perch in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), March 5, 1996, until 12 midnight, A.l.t., December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(7)(ii), the Final 1996 Harvest Specifications of Groundfish (61 FR 4311, February 5, 1996) for the BSAI established 2,571 metric tons (mt) as the initial total allowable catch for Pacific ocean perch in the Eastern Aleutian District.

The Director, Alaska Region, NMFS (Regional Director), has determined, in accordance with § 675.20(a)(8), that the Pacific ocean perch initial total allowable catch in the Eastern Aleutian District subarea soon will be reached. Therefore, the Regional Director has established a directed fishing allowance of 2,471 mt after determining that 100 mt will be taken as incidental catch in directed fishing for other species in the Eastern Aleutian District. NMFS is prohibiting directed fishing for Pacific ocean perch in the Eastern Aleutian District to prevent exceeding the directed fishing allowance.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under § 675.20 and is exempt from review under E.O. 12866.

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

Dated: March 4, 1996.

Richard W. Surdi,

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

[FR Doc. 96–5560 Filed 3–5–96; 3:44 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 47
Friday, March 8, 1996

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

9 CFR Parts 1 and 3

[Docket No. 93–076–8]

RIN 0579–AA59

Animal Welfare; Marine Mammals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The purpose of this notice is to announce the second and final meeting of the Marine Mammal Negotiated Rulemaking Advisory Committee.

DATES: April 1 through 3, 1996, from 8:30 a.m. to 4:30 p.m. each day.

ADDRESSES: The meeting will be held at the USDA Center at Riverside, Conference Center Rooms A and B, 4700 River Road, Riverdale, Maryland 20737, (301) 734–7833.

FOR FURTHER INFORMATION CONTACT: Dr. Barbara Kohn, Senior Staff Veterinarian, Animal Care Staff, REAC, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1234, (301) 734–7833.

SUPPLEMENTARY INFORMATION: In a Federal Register notice published on May 22, 1995 (60 FR 27049–27051, Docket No. 93–076–3), we announced our intent to establish a Marine Mammal Negotiated Rulemaking Advisory Committee (Committee), chartered under the Federal Advisory Committee Act (Pub. L. 92–463). The Committee will review the current regulations and standards under the Animal Welfare Act concerning the care and maintenance of captive marine mammals, and provide consensus language to amend the regulations. The first meeting of the Committee, which was announced in a Federal Register notice published on September 8, 1995 (60 FR 46783–46784, Docket No. 93–076–7), was held on September 25–26, 1995. This notice announces the second and final meeting of the Committee.

The purpose of the meeting is to bring together members of the Animal and Plant Health Inspection Service, representatives of the marine mammal public display community, the marine mammal research community, the animal welfare community, and members of other Federal agencies with a definable stake in marine mammal care issues to frame a recommended rulemaking proposal to amend the current regulatory program concerning care and maintenance standards for captive marine mammals.

The Committee will determine the final agenda for the meeting at its beginning. The tentative agenda for the meeting is as follows:

First Day

Morning Session—8:30 a.m.

Establish Agenda for Meeting
Discussion of Marine Mammal Regulations

Afternoon Session—1 p.m.

Discussion of Marine Mammal Regulations
Public Comments

Second Day

Morning Session—8:30 a.m.

Establish Agenda for Day
Committee Administrative Issues
Discussion of Marine Mammal Regulations

Afternoon Session—1 p.m.

Discussion of Marine Mammal Regulations
Public Comments

Third Day

Morning Session—8:30 a.m.

Establish Agenda for Day
Committee Administrative Issues
Discussion of Marine Mammal Regulations

Afternoon Session—1 p.m.

Discussion of Marine Mammal Regulations
Public Comments

The meeting will be open to the public. Public participation at the meeting will be allowed during periods announced at the meeting for this purpose.

This notice is given pursuant to section 10 of the Federal Advisory Committee Act.

Done in Washington, DC, this 4th day of March 1996.

Lonnie J. King,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–5580 Filed 3–7–96; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–160–AD]

Airworthiness Directives; Jetstream BAe Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Jetstream BAe Model ATP airplanes. This proposal would require repetitive inspections to detect damage of the antenna mounting reinforcing plates and surrounding fuselage skin. If any damage is detected, the proposed AD would require replacement of the reinforcing plate with a new reinforcing plate and/or repair the surrounding fuselage skin, which would terminate the repetitive inspection requirements. This proposal is prompted by reports of corrosion found at the antenna reinforcing plates, which was caused by the ingress of water at the plates. The actions specified by the proposed AD are intended to prevent such corrosion, which could result in reduced structural integrity of the fuselage pressure vessel.

DATES: Comments must be received by April 18, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–160–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029,

Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–160–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–160–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain Jetstream BAe Model ATP airplanes. The CAA has received a report indicating that corrosion was found on at least two airplanes at the antenna reinforcing plates. The cause of such corrosion has been attributed to the ingress of water at the plates. Corrosion of the antenna reinforcing plates, if not detected and corrected in a timely manner, could result in reduced structural integrity of the fuselage pressure vessel.

Jetstream has issued Service Bulletin ATP–53–31, dated July 1, 1995, which describes procedures for repetitive detailed external visual inspections to detect damage (i.e., corrosion, cracks, pillowing, and rivet pulling) of the antenna mounting reinforcing plates and surrounding fuselage skin. For cases where any damage is detected during the inspection, the service bulletin describes procedures for replacement of the reinforcing plate with a new reinforcing plate and/or repair the surrounding fuselage skin. Accomplishment of the replacement/repair would eliminate the need for the repetitive inspections. The CAA classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require repetitive detailed external visual inspections to detect damage (i.e., corrosion, cracks, pillowing, and rivet pulling) of the antenna mounting reinforcing plates and surrounding fuselage skin. For cases where any damage is detected during the inspection, the proposed AD would require replacement of the reinforcing plate with a new reinforcing plate and/or repair the surrounding fuselage skin; this replacement/repair would constitute terminating action for the repetitive inspection requirements. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 10 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,200, or $120 per airplane, per inspection cycle.

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

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

Jetstream Aircraft Limited (Formerly British Aerospace Commercial Aircraft Limited): Docket 95–NM–160–AD.

Applicability: BAe Model ATP airplanes having constructor's numbers 2002 through 2063 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent corrosion of the antenna mounting reinforcing plates and surrounding skin, which could result in reduced structural integrity of the fuselage pressure vessel, accomplish the following:

(a) Within 6 months after the effective date of this AD, perform a detailed external visual inspection to detect damage (i.e., corrosion, cracks, pillowing, and rivet pulling) of the antenna mounting reinforcing plates and surrounding fuselage skin in accordance with PART A of the Accomplishment Instructions of Jetstream Service Bulletin ATP–53–31, dated July 1, 1995.

(1) If no damage is detected, repeat the inspection thereafter at intervals not to exceed 1 year.

(2) If any damage is detected, replace the reinforcing plate with a new reinforcing plate and/or repair the surrounding fuselage skin at the applicable times specified in Figure 4 of the service bulletin, and in accordance with PART B of the Accomplishment Instructions of the service bulletin. Accomplishment of the replacement/repair constitutes terminating action for the repetitive inspection requirements of paragraph (a) of this AD.

(b) Accomplishment of the replacement/repair procedures specified in PART B of the Accomplishment Instructions of Jetstream Service Bulletin ATP–53–31, dated July 1, 1995, constitutes terminating action for the requirements of this AD.

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

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

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

Issued in Renton, Washington, on March 4, 1996.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–5526 Filed 3–7–96; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 886

[Docket No. 93P–0277]

Ophthalmic Devices; Reclassification of Neodymium:Yttrium:Aluminum:Garnet (Nd:YAG) Laser for Peripheral Iridotomy

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; notice of panel recommendation.

SUMMARY: The Food and Drug Administration (FDA) is proposing to reclassify the ophthalmic neodymium:yttrium:aluminum:garnet (Nd:YAG) laser (mode-locked or Q-switched) intended for peripheral iridotomy from class III (premarket approval) into class II (special controls). The agency is also issuing for public comment the recommendation of the Ophthalmic Devices Panel (the Panel) regarding the reclassification of this device. The Panel made this recommendation after reviewing the reclassification petition submitted by Intelligent Surgical Lasers, Inc. (ISL). FDA is also issuing for public comment its tentative findings on the Panel's recommendation and its intent to change the generic designation of the device from Nd:YAG laser for posterior capsulotomy to Nd:YAG laser for posterior capsulotomy and peripheral iridotomy. After considering any public comments on the Panel's recommendation and FDA's tentative findings, FDA will approve or deny the reclassification petition by order in the form of a letter to the petitioner. FDA's decision on the petition will be announced in the Federal Register. If the petition is approved and the device is reclassified into class II, FDA will publish a final rule to codify the reclassification.

DATES: Written comments by June 6, 1996.

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

FOR FURTHER INFORMATION CONTACT: Morris Waxler, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2018.

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 2, 1993, ISL submitted a petition under section 513(f)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c(f)(2)), requesting that the ophthalmic Nd:YAG laser (mode-locked or Q-switched) intended for peripheral iridotomy be reclassified from class III into class II.

The subject device is automatically classified into class III under section 513(f)(1) of the act because it is not within a type of device that was introduced or delivered for introduction into interstate commerce for commercial distribution before May 28, 1976, it is not substantially equivalent to such a device, and it is not substantially equivalent to a device placed in commercial distribution since May 28, 1976, which was subsequently reclassified into class II or class I.

Section 513(f)(2) of the act provides that FDA may initiate the reclassification of a device classified into class III under section 513(f)(1) of the act, or the manufacturer or importer of the device may petition the agency to reclassify the device into class I or class II. FDA's regulations in 21 CFR 860.134 set forth the procedures for filing and review of a petition to reclassify these class III devices. In order to reclassify the ophthalmic Nd:YAG laser (mode-locked or Q-switched) for peripheral iridotomy into class II, it is necessary that the proposed new class has sufficient regulatory controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use.

II. Background

Nd:YAG lasers originally were developed for industrial applications, and were successfully employed in such industries as watchmaking prior to the initiation of clinical trials in Europe and the United States. Therefore, the basic principles of operation of the device

were scientifically established well before any clinical testing of the device in ophthalmic surgery.

Surgical iridectomies, i.e., manual surgical excisions of part of the iris, were performed, with mixed results, in the late 1800's to relieve the symptoms of glaucoma. In 1920, the differences between the various types of glaucoma were described and it then became apparent why the surgery relieved the symptoms of some patients and not others. As a result, peripheral surgical iridectomies were then performed only on patients with pupillary-block (angle-closure) glaucoma.

Argon laser iridotomies, surgery with an argon laser to create an iris hole, became the preferred treatment for most cases of angle-closure glaucoma in the 1970's. Although there were advantages to the use of argon lasers (reduced risk of flat chamber, wound leak, endophthalmitis, malignant glaucoma, and lens subluxation), there were different complications associated with the new modality (permanent corneal burns, retinal burns, iritis, localized cataract formation, posterior synechiae, failed patency, intraocular pressure (IOP) rises and iris pigmentation).

The next treatment modality, iridotomy with the Q-switched Nd:YAG laser, was introduced during the early 1980's to treat angle-closure by a mechanical cutting effect to create peripheral iridotomies rather than the thermal effect of argon lasers. Because the technology permitted tissue disruption through a transparent medium with negligible heat generation, the Nd:YAG laser appeared to be ideal for ophthalmic surgery on opacified posterior capsular membranes, thus avoiding the risks involved in traditional invasive surgery as well as the thermal effects characteristic of other ophthalmic laser devices. Clinical trials were conducted and, subsequently, FDA granted premarket approval for three CooperVision Nd:YAG lasers (models 2000 and 2500 in 1985; model 2300 in 1986) for discission of the posterior capsule of the eye (posterior capsulotomy).

On January 24, 1986, the Medical Laser Manufacturers Association (MLMA) submitted to FDA, under section 513(e) of the act and 21 CFR 860.120, a petition for a change in the classification of the ophthalmic Nd:YAG laser (mode-locked or Q-switched) intended for posterior capsulotomy. On February 20, 1986, the MLMA amended its petition to include section 513(f)(2) of the act and 21 CFR 860.134 of the regulations as a basis for its requested relief. The petition requested that the ophthalmic Nd:YAG laser (mode-locked or Q-switched), intended for posterior capsulotomy, be reclassified from class III into class II. FDA referred the petition to the Panel for its recommendation as to whether the device should be reclassified. On May 22, 1986, during an open public meeting the Panel recommended that FDA reclassify the device from class III into class II when intended for use in posterior capsulotomy. The Panel identified the following devices as examples of the generic type of device: The Meditec OPL-3, the M-Tec 2000, the Horizon 2000, the Horizon 2500, and the YAG-100.

The Panel also recommended that this generic type of device be identified as the ''Nd:YAG laser for posterior capsulotomy.'' On December 14, 1987 (52 FR 47454), FDA published in the Federal Register a notice announcing the Panel's recommendation. On March 31, 1988, FDA ordered (by letter to MLMA) the reclassification of the Nd:YAG laser intended for posterior capsulotomy and substantially equivalent devices of this generic type from class III into class II.

On March 2, 1993, ISL submitted to FDA, under section 513(f) of the act, a petition requesting reclassification of the ophthalmic Nd:YAG laser (mode-locked or Q-switched) intended for peripheral iridotomy from class III into class II (Ref. 1). The agency referred the petition to the Panel for its recommendation on the requested change in classification.

III. Recommendation of the Panel

The Panel met on October 28, 1993, in an open public meeting to discuss the subject device. After considering the published studies, published data on laser parameters for safe and effective Nd:YAG iridotomy, and the guidelines for laser iridotomy published by the American Academy of Ophthalmology (Ref. 2), the Panel recommended that the ophthalmic Nd:YAG laser (mode-locked or Q-switched) intended for peripheral iridotomy be reclassified from class III into class II. The Panel believed the petitioners had presented sufficient data to demonstrate that special controls can be established to provide reasonable assurance of the safety and effectiveness of the device for its intended use. The Panel also noted that the procedure is well understood and widely used by most ophthalmologists in the United States, as evidenced by the discussion of the Panel members (Ref. 3 p. 83).

IV. Device Description

The ophthalmic Nd:YAG laser intended for peripheral iridotomy consists of a mode-locked or Q-switched solid state Nd:YAG laser that generates short pulse, low energy, high power, coherent optical radiation. When the laser output is combined with focusing optics, the high irradiance at the target site causes tissue disruption via optical breakdown. A visible aiming system is utilized to target the invisible Nd:YAG laser radiation on or in close proximity to the target tissue.

A. Principles of Operation

The Nd:YAG laser is one component of a device system that also includes conditioning optics, a delivery system, an aiming system, and operator controls. Its laser beam must be shaped by conditioning optics to a configuration with a specific profile and desired characteristics. The physical properties of the Nd:YAG laser beam that directly influence the ability of the device to perform its intended function safely and effectively are its invisible infrared beam at a wavelength of 1,064 nanometers, output pulse generating method, output energy, pulse width, spatial mode, convergence angle, spotsize, and pulse repetition frequency. The only variable that is selected by the ophthalmic surgeon during the iridotomy procedure is the device's output energy.

While other types of lasers (e.g., the argon laser) used for ophthalmic surgery employ long duration exposures to achieve thermal tissue effects for photocoagulation, tissue cutting, or tissue destruction, the ophthalmic Nd:YAG laser (mode-locked or Q-switched) intended for peripheral iridotomy uses very short duration exposures (pulses) that are focused precisely to small spot sizes and that produce a high local irradiance (power density). The combination of short exposure duration and high irradiance results in nonlinear absorption of the radiation by the target tissue, causing tissue disruption through optical breakdown. The plasma generated by the process of optical breakdown provides protection for posterior tissue in direct line with the incident beam. These unique characteristics permit the ophthalmic Nd:YAG laser to perform a patent iridotomy with reduced inflammation, regardless of iris pigmentation.

B. Device Specifications

Mode-locked laser output consists of a train of 7 to 10 pulses with a pulse duration of about 30 nanoseconds and a pulsewidth of about 30 picoseconds. Q-switched laser output consists of single pulses, with pulsewidths of about 2 to 20 nanoseconds in duration.

The typical threshold of optical breakdown of tissue in air for mode-locked lasers is 10^{14} watts per centimeter squared, and for Q-switched lasers is 10^{11} watts per centimeter squared. The threshold for optical breakdown of tissue in an aqueous environment appears to be lower but varies depending upon the nature of the tissue. For disruption of the iris of the eye, an energy setting of 4.0 to 6.0 millijoules results in optical breakdown creating the desired tissue effect after application of 1 to 4 bursts that contain 1 to 4 pulses/burst (Refs. 10, 11, 12, 13, 14, and 15).

In addition to the laser, the other two main components of the system subject to the petition are a visible light beam aiming system and a slit-lamp biomicroscope used by the operator to target the treatment laser beam and to visually monitor the treatment process.

V. Summary of Reasons for the Recommendation

The Panel based its recommendation on the data and information contained in the petition and presented during the open committee discussion during the Panel meeting on October 28, 1993. After review and consideration of the available information, the Panel gave the following reasons in support of its recommendation to reclassify the generic type ophthalmic Nd:YAG laser (mode-locked or Q-switched) intended for peripheral iridotomy from class III into class II:

(1) The device is not an implant.

(2) General controls by themselves are insufficient to provide reasonable assurance of the safety and effectiveness of the device.

(3) There is sufficient publicly available information to establish special controls to assure the performance of the device for its intended use. Also, there is sufficient publicly available information to demonstrate that the risks to health have been determined, and that the relationship between the device's performance parameters and risks and its safety and effectiveness have been established by valid scientific evidence.

(4) Various safety features of medical lasers are already controlled by existing FDA standards (21 CFR 1040.10 and 1040.11) promulgated under the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263b).

The Panel believed that the following devices identified in the petition are representative of the generic type of device: the NIDEK YAG-100; the NIDEK 200; the Coherent 9900; and the Meridian LASAG MR-2.

VI. Risks To Health

Based on publicly available information establishing that it can successfully perform a discission of the iris (iridotomy), the Panel concluded that the ophthalmic Nd:YAG laser (mode-locked or Q-switched) intended for peripheral iridotomy is effective for its intended use. The Panel also determined that the foreseeable risks to health associated with the device are related to either unintentional damage to nontarget tissue or postoperative complications resulting from user error or device malfunction. These risks include corneal damage or edema, iritis, corectopia, lenticular opacities, retinal damage, transient elevation of IOP, failure to obtain iridotomy, precipitation of angle-closure attack, late closure of iridotomy, and iris atrophy. The risks of these adverse effects have been documented to be low and acceptable when the device is used in accordance with its directions and appropriate postoperative care is followed.

The use of the Nd:YAG laser for peripheral iridotomy may be contraindicated for patients without a clear cornea or aqueous, patients with chronic uveitis, patients with a tendency to bleed, patients on anticoagulant therapy, and patients with a glass intraocular lens.

VII. Summary of Data Upon Which the Recommendation is Based

During its review and discussion of the petition, the Panel paid close attention to the risks associated with the use of the device. The clinical studies included in the petition reported few risks to health, and the few that were reported were clearly identified. The Panel concluded that special controls can be established to provide reasonable assurance of the safety and effectiveness of the device when intended for peripheral iridotomy. The incidence rates of iridotomy closure, vision loss due to progression of laser induced lens or corneal damage, additional filtration surgery, transient iris bleeding, transient IOP spike, focal lens opacities, nonprogressive corneal endothelial changes, retinal damage, focal corneal opacities, mild iritis, and hyphema associated with Nd:YAG laser iridotomy are either lower than those for argon laser surgery or conventional surgical iridotomy or are self-limiting and not persistent.

Del Priore, et al. (Ref. 4) compared iridotomies using the Nd:YAG laser and argon laser in a prospective, randomized clinical study. The study focused on 43 patients (86 eyes) followed for 20 months (mean followup time 27 ±7 months). The mean preoperative visual acuity in the argon treated and the Nd:YAG treated eyes was 6/12 ±3 Snellen lines and did not change postoperatively. No retinal detachments or laser burns of the macula were detected. Iridotomy closure was not observed in any of the Nd:YAG laser treated eyes, but 9 (21 percent) argon iridotomies required retreatment. Visual loss due to progression of laser induced lens or corneal damage was not observed in any eye. Nine of 43 (21 percent) argon laser treated eyes and 8 of 43 (19 percent) Nd:YAG laser treated eyes required laser trabeculoplasty for further intraocular pressure lowering after iridotomy. Transient iris bleeding was encountered in 19 (44 percent) Nd:YAG laser treated eyes, but was not seen in any argon treated eyes. Six (32 percent) of the eyes with transient bleeding had IOP elevations greater than 10 millimeters (mm) Hg within the first 3 hours, and the IOP spike was greater than 20 mm Hg in four (17 percent) of these eyes. Focal opacification of the anterior lens capsule was seen in 23 (53 percent) argon laser treated eyes and none of the Nd:YAG laser treated eyes. This difference is statistically significant ($P<0.01$). Focal corneal endothelial opacities were encountered in 13 (30 percent) Nd:YAG laser treated and 11 (26 percent) argon laser treated eyes. Neither type of opacity enlarged clinically, and both tended to regress. Clinically significant corneal edema or corneal decompensation did not develop in the eyes of either treatment group during long term followup. Although several different Nd:YAG lasers (AM YAG-100 (American Medical Optics), Coherent JK Nd:YAG, and Coherent 9900) were used in the study, no differences were indicated by the results. The Nd:YAG laser offers intraoperative advantages in patients who cannot maintain a steady head position and fixation, and is independent of iris color. The Nd:YAG laser is also regarded as the treatment of choice in most patients with chronic pupillary-block glaucoma (Ref. 4).

In other studies, Fleck, et al. (Ref. 5) compared Nd:YAG laser iridotomy with and without argon laser pretreatment and concluded that argon laser pretreatment offers no advantage over primary Nd:YAG laser iridotomy. On the other hand, Goins, et al. (Ref. 6) found that argon laser pretreatment significantly reduced the incidence of hemorrhage during Nd:YAG iridotomy ($p=0.012$). Robin and Pollack (Ref. 7) found that hyphema is not clinically significant when eyes are pretreated with the argon laser. Of the Nd:YAG

iridotomies they studied, 67 percent (8/12) had operative hemorrhages, while 17 percent (2/12) of the argon pretreated eyes had hemorrhages. Robin and Pollack (Ref. 7) also reported a lower incidence of bleeding when eyes were pretreated with the argon laser. McGalliard and Wishart (Ref. 8) studied 81 eyes with shallow anterior chambers and raised IOP. Iridotomies were performed to prevent further angle closure glaucoma (ACG) and to remove pupillary block that could have contributed to the raised IOP. In eyes where there was no peripheral anterior synechia (PAS) there was no drop in IOP, but in eyes with well established PAS 69 percent showed a drop in IOP. Jiang (Ref. 9) also found a very significant difference between the preoperative values and the postoperative values at 3-year followup. In a study of 31 patients (40 eyes with persistent angle closure glaucoma (PACG)), the iridotomy controlled the IOP, and the iridotomy hole closed spontaneously in four eyes. The success rates were 94 percent at 6 months, 91 percent at 2 years, and dropped to 82.4 percent at the end of the third year. Romano, et al. (Ref. 10) compared Nd:YAG iridotomy with conventional surgical iridectomy. They found that in the nonlaser-treated group, pilocarpine alone controlled the IOP. In the laser treated group, eyes without PAS required fewer medications to maintain normal pressures than eyes with PAS required.

Regarding Nd:YAG laser technique, March (Ref. 11) recommends that a laser lens be used in performing a Nd:YAG laser iridectomy to aid in the placement of the lesion on the iris. He also recommends iridectomy placement beneath the upper lid if possible to avoid complications of halos, blurring, horizontal bands of light, and diplopia secondary to light transmission through the site postoperatively. Focusing on the ability of the Nd:YAG laser to produce a patent iridotomy, Spaeth (Ref. 11) reviewed a prospective study of 58 patients in which the right eyes were treated with the LASAG Microruptor 2 Nd:YAG laser and the left eyes with a Britt argon laser, and concluded that the Nd:YAG laser can indeed produce a patent iridotomy. He observed that there was a significant pressure rise in one third of the cases treated and that frequent hemorrhage occurred at the time of the iridectomy, but was not so severe that a gross hyphema developed. In no instance of Nd:YAG laser treatment was corneal endothelium or anterior lens capsule damage noted. Completion of the iridectomy was made on the basis of visualization of the lens through a hole in the iris. The IOP results reported for both lasers indicated a rise in IOP at 1 hour postoperative which decreased to the preoperative level 1 week postoperative.

In two studies by Robin and Pollack (Refs. 7 and 12) using the Coherent 9900 Q-switched and the AMO YAG-100 lasers, the authors reported that hyphema was not clinically significant and was consistent with other studies showing a lower incidence of bleeding for pretreated argon eyes. In one study, 33 eyes (both brown and blue irises) from 28 patients with pupillary block glaucoma were treated. Study followup was 1 month. Twenty-six had previous argon laser iridectomies. All had iridectomy closure within a week of argon treatment or there had been failure to penetrate the iris; the preoperative IOP range was 8 mm to 74 mm Hg and was 10 mm to 43 mm Hg at 1-month followup. Complications reported after use of the Coherent 9900 Q-switched Nd:YAG laser were focal discrete nonprogressive corneal endothelial changes in six eyes (18 percent), bleeding in 12 eyes (36 percent), and IOP greater than 10 mm Hg during the first 3 hours postoperatively in nine eyes (27 percent). No hyphema, laser-induced lens damage or retinal damage was observed. Two iridectomies closed within days of treatment. Study followup was 1 month.

In the second study, the authors studied 40 eyes (20 patients) in which one eye was treated with an argon laser and the fellow eye with a Q-switched YAG laser, an AMO YAG-100 (7 patients) or a Coherent JK prototype (13 patients). Iris colors were blue and brown. At no time was the IOP change significant between the argon laser and YAG laser treated patients. Inflammation was seen in all patients. Of the argon treated eyes, 12 had a rise in IOP during the first 3 hours postoperatively. Six (30 percent) iridectomies required retreatment, focal corneal opacities were seen in five (25 percent) of the argon treated eyes, and posterior synechiae were seen in three (15 percent) of the argon treated eyes. By comparison, thirteen YAG treated eyes had an IOP rise during the first 3 hours and bleeding occurred in nine (45 percent), with one having less than 5 percent hyphema which cleared by the first postoperative day. No iridectomy closures were seen, while focal corneal opacities were seen in seven (35 percent) of the YAG treated eyes. None of the YAG treated eyes suffered focal lenticular opacity. Finally, the Panel noted the publication by the American Academy of Ophthalmology, *Laser Peripheral Iridotomy for Pupillary-Block Glaucoma* (Ref. 2), which discusses surgical iridectomy and laser iridotomy techniques, treatment parameters, complications and patient care, and provides insight in addressing laser iridotomy and the above risks.

The Panel believes that the risks identified above that are directly attributable to the Nd:YAG laser for peripheral iridotomy can be controlled by special controls. The risks of damage to the corneal endothelium, the lens, or the retina are slight. These risks can be minimized by ensuring proper device design of the laser beam for accuracy and precision. The risk of IOP rise can be controlled by proper device labeling and by the surgeon through available, established medical procedures and treatments. There is reasonable assurance that an ophthalmic Nd:YAG laser (mode-locked or Q-switched) is safe and effective for iridotomy when the device is used consistent with appropriate labeling, designed in accordance with proper device specifications and produced under a quality assurance program to ensure that critical specifications are met within specified tolerances.

VIII. FDA's Tentative Findings

FDA tentatively concurs with the recommendation of the Panel that the Nd:YAG laser intended for peripheral iridotomy should be reclassified into class II and that the generic designation of the device be changed from Nd:YAG laser for posterior capsulotomy to Nd:YAG laser for posterior capsulotomy and peripheral iridotomy. The agency also tentatively concludes that ''new information'' in the form of publicly available, valid scientific evidence exists to provide reasonable assurance of the safety and effectiveness of the Nd:YAG laser for its intended use. Consistent with the purpose of the act, class II controls (labeling) as defined by section 513(a)(1)(B) of the act are sufficient to provide reasonable assurance that current Nd:YAG lasers are safe and effective for their intended use.

IX. Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) that thisaction is of a type that does not individually or cumulatively have a significant effect of the human environment. Therefore, neither as environmental assessment nor an environmental impact statement is required.

X. Analysis of Impacts

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

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because reclassification of devices from class III into class II may relieve manufacturers of the cost of complying with the premarket approval requirements in section 515 of the act, and may permit small potential competitors to enter the marketplace by lowering their costs, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

XI. Request for Comments

Interested persons may, on or before June 6, 1996, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m. Monday through Friday.

XII. References

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

1. Reclassification Petition for the Nd:YAG Laser for Iridotomy, submitted by Intelligent Surgical Lasers, Inc., March 2, 1993.

2. American Academy of Ophthalmology Guideline: Laser Peripheral Iridotomy for Pupillary-Block Glaucoma, Approved by Board of Directors, June 25, 1988. (Also contained in the petition.)

3. Transcript of the Ophthalmic Devices Panel Meeting, October 28, 1993.

4. Del Priore, L. V., A. L. Robin, and I. P. Pollack, ''Neodymium:YAG and Argon Laser Iridotomy: Long-term Followup in a Prospective, Randomized Clinical Trial,'' *Ophthalmology*, 94(9):1205–1211, 1988.

5. Fleck, B. W., E. Wright, C. McGlynn, ''Argon Laser Pretreatment 4 to 6 Weeks Before Nd:YAG Laser Iridotomy,'' *Ophthalmic Surgery*, 22(11):644–649, 1991.

6. Goins, K., E. Schmeisser, T. Smith, ''Argon Laser in Nd:YAG Iridotomy,'' *Ophthalmic Surgery*, 21(7):497–500, 1990.

7. Robin, A. L. and I. P. Pollack, ''Q-switched Neodymium-YAG Laser Iridotomy in Patients in Whom the Argon Laser Fails,'' *Archives of Ophthalmology*, 104(4):531–535, 1986.

8. McGalliard, J. N., P. K. Wishart, ''The Effect of Nd:YAG Iridotomy on Intraocular Pressure in Hypertensive Eyes with Shallow Anterior Chambers,'' *Eye*, 4(6):823–829, 1990.

9. Jiang, Y. Q., ''The Long-term Effect of Nd:YAG Laser Iridotomy,'' Chung-Hua Yn Ko Tsa Chih Chin, *Journal of Ophthalmology*, 27(4):221–224, 1991.

10. Romano, J. H., R. A. Hitchings, and D. Pooinasawmy, ''Role of Nd:YAG Peripheral Iridectomy in the Management of Ocular Hypertension With a Narrow Angle,'' *Ophthalmic Surgery*, 19(11):814–816, 1988.

11. March, W. F., and G. Spaeth, ''YAG Laser Iridectomy, Complications,'' *Ophthalmic Lasers (A Second Generation)*, Thorogare, New York: Slack Inc., 1990.

12. Robin, A. L. and I. P. Pollack, ''A Comparison of Neodymium:YAG and Argon Laser Iridotomies,'' *Ophthalmology*, 91(9):1011–1016, 1984.

13. Moster, M. R., et al., ''Laser Iridectomy, A Controlled Study Comparing Argon and Neodymium:YAG,'' *Ophthalmology*, 93:20–24, 1986.

14. Cinotti, D. J., et al., ''Neodymium:YAG Laser Therapy for Pseudophakic Pupillary Block,'' *Journal of Cataract and Refractive Surgery*, 12:174–179, 1986.

15. Robin, A. L. et al, ''Q-switched Neodymium-YAG Iridotomy: A Field Trial with a Portable Laser System,'' *Archives of Ophthalmology*, 104:526–530, 1986.

List of Subjects in 21 CFR Part 886

Medical devices, Ophthalmic goods and services.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 886 be amended as follows:

PART 886—OPHTHALMIC DEVICES

1. The authority citation for 21 CFR part 886 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

2. Section 886.4392 is amended by revising the section heading and paragraph (a) to read as follows:

§ 886.4392 Nd:YAG laser for posterior capsulotomy and peripheraliridotomy.

(a) *Identification*. The Nd:YAG laser for posterior capsulotomy and peripheral iridotomy consists of a mode-locked or Q-switched solid state Nd:YAG laser intended for disruption of the posterior capsule or the iris via optical breakdown. The Nd:YAG laser generates short pulse, low energy, high power, coherent optical radiation. When the laser output is combined with focusing optics, the high irradiance at the target causes tissue disruption via optical breakdown. A visible aiming system is utilized to target the invisible Nd:YAG laser radiation on or in close proximity to the target tissue.

* * * * *

Dated: February 14, 1996.

D.B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 96–5445 Filed 3–7–96; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL–0054–95]

RIN 1545–AT96

Proposed Amendments to the Regulations on the Determination of Interest Expense Deduction of Foreign Corporations and Branch Profits Tax

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed Income Tax Regulations relating to the determination of the interest expense deduction of foreign corporations under section 882 and the branch profits tax under section 884 of the Internal Revenue Code of 1986. These proposed regulations are necessary to provide guidance that coordinates with guidance provided in final regulations under sections 882 and 884 published elsewhere in this issue of the Federal Register. These regulations will affect foreign corporations engaged in a U.S. trade or business. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by June 6, 1996. Outlines of topics to be discussed at the public hearing scheduled for Thursday, June 6, 1996, at 10 a.m. must be received by May 23, 1996.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (INTL–0054–95), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to CC:DOM:CORP:R (INTL–0054–95), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington DC. The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Ahmad Pirasteh or Richard Hoge, (202) 622–3870; and the hearing, Michael Slaughter (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations amending the Income Tax Regulations (26 CFR Part 1) under sections 882 and 884 of the Internal Revenue Code. In final regulations under sections 882 and 884, published elsewhere in this issue of the Federal Register, various sections were reserved. These proposed regulations would provide guidance under those reserved sections, as well as amend other sections, to coordinate with the final regulations.

Explanation of the Provisions

I. Financial Products

The proposed regulations include several provisions that take into account recent developments in the tax treatment of financial instruments, such as the enactment of section 475, the development of hedging rules and the introduction of profit split methodologies in global trading Advance Pricing Agreements. The IRS and Treasury intend to issue regulations under section 864 that will address these recent developments as they affect the determination of a foreign corporation's effectively connected income. Comments are solicited on these proposed regulations as they relate to financial products and on their interaction with the determination of effectively connected income.

A. *''Split asset'' rule for section 475 securities and section 1256 contracts.* Currently § 1.884–1(d)(2)(vii) provides a ''split asset'' rule for certain securities described in § 1.864–4(c)(5)(ii)(*b*)(*3*) that produce income only a portion of which is treated as effectively connected with the conduct of a U.S. trade or business. Since other securities may also produce income split between effectively connected and non-effectively connected income, the rule has been broadened to cover all financial instruments that meet the definition of a security under section 475(c)(2), as well as section 1256 contracts, that may produce such split income. Accordingly, a foreign corporation that, under an Advance Pricing Agreement, is permitted to apply a ''profit split'' methodology to determine the portion of its income from a portfolio of securities that is effectively connected with the conduct of a U.S. trade or business would apply this rule. This rule will also apply to determine the portion of a foreign corporation's portfolio of securities that is a U.S. asset for purposes of § 1.882–5.

B. *Hedging transactions.* Proposed § 1.884–1(c)(2)(ii) introduces a new rule for hedging transactions for purposes of section 884. The new rule requires that a taxpayer increase or decrease, as the case may be, the amount of their U.S. assets by the amount of any gain or loss on any transaction that hedges the U.S. assets. If the hedging transaction is undertaken outside the United States, perhaps as part of a global hedging strategy of the foreign corporation, then the hedging transaction is only taken into account to the extent that income from the transaction would be treated as income effectively connected with the U.S. trade or business of the taxpayer. If, however, the hedging transaction is entered into by the U.S. branch, it will only affect the amount of U.S. assets if it is contemporaneously identified as a hedging transaction in accordance with the provisions of § 1.1221–2.

In response to comments, hedging rules also have been added to the interest allocation rules of § 1.882–5. These rules provide that a transaction that hedges a U.S. booked liability will be taken into account in determining the amount, currency denomination, and interest rate associated with that liability for purposes of performing the second and third steps of the interest expense calculation.

C. *Securities marked-to-market.* Section 1.884–1(d)(6), which provides ''E&P basis'' rules for specific types of U.S. assets, has been clarified to provide rules for securities subject to mark-to-market accounting. The new provision in § 1.884–1(d)(6)(v) specifies that securities subject to section 475, as well as section 1256 contracts, have an E&P basis equal to their mark-to-market value as of the determination date. Proposed § 1.882–5(b)(2)(iv) provides a basis adjustment rule under which such assets are treated as having been marked-to-market on each determination date. Examples are contained in the proposed regulations that illustrate the effect of these rules on the calculation of worldwide assets and liabilities.

II. Transactions Between Partners and Partnerships

Example 4 in proposed § 1.882–5(c)(5) would clarify that an obligation of a partnership to make payments to its partner for the use of capital, which gives rise to guaranteed payments under section 707(c), is not a liability for purposes of § 1.882–5. The Service and Treasury solicit comments on the treatment of loans between partners and partnerships as part of Treasury's review of the international tax aspects of pass-through entities.

Special Analyses

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

Comments and Request for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (signed original and eight (8) copies) that are timely submitted to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Thursday, June 6, 1996, at 10 a.m. in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons that wish to present oral comments at the hearing

must submit written comments by June 6, 1996, and submit an outline of topics to be discussed and time to be devoted to each topic (signed original and eight (8) copies) by May 23, 1996.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

Several persons from the Office of Chief Counsel and the Treasury Department participated in drafting these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.882–5 is amended as follows:

1. The text of paragraph (b)(2)(iv) is added.
2. The text of paragraph (c)(2)(v) is added.
3. In paragraph (c)(5), *Example 4, Example 6,* and *Example 7* are added.
4. The text of paragraph (d)(2)(vi) is added.
5. In paragraph (d)(6), *Example 4* is added.
6. The text of paragraph (e)(3) is added.
7. In paragraph (e)(5), *Example 2* is added.
8. The text of paragraph (f)(2) is added.

The added provisions read as follows:

§ 1.882–5 Determination of interest deduction.

* * * * *

(b) * * *

(2) * * *

(iv) *Adjustment to basis of financial instruments.* The basis of a security or contract that is marked to market pursuant to section 475 or section 1256 will be determined as if each determination date were the last business day of the taxpayer's taxable year. A financial instrument with a fair market value of less than zero is a liability, not an asset, for purposes of this section.

* * * * *

(c) * * *

(2) * * *

(v) *Hedging transactions.* A transaction (or transactions) that hedges an asset or liability, or a pool of assets or a pool of liabilities, will be taken into account in determining the value, amount and currency denomination of the asset or liability that it hedges. A transaction will be considered to hedge an asset or liability only if the transaction meets the requirements of § 1.1221–2.

* * * * *

(5) * * *

Example 4. Partnership liabilities. X and *Y* are each foreign corporations engaged in the active conduct of a trade or business within the United States through a partnership, *P.* Under the partnership agreement, *X* and *Y* each have a 50% interest in the capital and profits of *P,* and *X* is also entitled to a return of 6% per annum on its capital account that is a guaranteed payment under section 707(c). In addition, *P* has incurred a liability of $100x to an unrelated bank, *B.* Under paragraph (c)(2)(vi) of this section, *X* and *Y* each share equally in *P's* liability to *B.* In accordance with U.S. tax principles, *P's* obligation to make guaranteed payments to *X* does not constitute a liability of *P,* and therefore neither *X* nor *Y* take into account that obligation of the partnership in computing their actual ratio.

* * * * *

Example 6. Securities in ratio as assets. FC is a foreign corporation engaged in a trade or business in the United States through a U.S. branch. FC is a dealer in securities within the meaning of section 475(c)(1)(B) because it regularly offers to enter into positions in currency spot and forward contracts with customers in the ordinary course of its trade or business. FC has not elected to use the fixed ratio. On December 31, 1996, the end of FC's taxable year, the mark-to-market value of the spot and forward contracts entered into by FC worldwide is 1000x, which includes a mark- to-market gain of 500x with respect to the spot and forward contracts that are shown on the books of its U.S. branch and that produce effectively connected income. On its December 31, 1996, determination date, FC includes 500x in its U.S. assets, and 1000x in its worldwide assets.

Example 7. Securities in ratio as assets and liabilities. The facts are the same as in *Example 4,* except that on December 31, 1996, the mark-to-market value of the spot and forward contracts entered into by FC worldwide is 1000x, and FC has a mark-to-market loss of 500x with respect to the spot and forward contracts that are shown on the books of its U.S. branch and that would produce effectively connected income. On its December 31, 1996, determination date, FC includes the 1000x in its worldwide assets for purposes of determining its ratio of worldwide liabilities to worldwide assets. For purposes of Step 3, however, FC has U.S-booked liabilities in the United States equal to the 500x U.S. loss position.

(d) * * *

(2) * * *

(vi) *Hedging transactions.* A transaction (or transactions) that hedges a U.S. booked liability, or a pool of U.S. booked liabilities, will be taken into account in determining the currency denomination, amount of, and interest rate associated with, that liability. A transaction will be considered to hedge a U.S. booked liability only if the transaction meets the requirements of § 1.1221–2(a), (b), and (c), and is identified in accordance with the requirements of § 1.1221–2(e).

* * * * *

(6) * * *

Example 4. Liability hedge—(i) *Facts. FC* is a foreign corporation that meets the definition of a bank, as defined in section 585(a)(2)(B) (without regard to the second sentence thereof), and that is engaged in a banking business in the United States through its branch, *B. FC*'s corporate policy is to match the currency denomination of its assets and liabilities, thereby minimizing potential gains and losses from currency fluctuations. Thus, at the close of each business day, *FC* enters into one or more hedging transactions as needed to maintain a balanced currency position, and instructs each branch to do the same. At the close of business on December 31, 1998, *B* has 100x of U.S. dollar assets, and U.S. booked liabilities of 90x U.S. dollars and 1000 x Japanese yen (exchange rate: $1 = ¥100). To eliminate the currency mismatch in this situation, *B* enters into a forward contract with an unrelated third party that requires *FC* to pay 10x dollars in return for 1000x yen. Through this hedging transaction, *FC* has effectively converted its 1000x Japanese yen liability into a U.S. dollar liability. *FC* uses its actual ratio of 90% in 1998 for Step 2, the adjusted U.S. booked liabilities method for purposes of Step 3, and is a calendar year taxpayer.

(ii) *Analysis.* Under paragraph 1.882–5(d)(2)(vi), *FC* is required to take into account hedges of U.S. booked liabilities in determining the currency denomination, amount, and interest rate associated with those liabilities. Accordingly, *FC* must treat the Japanese yen liabilities booked in the United States on December 31, 1998, as U.S. dollar liabilities to determine both the amount of the liabilities and the interest paid or accrued on U.S. booked liabilities for purposes of this section. Moreover, in applying the scaling ratio prescribed in paragraph (d)(4)(i) of this section, *FC* must scale back both the U.S. booked liabilities and the hedge(s) of those liabilities. Assuming that *FC*'s average U.S. booked liabilities for the year ending December 31, 1998, exceed its U.S.-connected liabilities determined

under paragraphs (a)(1) through (c)(5) of this section by 10%, *FC* must scale back by 10% both its interest expense associated with U.S. booked liabilities, and any income or loss from the forward contract to purchase Japanese yen that hedges its U.S. booked liabilities.

(e) * * *

(3) *Hedging transactions.* A transaction (or transactions) that hedges a liability, or a pool of liabilities, will be taken into account in determining the amount of, or interest rate associated with, that liability. A transaction will be considered to hedge a liability only if the transaction meets the requirements of § 1.1221–2(a), (b), and (c).

* * * * *

(5) * * *

Example 2. Asset hedge—(i) *Facts. FC* is a foreign corporation that meets the definition of a bank, as defined in section 585(a)(2)(B) (without regard to the second sentence thereof), and that is engaged in the banking business in the United States through its branch, *B. FC*'s corporate policy is to match the currency denomination of its assets and liabilities, thereby minimizing potential gains and losses from currency fluctuations. Thus, at the close of each business day, *FC* enters into one or more hedging transactions as needed to maintain a balanced currency position, and instructs each branch to do the same. At the close of business on December 31, 1998, *B* has two U.S. assets, a loan of 90x U.S. dollars and a loan of 1000x Japanese yen (exchange rate: $1 = ¥100). *B* has U.S. booked liabilities, however, of 100x U.S. dollars. To eliminate the currency mismatch, *B* enters into a forward contract with an unrelated third party that requires *FC* to pay 1000x yen in return for 10x dollars. Through this hedging transaction, *FC* has effectively converted its 1000x Japanese yen asset into a U.S. dollar asset. *FC* uses its actual ratio of 90% in 1998 for Step 2, has elected the separate currency pools method in paragraph (e) of this section, and is a calendar year taxpayer.

(ii) *Analysis.* Under paragraph (e)(1)(i) of this section, *FC* must take into account any transaction that hedges a U.S. asset in determining the currency denomination and value of that asset. *FC*'s Japanese yen asset will therefore be treated as a U.S. dollar asset in determining its U.S. assets in each currency. Accordingly, *FC* will be treated as having only U.S. dollar assets in making its separate currency pools computation.

(f) * * *

(2) *Special rules for financial products.* Paragraphs (b)(2)(iv), (c)(2)(v), (d)(2)(vi), and (e)(3) of this section will be effective for taxable years beginning on or after the date these regulations are published as final regulations in the Federal Register.

Par. 3. Section 1.884–1 is amended as follows:

1. Paragraph (c)(2)(iii) is added.

2. Paragraph (d)(2) is amended as follows:

a. Paragraph (d)(2)(vii) is revised.

b. In paragraph (d)(2)(xi), *Example 6* through *Example 8* are added.

3. The text of paragraph (d)(6)(v) is added.

4. In paragraph (i)(4), a sentence is added at the end of the existing text.

The revised and added provisions read as follows:

§ 1.884–1 Branch profits tax.

* * * * *

(c) * * *

(2) * * *

(iii) *Hedging transactions.* A transaction that hedges a U.S. asset, or a pool of U.S. assets, will be taken into account in determining the amount of that asset (or pool of assets) to the extent that income or loss from the hedging transaction produces ECI or reduces ECI. A transaction that hedges a U.S. asset, or pool of U.S. assets, is also taken into account in determining the currency denomination of the U.S. asset (or pool of U.S. assets). A transaction will be considered to hedge a U.S. asset only if the transaction meets the requirements of § 1.1221–2(a), (b), and (c), and is identified in accordance with the requirements of § 1.1221–2(e).

(d) * * *

(2) * * *

(vii) *Financial instruments.* A financial instrument, including a security as defined in section 475 and a section 1256 contract, shall be treated as a U.S. asset of a foreign corporation in the same proportion that the income, gain, or loss from such security is ECI for the taxable year.

* * * * *

(xi) * * *

Example 6. Hedging transactions—(i) *Facts.* FC is a foreign corporation engaged in a trade or business in the United States through a U.S. branch. The functional currency of FC's U.S. branch is the U.S. dollar. On January 1, 1997, in the ordinary course of its business, the U.S. branch of FC enters into a forward contract with an unrelated party to purchase 100 German marks (DM) on March 31, 1997, for $50. To hedge the risk of currency fluctuation on this transaction, the U.S. branch also enters into a forward contract with another unrelated party to sell 100 DM on March 31, 1997, for $52, identifying this contract as a hedging transaction in accordance with the requirements of § 1.1221–2(e). FC marks its foreign currency transactions to market for U.S. tax purposes.

(ii) *Net assets.* At the end of FC's taxable year, the value of the forward contract to purchase 100 DM is marked to market, resulting in gain of $10 being realized and recognized as U.S. source effectively connected income by FC. Similarly, FC marks to market the contract to sell 100 DM, resulting in $8 of realized and recognized loss by FC. Pursuant to paragraph (c)(2)(iii) of this section, FC must increase or decrease the amount of its U.S. assets to take into account any transaction that hedges the contract to purchase 100 DM. Consequently, FC has a U.S. asset of $2 ($10 (the adjusted basis of the contract to purchase 100 DM) −$8 (the loss on the contract to sell 100 DM)).

Example 7. Split hedge. The facts are the same as in *Example 5,* except that the contract to sell 100 DM is entered into with an unrelated third party by the home office of FC. FC includes the contract to sell 100 DM in a pool of assets treated as producing income effectively connected with the U.S. trade or business of FC. Therefore, under paragraph (c)(2)(iii) of this section, at its next determination date FC will report a U.S. asset of $2, computed as in *Example 5.*

Example 8. Securities. FC is a foreign corporation engaged in a U.S. trade or business through a branch in the United States. During the taxable year 1997, FC derives $100 of income from securities, of which $60 is treated as U.S. source effectively connected income under the terms of an Advance Pricing Agreement that uses a profit split methodology. Accordingly, pursuant to paragraph (d)(2)(vii) of this section, FC has a U.S. asset equal to 60% ($60 of ECI divided by $100 of gross income from securities) of the value of the securities.

* * * * *

(6) * * *

(v) *Computation of E&P basis of financial instruments.* For purposes of this section, the E&P basis of a security that is marked to market under section 475 and a section 1256 contract shall be adjusted to take into account gains and losses recognized by reason of section 475 or section 1256. The E&P basis must be further adjusted to take into account a transaction that hedges a U.S. asset, as provided in paragraph (c)(2)(ii) of this section.

* * * * * *

(i) * * *

(4) * * * Paragraphs (c)(2)(iii), (d)(2)(vii), and (d)(6)(v) of this section will be effective for taxable years beginning on or after the date these regulations are published as final regulations in the Federal Register.

* * * * *

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 96–5264 Filed 3–5–96; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915 and 1926

[Docket No. H–041]

Occupational Exposure to 1,3-Butadiene

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Proposed Rule; Limited reopening of the rulemaking record.

SUMMARY: The Occupational Safety and Health Administration is reopening the record for the proposed revision of the 1,3-Butadiene (BD) standard to solicit public comment on a joint labor/industry agreement dated January 29, 1996, recommending that OSHA reduce the permissible exposure limits and expanding on some provisions that were addressed in OSHA's 1990 proposal (55 FR 32736, August 10, 1990). In addition, OSHA is seeking comment on possible changes in the medical surveillance requirements, including reliance on a medical questionnaire that would replace some of the proposed yearly medical examinations and reduce the need for medical removal protection. Finally, the Agency is entering into the rulemaking record four documents that have become available since the submission deadline of December 13, 1991, set by the Administration Law Judge following the rulemaking hearings.

DATES: Written comments must be postmarked by April 8, 1996.

ADDRESSES: Comments are to be submitted in quadruplicate to the Docket Office, Docket No. H–041, U.S. Department of Labor, Room N–2634, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 219–7894. Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 219–5046, provided the original and 3 copies are sent to the Docket Office thereafter.

Copies of the labor/industry agreement and submissions to the record along with other information cited in this notice are available for inspection and copying in the Docket Office. For electronic copies of this notice, contact the Labor News Bulletin Board (202) 219–4784; or OSHA's WebPage on the Internet at http://www.osha.gov/. For news releases, fact sheets, and other short documents, contact OSHA FAX at (900) 555–3400 at $1.50 per minute.

FOR FURTHER INFORMATION CONTACT: Anne C. Cyr, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 219–8148.

SUPPLEMENTARY INFORMATION:

I. Background

A. History

The present OSHA standard for BD requires employers to ensure that employee exposure does not exceed 1,000 ppm determined as an 8-hour time weighted average (TWA) (29 CFR 1910.1000, Table Z–1).

In 1983, the American Conference of Governmental Industrial Hygienists (ACGIH) classified BD as an animal carcinogen based on a National Toxicology Program (NTP) animal study showing that BD caused cancer in rodents. The ACGIH recommended that employee exposures be reduced to or below 10 ppm (8-hr TWA). In 1984, the United Rubber, Cork, Linoleum and Plastic Workers of America (URW), the Oil, Chemical and Atomic Workers, and the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO) petitioned OSHA to issue an Emergency Temporary Standard (ETS) of 1 ppm or less. OSHA denied the petition for an ETS, but began collecting information in order to institute rulemaking under Section 6(b) of the Occupational Safety and Health Act. The Environmental Protection Agency (EPA) was also studying the health hazards of BD. That agency's analysis found that BD was a probable human carcinogen and that workplace exposures presented an unreasonable risk of injury to human health. Because exposures to BD occurred primarily in the workplace, EPA, in accordance with section 9(a) of the Toxic Substances Control Act, referred BD to OSHA to give this Agency an opportunity to regulate the chemical under the OSH Act. (50 FR 41393; October 10, 1985).

On August 10, 1990, OSHA issued a notice of proposed rulemaking (55 FR 32736) to address the significant occupational risks of BD-induced health effects. The proposed rule required employers to reduce occupational exposure to BD to 2 ppm as an 8-hour TWA and 10 ppm as a 15-minute short term exposure limit (STEL), and to institute ancillary measures, such as employee training and medical surveillance, for further protection of BD-exposed workers.

OSHA convened public hearings in Washington, DC, on January 15–23, 1991, and in New Orleans, Louisiana, on February 20–21–1991. The post-hearing period for the submission of briefs, arguments and summations was to end July 22, 1991, but was extended by the Administrative Law Judge to December 13, 1991, in order to give participants time to review new data on low-dose exposure submitted by NTP and a quantitative risk assessment done by NIOSH.

B. The Labor/Industry Agreement

To assist OSHA in issuing a final rule for BD, representatives of the major unions and industry groups involved in the production and use of BD submitted a voluntary agreement reached by the parties dated January 29, 1996, on provisions that should be included in the standard. The letter transmitting the agreement was signed by J.L. McGraw for the International Institute of Synthetic Rubber Producers, Michael J. Wright for the United Steelworkers of America and Michael Sprinker for the International Chemical Workers Union. The committee that worked on the issues also included Joseph Holtshouser of the Goodyear Tire and Rubber Company, Carolyn Phillips of the Shell Chemical Company, representing the Chemical Manufacturers Association, Robert Richmond of the Firestone Synthetic Rubber and Latex Company, and Louis Beliczsky (formerly of the URW) and James L. Frederick of the United Steelworkers. OSHA is pleased that labor and industry have joined together to recommend regulatory requirements that can lead to lower and less frequent exposures for employees who work with or near BD.

The agreement proposes a significant change in the permissible exposure limits, additional provisions for exposure monitoring, and an exposure goal program designed to reduce exposures below the action level. It also proposes other modifications to the scope, respiratory protection, communication of hazards, medical surveillance, and start-up dates sections of the final rule. The agreement also assumes that items not specifically addressed in the agreement will remain as proposed. OSHA reprints the provisions below in order to allow the public an opportunity to provide the Agency with comments.

1, 3-Butadiene

Recommended Revisions to OSHA's Proposed Standard Scope and Application: Exclude [from the final rule's coverage]:

1. Products with BD concentration of 0.1% or less by volume unless objective data shows exposure could exceed the

AL [action level] or STEL [short-term exposure level].

2. Storage, transportation, distribution or sale of BD in intact containers or pipelines, except for labeling requirements and emergency response provisions.

Definitions: Objective Data means monitoring data or mathematical calculations or modeling based on the chemical and physical properties of the material, stream or product.

Limits:

1. Action level (AL) of 0.5 ppm [parts per million] (ppm) as an 8-hour TWA.

2. Permissible Exposure Limit (PEL) of 1 ppm as an 8 hr TWA.

3. Short Term Exposure Limit (STEL) of 5 ppm [sampled] for 15 minutes.

Exposure Monitoring:

1. Establish a baseline of at least 8 samples. The samples may be taken in a single year, so long as at least one sample is taken in each quarter, and no two are taken within 30 days of each other. The employer may utilize monitoring data from the previous two years to satisfy the initial monitoring requirement as long as [the] process has been consistent.

2. After the baseline has been established, monitoring is [required]:

a. Every 6 months if exposure exceeds PEL or STEL.

b. Annually if exposure is at or above the AL but below the PEL.

Additional Monitoring: May use direct reading instruments for any spills, leaks, etc. to ensure that levels have returned to normal following an emergency.

Employee Notification: Five (5) day [period for] employee notification of sampling results.

Exposure Goal Program: The employer shall institute an ''exposure goal program'' which attempts to limit exposure levels to or below the action level. No exposure goal program is required if all exposures are at or below the action level. The program shall include the following controls, unless the employer can demonstrate that they will not be feasible or effective.

a. A leak prevention, detection, and repair program.

b. A program for maintaining the integrity of local exhaust ventilation systems.

c. The use of pump exposure control technology such as, but not limited to, double-sealed or seal-less pumps.

d. Gauging devices designed to limit employee exposure, such as magnetic gauges on rail cars.

e. Unloading devices designed to limit employee exposure, such as vapor return systems.

f. Maintaining control rooms below the AL by use of engineering controls.

Respirators:

1. Use when exposure may exceed PEL or STEL.

2. Fit testing as per ANSI standards.

3. Allow ½ face negative pressure respirators for certain applications.

Medical Surveillance:

1. Medical evaluations for all employees exposed above the PEL for 30 days or more, or above the AL for 60 days or more.

2. Medical evaluations for formerly-exposed employees whose work history includes exposure as defined in (1) for 10 year or more, or exposure above 10 ppm as an 8-hr TWA for more than 30 days in any past year, so long as they continue to be employed by the employer responsible for the exposure, or a successor owner.

3. An exam with respect to acute effects as quickly as possible in the case of exposure from a significant release.

4. Appropriate exams for respirator wearers in accord with 29 C.F.R. 1910.134.

5. Medical evaluations include an update of medical history [and] a CBC [complete blood count] including platelets. Additional tests are deemed appropriate by the examining physician. Remove references to fertility evaluations.

Communication of BD Exposure to Employees: Modify warning signs and label requirements to eliminate reproductive/lung/kidney reference.

Employee Training: Required annually or with change of job when exposure may reach PEL, STEL or AL.

Dates: Employer may take up to two (2) years from effective dates to implement engineering controls.

Appendices: OSHA should also correct certain misstatements in Appendices A and B:

Appendix A, Part IV(B): The sentence; ''Any clothing which becomes wet with liquid BD should be removed immediately * * *'' should be deleted. BD evaporates too rapidly to cause wet clothing.

Appendix B, Part II(A)(6): The statement that ''vapors of BD will burn without the presence of air or other oxidizers'' is incorrect.

Appendix B, Part III(A)(3): The suggestion that spills of small quantities of BD should be absorbed on paper towels is unnecessary, as the BD will evaporate too quickly.

Appendix B, Parts VI (C) and (D): Sanitation requirements concerning agents to remove BD from the skin, and separate lockers, are unnecessary, since liquid BD evaporates rapidly and will not contaminate skin or clothing for any significant time.

Not also the odor threshold discrepancy between Appendix B, Part II(C) and Appendix D, Part 1.1.4. The correct value is 0.45 ppm, based on the AIHA publication, ''Odor Thresholds for Chemicals with Established Occupational Health Standards,'' (1989).

OSHA believes the agreement contains a number of provisions that will greatly improve worker health and therefore should be included in the final BD standard. However, prior to inclusion, the Agency must be certain of the meaning and effect of the provisions and then translate the recommendations into regulatory language. To this end, OSHA seeks comment on the following issues addressed by labor and industry in their agreement:

1. *Definitions.* When objective data are relied upon to exclude products with a BD concentration of 0.1% or less, what should be the source of the objective data? Should conditions be placed upon the monitoring or modeling methods used to obtain or project exposure levels in order to ensure accuracy?

2. *Exposure Monitoring.* OSHA is concerned that the taking of 8 samples to establish a baseline may not be an effective use of scarce industrial hygiene resources in that the number of samples taken may be far less important than the quality of the samples used to characterize the exposure of BD employees. Are there other ways to improve OSHA's traditional approach of monitoring at least the one most exposed employee in each job classification on each shift? Please comment.

3. *Exposure Goal Program.* OHSA requests comment on whether the requirements for specific engineering controls rather than a performance approach could lead to situations in which (1) better engineering controls are discouraged or ignored, (2) the required controls may not be applicable, or (3) the required controls may not be needed because work practices will achieve the necessary reduction. How could these situations be avoided?

4. *Respirators.* ANSI does not have final protocols for respirator fit-testing. OSHA is in the process of completing its generic respirator standard that will include protocols for fit-testing. (OSHA Docket No. H–049; 59 FR 5884, November 15, 1994). Do workers exposed to BD need special provisions for respirator fit-testing? If so, what provisions are necessary and why? What applications are appropriate for half-mask negative pressure respirators? Should the standard specify tasks or exposures where the respirators are or are not appropriate?

5. *Medical Surveillance.* OSHA is concerned that some at-risk employees

will not be afforded the protection of medical surveillance because eligibility for inclusion requires exposures of 60 days above the AL or 30 days above the PEL, requirements that are more restrictive than the comparable requirements in OSHA standards for acrylonitrile, (any exposure above the AL); benzene, (30 days above AL or 10 above PELs); and cadmium, (30 days above AL). OSHA also seeks comment on whether the medical requirements in the respirator standard for general industry, 29 CFR 1910.134(b)(10), may be inadequate to protect workers with occupational exposure to BD. In addition, should each employee whose exposure to BD requires the use of a respirator be included in the medical surveillance program, regardless of duration of exposure? Finally, by requiring employees whose former exposures were above the action level for 60 days or the PEL for 30 days to have had 10 years of exposure before being included in medical surveillance, would the standard improperly exclude employees whose exposures occurred over a lesser period of time, say 5 years, but whose risk may be comparable?

6. *Communication of BD Exposure to Employees.* OSHA is concerned that eliminating the reference to potential reproductive hazard from warning signs and labels would not provide sufficient information to employees. Toxicological studies cited in the proposal indicate BD is a potential reproductive hazard. For example, ovarian atrophy and testicular atrophy were observed in mice exposed to BD. OSHA is considering requiring the warning signs and labels to contain the phrase ''Cancer and Potential Reproductive Hazard.''

C. Additional Issues

OSHA is also seeking comment on the following issues that were neither addressed by labor and industry in their agreement, nor fully aired at the rulemaking hearing:

1. OSHA proposed to define ''Emergency'' as:

> * * * any occurrence such as, but not limited to, equipment failure, rupture of containers, or failure of control equipment that may or does result in an unexpected significant release of BD.

OSHA is considering limiting the emergency releases to those that are uncontrolled, so that the last phrase of the definition would read: ''* * * that may or does result in an uncontrolled significant release of BD.'' Does this addition clarify what situations OSHA considers to be emergencies? Does the term ''significant release'' give adequate guidance to employers as to how much BD must be released in order to constitute an emergency?

2. OSHA is considering the adequacy of a less burdensome medical surveillance program for BD-exposed workers. The program would consist of an initial medical examination, repeated every third year, and an annual CBC along with a yearly questionnaire focusing on the hematopoietic and reproductive systems. OSHA requests comment on whether this approach is sufficiently protective. OSHA is also seeking comment on whether medical removal protection provisions similar to those contained in the Benzene Standard (29 CFR 1910.1028) are appropriate for BD. Removal would be predicated upon a medical determination that the employee should not continue to be exposed to BD.

3. Where employers rely on objective data to exempt them from monitoring responsibilities, OSHA is considering requiring these employers to keep the data for as long as such data continue to be relied upon. Is this the appropriate length of time to keep such data?

D. Additional Submissions to the BD Docket

OSHA is submitting the following reports to the BD Docket:

(1) *Abstracts from International Symposium: Evaluation of Butadiene and Isoprene Health Risks,* June 27–29, 1995, Blaine, Washington; (2) Delzell, E., N. Sathiakumar, M. Macaluso, M. Hovinga, R. Larson, F. Barbone, C. Beall, P. Cole, *A Follow-up Study of Synthetic Rubber Workers,* October 2, 1995; (3) Santos-Burgua, C., G. Matanoski, S. Zeger, L. Schwartz, ''Lymphohematopoietic Cancer in Styrene-Butadiene Polymerization Workers,'' *American Journal of Epidemiology,* Volume 136, 1992, pp. 843–844; and (4) M. Sorsa, K. Peltonen, H. Vainio, and K. Hemminki (eds.), *Butadiene and Styrene Assessment of Health Hazards,* International Agency for Research on Cancer Scientific Publication No. 127, Lyon, France, 1993.

II. Public Participation

Comments

Written comments regarding the issues raised by this notice must be postmarked by April 8, 1996. Four copies of these comments must be submitted to the Docket Office, Docket No. HS–041), U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 219–5046, provided the original and 3 copies are sent to the Docket Office thereafter. All materials submitted will be available for inspection and copying at the above address. Materials previously submitted to the Docket for this rulemaking need not be re-submitted.

III. Authority

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20210. It is issued pursuant to section 6(b) of the Occupational Safety and Health Act (29 U.S.C. 655), and 29 CFR part 1911.

Signed at Washington, D.C., this 5th day of March, 1996.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 96–5519 Filed 3–7–96; 8:45 am]

BILLING CODE 4510–26–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AP–FRL–5437–6]

RIN 2060–AE04

National Emission Standards for Hazardous Air Pollutants for Source Category: Pulp and Paper Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of availability of supplemental information, proposed rule, and opening of the public comment period for these actions.

SUMMARY: This action presents an assessment of supplemental information on 1993 proposed National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Pulp and Paper Production Source Category and announces proposed additional sources in that source category not covered by the 1993 proposed standards. These additional sources include mechanical mills, secondary fiber mills, nonwood fiber mills, and paper machines. This action also announces availability of data for public review that is in addition to data previously announced in a February 22, 1995 Notice of Data Availability (60 FR 9813). In addition, this action announces the availability and requests comments on new emission factors developed using that data.

This action sets forth the most significant changes EPA is considering, but is not inclusive of all changes likely

to be made on the 1993 proposed NESHAP. EPA is still considering other comments submitted on the 1993 proposed NESHAP and will combine them along with comments and data received on this action to form the basis for the promulgation of a final NESHAP later this year. Proposed NESHAP for the chemical recovery area combustion sources at mills are not contained in this action, but will follow in a separate action later this year.

DATES: Comments are requested only on information presented in this action. Comments must be received on or before April 8, 1996, unless a public hearing is requested by March 18, 1996. If a hearing is requested, written comments must be received by April 22, 1996.

ADDRESSES: Comments related to the chemical wood pulping mills (kraft, sulfite, soda, and semi-chemical) should be submitted (in duplicate, if possible) to: Air Docket Section (6102), Attn: Docket No. A–92–40, U.S. EPA, 401 M Street, SW, Washington, DC 20460, and Ms. Penny Lassiter, address shown in **FOR FURTHER INFORMATION CONTACT** Section. Comments related to mechanical mills, secondary fiber mills, nonwood mills, and paper machines should be submitted (in duplicate, if possible) to Air Docket Section (6102), Attn: Docket No. A–95–31 (MACT III), U.S. EPA, 401 M Street, SW, Washington, DC 20460 and Ms. Elaine Manning, address shown in **FOR FURTHER INFORMATION CONTACT** Section.

FOR FURTHER INFORMATION CONTACT: For additional information or regulations applicable to chemical wood pulping mills, contact Ms. Penny Lassiter or Mr. Stephen Shedd, Office of Air Quality, Planning, and Standards (MD–13), U.S. EPA, Research Triangle Park, North Carolina 27711: telephone Ms. Lassiter at (919) 541–5396 or Mr. Shedd at (919) 541–5397. For further information on the regulatory development for mechanical mills, secondary fiber mills, nonwood mills, and paper machines, contact Ms. Elaine Manning at the address in Research Triangle Park listed above, telephone (919) 541–5499, facsimile for the address in Research Triangle Park listed above is (919) 541–3470.

SUPPLEMENTARY INFORMATION: Public Hearing. Anyone requesting a public hearing must contact EPA no later than March 18, 1996. If a hearing is held, it will take place on March 25, 1996, beginning at 9 a.m. at the EPA Administration Bldg., Main Auditorium, 79 T.W. Alexander Drive, (near intersection of NC54), Research Triangle Park, NC. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Jolynn Collins, U.S. EPA, Research Triangle Park, North Carolina 27711, telephone (919) 541–5671.

Docket. Air Docket No. A–92–40, contains supporting information used in developing the proposed standards and this action for the chemical wood pulping mills. All docket cites in this action are from Air Docket No. A–92–40, unless specified differently. Air Docket No. A–95–31 contains information that supports the proposed standards for the rule development for the mechanical mills, secondary fiber mills, nonwood mills and paper machines. These air dockets are located at the U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460 in room M–1500, Waterside Mall (ground floor). All comments received during the public comment period on the 1993 proposed NESHAP are contained in the Pulp and Paper Water Docket located in the basement of Waterside Mall, room L102. These dockets may be inspected from 8:30 a.m. to 12 p.m. and 1:00 p.m. to 3:00 p.m., Monday through Friday. A reasonable fee may be charged for copying.

Documents. An electronic version of this action as well as ''Review Draft: Chemical Pulping Emission Factor Development Document,'' ''Presumptive MACT for Non-Chemical and Other Pulp and Paper (MACT III) Mills,'' and previous Federal Register notices pertinent to the pulp and paper NESHAP are available for download from EPA's Technology Transfer Network (TTN), which is a network of electronic bulletin boards developed and operated by EPA's Office of Air Quality Planning and Standards. The TTN provides information and technology exchange in various areas of air pollution control. The service is free, except for the cost of a phone call. Dial (919) 541–5742 for data transfer of up to 14,400 bits per second. The TTN is also available on the Internet (access: TELENET ttnbbs.rtpnc.epa.gov). For more information on the operation of the TTN, contact the systems operator at (919) 541–5384.

The information in this action is organized as follows:

I. Background

A. History

The Clean Air Act (the Act) requires EPA to develop NESHAP for the pulp and paper source category by November 1997. Under section 112 (d) of the Act, the goal of NESHAP is to require the implementation of maximum achievable control technology (MACT) to reduce emissions and, therefore, reduce the public health hazard of pollutants emitted from stationary sources.

On December 17, 1993 (58 FR 66078), EPA published proposed NESHAP and effluent guidelines for the pulp and paper industry. These integrated regulations are referred to as the cluster rule. The purpose of this action is to announce the availability of additional data and to reopen the public comment period only for items identified in this action. EPA's Office of Water (OW) plans to issue a Federal Register notice similar to this action for the effluent guidelines portion of the cluster rule. Publication of OW's action is anticipated to be in approximately four weeks.

The 1993 proposed air standards would regulate all HAP's emitted from new and existing pulp and paper mills that chemically pulp wood fiber using kraft, sulfite, soda, or semi-chemical methods (MACT I). These proposed MACT I standards address air emission points in the pulping and bleaching processes and in the associated process wastewater collection and treatment systems. Information was not available at that time to evaluate controls on other emission points within the source category. The standards for the pulp and paper source category, therefore, are being developed in phases. Standards for combustion sources (MACT II) are under development and will be proposed later this year. Proposed standards for the remaining sources

(MACT III) are addressed in Section X of this notice. The MACT III standards apply to the following operations located at all mills: mechanical pulping (e.g., groundwood, thermomechanical, pressurized); pulping of secondary fibers (deinked and nondeinked) by nonchemical means; nonwood pulping; and paper machine additives. Coating and converting operations will be addressed later under a separate source category.

Available data shows that pulp and paper facilities emit significant quantities of HAP's that would be controlled by the proposed standards. Some of these pollutants are considered to be carcinogenic, and all can cause toxic health effects following exposure, including nausea, headaches, respiratory distress, and possible reproductive effects. Most of the organic HAP's emitted from this industry also are classified as volatile organic compounds (VOC) which participate in photochemical reactions in the atmosphere to produce ozone, a contributor to photochemical smog. The proposed emission controls for HAP's will reduce VOC emissions as well. The proposed HAP control technologies will similarly reduce emissions of total reduced sulfur (TRS) compounds that are of concern because they produce some odor and they include some HAP.

The public comment period on the proposed NESHAP ended on April 18, 1994; however, EPA recognized in the preamble to the proposed rule that various industry groups were collecting air emissions data that would not be available until after the comment period and further stated that EPA would still consider those data before the promulgation of the NESHAP. Some of the data were received and were noticed in a February 22, 1995 Notice of Data Availability (60 FR 9813).

This action announces the availability of new data and solicits comments on the use of the data for emission factor development and on changes to the proposed rule. These data and analyses are included in Air Docket A–92–40. This action does not reopen the public comment period for all issues related to the proposed rule. Comments should address only those technical and regulatory changes specifically mentioned in this action.

On September 29, 1995, a Presumptive MACT report was issued for the MACT III source category. A brief description of the Presumptive MACT process and the outcome of the process is provided in Section X. Comments are also solicited on the MACT III tentative conclusions. EPA currently plans to take final action on the MACT III NESHAP for the sources discussed in this action at the same time as the MACT I final action. EPA also plans to propose NESHAP for recovery area combustion sources (MACT II) at the same time.

B. Summary of Action

As noted earlier, EPA has proposed NESHAP for mills that chemically pulp wood fiber. EPA is considering revisions to this proposed NESHAP based on comments from the public as well as test data that has been given to EPA since proposal. The changes to the proposed rule under consideration include: revisions to emission factors; broadening of the source definition; development of subcategories for pulping; revisions to MACT requirements and how they are applied; and revisions to MACT compliance schedule for certain kraft mill emission points. This action also identifies how EPA currently plans to address concerns raised by commentors regarding interaction between the NESHAP, currently under development and other rules, such as Resource Conservation and Recovery Act/Boiler Industrial Furnace (RCRA/BIF) and Prevention of Significant Deterioration/New Source Review (PSD/NSR). EPA is also soliciting comments on the industry's alternative compliance concept that includes some degree of emissions averaging. A brief overview of these changes is described below. The data and information to support these changes under consideration can be found in the Air Docket No. A–92–40. Additionally, EPA is announcing a proposed decision for standards for other mills and paper machines.

The emission factors were evaluated using additional emission test data submitted by the industry. Also, the approach to emission factor development has changed since proposal as more information has become available. The new approach involves developing emission factors for functional mill systems, as opposed to the individual emission points used at proposal. This emission factor evaluation is contained in a development document and is being announced in this notice for public review and comment.

At proposal, EPA chose a single source definition to include pulping processes, bleaching processes, and pulping and bleaching wastewater streams at a pulp and paper mill. EPA currently intends to expand this definition to include paper machines and the causticizing area due to the interrelated nature of these processes with the pulping and bleaching areas.

At this time, EPA plans to subcategorize the pulping and associated wastewater components to develop different MACT requirements. This subcategorization is necessary to reflect important differences between the different pulping process emissions, emission controls, and control cost. The pulping (and associated wastewater) subcategories being considered are kraft, sulfite, soda, and semi-chemical.

At proposal, all vents and pulping wastewater streams in pulping and bleaching areas were subject as a group to the MACT requirements with the exception of certain small vents and wastewater streams defined by numerical cutoffs. For existing source MACT applicable to the pulping component at kraft mills, EPA is considering specifically defining the following systems as requiring enclosure and venting to a control device: the low volume-high concentration (LVHC) vent system (i.e., the digester, turpentine recovery, and evaporator systems); weak black liquor storage tanks; the pre-washer knotting and screening system; the brownstock washing system; and the oxygen delignification system. Enclosure and vent control requirements would not change from proposal. Only these enumerated systems would be subject to the rule.

EPA currently intends to define new source MACT for the pulping area at kraft mills to be the same as existing source MACT with the addition of control of post-washer deckers and screens. EPA currently intends to define new and existing source MACT for kraft mill wastewater to be collection and treatment of certain named pulping condensate streams instead of all pulping wastewater above 500 parts per million by weight (ppmw). EPA is considering changing the proposed treatment requirements for steam strippers at kraft mills to allow compliance with one of the following: (1) Removal of 92 percent of the HAP or methanol content, (2) removal of 9.2 pounds of methanol per air-dried ton of pulp (lb/ADTP), or (3) treat to a steam stripper outlet HAP concentration below 330 ppmw measured as methanol. For unbleached kraft mills, the following treatment requirements would be applicable: (1) Removal of 92 percent of the HAP or methanol content; (2) removal of 5.9 lb/ADTP of methanol; or (3) treatment to a steam stripper outlet HAP concentration below 210 ppmw measured as methanol. As at proposal, methanol is being used here as a surrogate for tracking total HAP reduced. Mills still have the option of achieving these removals with an

alternative control device, recycling to a controlled system, or hardpiping these condensate streams directly to the biological wastewater treatment plant instead of steam stripping.

EPA is considering extending the compliance time for controlling brownstock washers and oxygen delignification units for kraft pulping mills by an additional 5 years. The additional period would be provided to allow industry sufficient time to plan, coordinate, and implement the best combination of control technologies that facilitate pollution prevention and emphasize the multimedia nature of pollution control.

EPA is considering the following standards for the newly-created sulfite, semi-chemical, and soda mill subcategories. Based on an analysis of current controls, EPA is considering requiring certain sulfite mill vents in the pulping component at existing sources (i.e., digester, evaporator, and red stock washers) to be vented to recovery systems to reduce HAP emissions. Affected vents at new sources include the same vents as at existing sources, with the addition of knotter and screening systems, and weak and strong liquor and acid condensate storage tank vents. Air emissions from these selected vents and connected recovery systems would be limited to certain mass emission rates or percent reductions across the complete connected system. This systems approach would allow many mills to use the various configurations of current recovery systems to meet either of these limits. Compliance would be demonstrated by an initial performance test to confirm compliance with one of the mass limits, followed by monitoring of control and process equipment operating parameters to demonstrate long-term compliance. EPA has determined from an evaluation of the current mill emission data that the following emission values represent the best performing existing and new mills: (1) Mass emission rates of 0.65 and 1.10 lb methanol/ODTP, or (2) a mass HAP or methanol emission reduction of 92 and 87 percent, for calcium-based and ammonium and magnesium-based mills, respectively. The new and existing MACT for pulping wastewater streams at sulfite mills would be no additional control.

EPA currently plans to define existing source MACT for semi-chemical mills and soda mills to be enclosure and venting of LVHC vents to a control device. Enclosure and control device requirements would be the same as at proposal. New source MACT for semi-chemical and soda mills would be the same as existing source MACT plus the control of the washer system vents. The new and existing MACT for pulping wastewater streams at semi-chemical and soda mills is no additional control.

For bleaching processes at all mills, EPA is still considering requiring all vents from the bleaching stages which utilize chlorine and/or chlorine dioxide to control emissions of chlorinated HAP's by 99 percent from the tower, seal tank, and washer vents as in the proposed NESHAP. A new limit of 10 parts per million by volume (ppmv) of chlorinated HAP from the outlet of the scrubber is also now being considered as an alternative to the 99 percent removal limit. A mill would still be allowed to measure the chlorinated HAP's as chlorine. Additionally paper-grade bleaching processes would be required to control chloroform air emissions by complying with the Best Available Technology (BAT) economically achievable currently under development by EPA's OW. EPA is still re-considering the level of control for chloroform from bleach plants at dissolving-grade mills. MACT for new sources would be the same as MACT for existing sources. The proposed requirements for controlling methanol and other organic HAP emissions for bleaching stages will likely no longer be considered. As at proposal, MACT for bleaching wastewater would be no additional control.

EPA has responded to requests for guidance on the interaction and applicability of the proposed air regulation with RCRA/BIF and NSR/PSD. With regard to the possible interaction of the regulation with RCRA/BIF that could result from the combustion of concentrated condensates derived from steam stripper overhead vents, EPA has initially determined that regulation of combustion of these condensates under RCRA is unnecessary because the MACT controls would be protective. With regard to the possible interaction of the regulation with NSR/PSD that could come as a result of secondary emissions from combustion control devices used to comply with this NESHAP, EPA is considering recommending to State permitting agencies that mills complying with the cluster rule be granted the ''pollution control project'' (PCP) exclusion and be allowed to conduct minor NSR only.

These are the most significant changes to the 1993 proposal that EPA may implement in the final NESHAP, but they do not include all changes likely to be made. More detailed information on changes discussed in this action and supporting documentation can be found in later sections.

In this action, EPA is also announcing a proposed decision for standards for mechanical mills, secondary fiber mills, nonwood mills, and additives and solvents applied to paper machines (MACT III). The proposal is based on Presumptive MACT that was issued in September 1995.

C. New Data

In the February 22, 1995 Notice of Data Availability (60 FR 9813), EPA announced data that had been received through February 16, 1995. These data included three separate multi-volume test reports, several test report and testing program summaries, and a draft condensate study. This action announces the availability of new data and solicits comments on the use of the data for emission factor development and on changes to the proposed rule.

Data added to Air Docket A–92–40 since the 1993 proposal are located in Section IV of this docket. Major groups of data of particular note (but not inclusive of all data in Section IV under consideration by EPA) are as follows: (1) Items IV–A–4, IV–D1–30, IV–D1–32, IV–D1–36, IV–J–17, and IV–J–28, supplemental information and corrections to the data noticed at 60 FR 9813; (2) IV–D1–84 and IV–J–31, compilation of emissions data noticed at 60 FR 9813; (3) items IV–D1–27, IV–D1–46, IV–D1–66, IV–D1–75, and IV–D1–79, wastewater system components, emissions, methanol biodegradability in wastewater treatment systems, and soluble biological oxygen demand (BOD) as a parameter to track methanol biodegradability; (4) IV–D1–72, IV–D1–76, IV–D1–77, IV–D1–80, IV–D1–81, IV–D1–86, IV–D1–89, IV–D1–90, IV–D1–92, IV–E–64, and IV–E–68, control of air emissions at semi-chemical pulp mills; (5) IV–D1–87, IV–D1–88, IV–D–93, IV–D1–94, IV–E–31b, IV–E–60, IV–E–66, and IV–E–67, control of air emissions at sulfite pulp mills; (6) IV–D1–43, IV–D1–58, IV–D1–62, IV–E–15, IV–E–25, IV–E–28, IV–E–38, IV–E–45, and IV–J–9, control design and costs; (7) IV–J–29 and IV–J–32, characterization of pulping condensates; (8) IV–D1–59 and IV–D1–95, industry's Clean Water Alternative (see Section VIII of this notice); (9) IV–D1–83, knotter emissions data; and (10) IV–D1–51, IV–D1–56, and IV–E–63, characterization and control of concentrated steam stripper condensates.

EPA also requests comments on EPA studies and memoranda completed since the 1993 proposal and contained in the docket (docket categories IV–A EPA Studies or Contractor Reports and IV–B EPA Factual Memoranda). These EPA studies and memoranda include

the emission factor development document and provide support material for the Level of the Standards Section VI in this notice.

D. Public Participation

A public comment period was open from December 17, 1993 to April 18, 1994 and a public hearing was held on February 10, 1994 to receive comments on the 1993 proposal. Comments and data received at the hearing and during the comment period are included in the docket (see **SUPPLEMENTARY INFORMATION** Section). EPA has also held numerous meetings on the 1993 proposed integrated rules and the Presumptive MACT with many of the stakeholders from the pulp and paper industry, including a trade association (American Forest and Paper Association - AF&PA), numerous individual companies, consultants and vendors, environmental groups, labor unions, and other interested parties. Materials have been added to the docket to document these meetings and to make available for public review new information received at those meetings.

II. Source Category and Pollutants for Control

EPA proposed in 1993 to regulate total HAP emissions from mills that chemically pulp wood fiber using kraft, sulfite, soda, and semi-chemical methods. At that time, EPA did not propose to regulate the HAP emissions from other types of mills. EPA is now inclined to include into this standard additional types of mills in the pulp and paper industry as well as the paper machines at all the mills (MACT III). These new mills include mechanical mills, secondary fiber mills, and nonwood mills. EPA's current position on these mills and on paper machines is described in Section X.

The 1993 proposed NESHAP regulates total HAP emissions from pulping, bleaching, and process wastewater at facilities covered by the proposal, as opposed to individual HAP's. The proposed standards allow the use of methanol (or methanol and chlorine from bleaching emissions) as surrogate compounds because EPA initially concluded that use of surrogates is technically viable and is a less costly way to track HAP emission reductions.

For pulping processes and wastewater, EPA's position on pollutants to be covered has not changed since proposal, and EPA is still inclined to regulate total HAP emissions, allowing the use of methanol as a surrogate measurement parameter. At proposal, EPA determined that the bleach plant emissions were comprised of various chlorinated and nonchlorinated HAP's. Therefore, a total HAP standard was proposed. Data at proposal indicated that methanol and chlorine could be used as surrogates for the nonchlorinated and chlorinated portions of total HAP, respectively. As a result of comments and data received since proposal, EPA now knows that only chlorinated HAP's, primarily chlorine, chloroform, and hydrochloric acid, are being controlled by the MACT control technologies for bleach plant emissions. Therefore, EPA currently plans to regulate only the emissions of chlorinated HAP's from bleaching processes. A more detailed discussion on this topic is presented in Section VI.

III. Emission Factors

Based on comments and data received, EPA has re-evaluated the emission factor development approach used to characterize emission sources and developed new emission factors. EPA developed emission factors at proposal based on all available data. These data included a field test program of air and liquid samples from four kraft mills and one sulfite mill (EPA 5-mill study) and some limited additional industry data that was used to supplement EPA 5-mill study (see the Pulp, Paper, and Paperboard Industry Background Information for Promulgated Standards, Volume 2). Industry representatives commented that these data were insufficient to accurately characterize emissions and have since supplied EPA with additional test data from kraft, sulfite, semi-chemical, and soda mills. EPA analyzed and incorporated these data into the existing database.

At proposal, EPA developed emission factors for each type of individual emission point typically found at the mills. Based on the additional test data, EPA is considering changing that approach. The new approach involves developing emission factors based on mill systems rather than on individual emission points. The mill systems are defined in Section VI, Level of Standards.

EPA now considers this mill system approach the best approach for several reasons. First, this approach provides a more objective comparison of the mills. Mills often utilize different configurations of equipment within a system, making point by point comparisons misleading. Averaging such pieces of equipment together can provide an inaccurate estimate of the total system. For example, comparing one mill's oxygen delignification system as a whole to another mill's system was more meaningful than establishing separate emission factors for each piece in the system (e.g., blow tanks, washer units, interstage storage chests, and filtrate tanks); not all mills have the same types of equipment in their oxygen delignification system, and some mills label their oxygen delignification equipment differently.

Next, one mill may have a single screen and another mill may have multiple screens, but both mills have one screening system with emissions that can be compared. The mill system approach makes these kinds of comparisons between mills possible.

Finally, the mill system approach lessens the problems associated with the nomenclature assigned to each of the components. Variability exists between the names that different mills assign to similar pieces of equipment in the same locations. By combining individual emission points into complete systems, the problem was lessened.

The results and the grouping procedures and approach followed for each mill system at the various mill types are detailed in the ''Review Draft: Chemical Pulping Emission Factor Development Document.'' The report is available in the docket and may be downloaded from the TTN (see **SUPPLEMENTARY INFORMATION** Section). This report also discusses the specific issues and all assumptions that were made in the emission factor development, including the specific data points tested by industry that were included in each mill system. EPA is specifically asking for comments on the results and the approach used in developing the emission factors before issuing the final report.

IV. Definition of Source

In the December 17, 1993 proposal, three definitions of ''source'' were proposed and considered by EPA. The one chosen by EPA at the time of proposal was a single source to include the pulping processes, the bleaching processes, and the pulping and bleaching process wastewater streams at a pulp and paper mill. EPA is still inclined to use the single source definition. EPA considers the broad source definition to be the best interpretation for the pulp and paper industry. This broad source definition would alleviate concerns that a small change to an existing mill that creates a small increase in emissions would trigger new source requirements in the NESHAP. The single source definition is also the most appropriate interpretation for the industry due to the interrelated nature of equipment in pulp and paper mills. For example, wastewater recycling from process to process is an

integral part of a mill in order to reduce fresh water intake. Emissions from a piece of process equipment are a function of pollutants released during the processing of the pulp as well as pollutants volatilized from water recycled to the process equipment.

EPA is inclined to include paper machines and causticizing equipment in the source definition above. The term *paper machine* being used here does not include paper machine additives and solvents, and their associated air emissions being addressed in the proposed MACT III standards set forth in Section X of this notice. Paper machine emissions discussed here for inclusion in the above source definition are from the HAP's remaining on the pulp from the pulping and bleaching process and released when processed through the paper machine. EPA would include paper machines and causticizing equipment since the emissions from these sources are, like the emission points discussed above, interrelated with other process emissions. For example, water is often reused or recycled from pulping processes to the causticizing processes, and HAP's in the pulp and water slurry from the pulping and bleaching processes are carried over into the paper machine where they are emitted. While the causticizing area and the paper machines were not defined as part of the source at proposal, they were still being controlled through the wastewater MACT requirements. Treatment of condensate streams to remove HAP's prior to recycling them would result in reduced emissions from the equipment to which they are recycled and from subsequent pieces of equipment due to reductions in HAP carried over with the pulp and process waters. EPA recognizes the wastewater contribution to emissions from these processes and as such currently intends to include these processes in the source definition. A mill could then take credit for emission reductions from these processes if it chose to implement the Clean Water Alternative. The Clean Water Alternative is discussed further in Section VIII (Emissions Averaging).

EPA considered regulating emissions from woodpiles, but did not find evidence to suggest that woodpiles are sources of HAP emissions. Therefore, they are excluded from the definition of source.

V. Subcategorization

In the proposed rule, EPA solicited comment on the need for subcategories. Many commentors responded to this solicitation with information on why certain mills should be treated differently than kraft mills. Separate subcategories for kraft, sulfite, soda, and semi-chemical pulping processes were suggested. Issues raised by commentors in support of subcategories included the difference in process emissions and emission control technologies for sulfite, soda, and semi-chemical mills. Others indicated that the lack of air and wastewater emissions data on these types of mills prevented a balanced assessment of the need for subcategories.

Based on comments received, review of the industry data submitted after proposal, and meetings with industry groups, EPA solicits comment on establishing four separate subcategories for the pulping processes at mills based on the type of pulping process (kraft, sulfite, semi-chemical, and soda) used.

As a result of the differences in digestion methods, the mills produce different emissions that have resulted in different degrees of control at baseline and different applicable control technologies. At proposal, EPA understood that the four types of mills differ in the way they digest wood to make pulp, but did not have the data to determine the extent to which these differences influence potential emission control strategies. Information received after proposal indicated the significant extent of these differences.

Kraft mills generate significant quantities of TRS compounds. Emissions of TRS compounds are regulated under the New Source Performance Standards for Kraft Mills (kraft NSPS). The vent streams subject to control also contain HAP's. Therefore, a number of kraft mills already have a control system in place for the LVHC vent streams. Also, most kraft mills contain the means of combusting other HAP containing streams, such as high volume-low concentration (HVLC) vent streams.

While the HAP-containing vents at kraft mills are laden with TRS compounds, the HAP containing vents at sulfite mills contain sulfur dioxide (SO_2). Sulfite mills collect the emissions from these vents to recover the SO_2, which is necessary to the production of the cooking liquor. The collection and burning of these vent streams, as is typically done at kraft mills, would not be practical. Therefore, a MACT standard with a different technology basis is needed for these mills, and a separate subcategory warranted.

Emissions data indicate that soda and semi-chemical mills have HAP emissions in the same range as for kraft mills, although semi-chemical mill emissions tend to be at the lower end of the kraft range. However, these mills do not generate significant quantities of TRS compounds. Therefore, these mills lack the LVHC equipment already installed at kraft mills, as well as lacking the benefit of controlled odor from these vent streams. The digestion process in semi-chemical pulping differs from soda pulping resulting in different emission points and characteristics. However, EPA intends to set MACT for the semi-chemical and soda mills as control of the LVHC vent streams. The MACT requirements are discussed in Section VI (Level of Standards).

Where two or more subcategories are located at the same mill site and share a piece of equipment, that piece of equipment would be considered a part of the subcategory with the more stringent MACT requirements for that piece of equipment. For example, the foul condensates from an evaporation set processing both kraft weak black liquor and spent liquor from a semi-chemical process would have to comply with the kraft subcategory requirements for foul condensate. This more stringent requirement is appropriate because there is no viable way to isolate the emissions for each pulping source to determine compliance separately.

VI. Level of Standards

Changes from the 1993 proposal now being considered by EPA on the level of the standard (emission limits and points to be controlled) are presented in this section. At proposal, sulfite, semi-chemical, and soda mills were not differentiated from kraft pulping mills and therefore were subject to the same control requirements as kraft mills. As discussed earlier, EPA is considering subcategorizing kraft, sulfite, semi-chemical, and soda pulping and associated wastewater components for the purpose of setting MACT standards. While EPA does not currently contemplate subcategorizing among bleaching processes, EPA may distinguish between papergrade and dissolving grade bleaching processes for purposes of setting chloroform MACT requirements for bleach plants. The rationale for this distinction is set forth later in this section.

EPA is also considering naming specific vents and streams subject to the standard instead of determining affected emission points and wastewater streams based on broad groups of equipment with exclusions for small streams currently not being controlled, as was done at proposal. This change in approach will more accurately specify the units that should be controlled.

Requirements for enclosures, closed-vent systems, and control devices for

those closed vent systems in the pulping process, as set forth in the proposed NESHAP, would be the same for the pieces of equipment being named in this action for kraft, semi-chemical, and soda mills. Public comments received on these 1993 proposed NESHAP requirements are under review. EPA will consider these comments prior to promulgation of this rule and will assess whether changes are warranted; however, such potential changes are not discussed in this notice. Those same requirements for enclosures and closed-vent systems, as set forth in the proposed NESHAP, would also apply to the pieces of equipment being named in this action for sulfite mills; however, EPA is considering changing the control device requirements for those closed vent systems at sulfite mills. Requirements for control of emissions from kraft pulping wastewater prior to treatment, as set forth in the 1993 proposal, would still apply to the kraft pulping condensate streams being named in this action; however, EPA is considering changing the treatment limits for these pulping condensates. No control requirements are now being considered for non-kraft wastewater streams. Requirements for enclosures, closed-vent systems, and control devices for those closed vent systems in the bleaching process, as set forth in the 1993 proposed NESHAP, would be the same for the stages using chlorinated bleaching agents; however, EPA is considering adding some requirements for the control of chloroform emissions and is considering adding additional ways to meet the treatment requirements on the closed vent systems from the chlorinated bleaching stages. Additionally, EPA is considering dropping the requirement for control of non-chlorinated HAP's (methanol, etc.) in the bleaching area.

A. Kraft

This section describes the changes to the level of the standard for kraft mills from the 1993 proposal. These changes include naming the streams to be controlled; changing and adding additional performance levels for steam strippers; and re-evaluating controls for pre-washer knotter and screen systems, and weak black liquor storage tanks.

The proposed standards required owners or operators of new or existing sources to enclose and vent all pulping component emission points into a closed vent system routed to a control device. Deckers and screens at existing mills and small vents or enclosed process equipment below certain specified volumetric flow rates, mass flow rates, and mass loadings were not subject to control. Similarly, pulping wastewater streams with concentrations below 500 ppmw of HAP's or flow rates below 1.0 liter per minute (lpm) did not require control.

At proposal, EPA had limited data to characterize some of the smaller emission points and condensate streams within the pulping component. However, based upon experience and engineering assumptions, these small vents and condensate streams were assumed to be uncontrolled at the floor and not reasonable to control beyond the floor. Therefore, EPA proposed these low volumetric flow rates and condensate HAP concentrations to differentiate between points currently being controlled and those that are not controlled. EPA solicited comments on whether this was a viable approach for identifying emission points and condensate streams that should be controlled under the MACT standard.

Based on comments and data received, EPA re-evaluated the method for establishing control applicability for pulping process equipment and associated wastewater streams. Using this new information, EPA is now tentatively intending to establish control applicability for kraft pulping process equipment systems and associated wastewater streams by specifically defining the equipment systems and associated wastewater streams subject to the MACT standard (i.e., only the equipment systems and wastewater streams specifically enumerated would be subject to the standard). EPA believes this change will result in the same level of control at the MACT floor for both wastewater and process equipment contemplated in the proposal, yet will reduce or eliminate the cost of testing that would have been required by the 1993 proposal to determine applicability. The requirements for enclosures, closed vent systems, and control devices set forth in the 1993 proposal would still apply.

The named pulping process systems that EPA is considering for control are: the LVHC vent system, pre-washer knotter and screening system, the brownstock washing system, weak black liquor storage tanks, and the oxygen delignification system. The following new definitions are now under consideration:

1. The LVHC vent system includes batch the digester blow heat recovery vents, batch digester relief steam condenser vents, continuous digester relief steam vents, turpentine condenser(s) vents, continuous digest blow tank vent, evaporator vacuum system vents, liquor concentrator vacuum system vents, pre-evaporator vacuum system vents, steam stripper feed tank vents, and steam stripper off gas vents.

2. The brownstock washing system includes rotary vacuum drum washers, pressure washers, diffusion washers, horizontal belt washers, all filtrate tanks, and intermediate stock chests. The washing system does not include deckers, screens, stock chests or pulp storage tanks following the last stage of brownstock washing.

3. The oxygen delignification system includes the blow tank, the post oxygen washers, filtrate tanks, and any interstage pulp storage tanks.

4. The pre-washing screening system includes knotters, knotter drain tanks, screens, and reject tanks prior to brownstock washing.

At proposal, EPA concluded that a sufficient number of weak black liquor storage tanks are controlled in the industry to constitute a floor-level of control. However, several commentors stated that weak black liquor storage tanks could not feasibly be controlled by simply venting the tanks to a header system and combustion device (the basis for the 1993 proposal). The commentors stated that a more complex system involving sweeping air across the tank would be necessary due to the potential for an older tank to collapse if a vacuum were pulled on the tank. A sweep air system would generate a larger volumetric flow rate from these tanks and thus increase the size of the header and the combustion capacity required of the control device. An alternative would be to replace the older tanks with newer tanks which could withstand the vacuum.

Based on the data available regarding current control technology levels in the industry and the range of emission potential for these tanks, EPA believes the 1993 proposed MACT requirements for these tanks should be retained. However, industry has raised concerns that the information submitted in the NCASI voluntary survey prior to proposal is providing a misleading picture of current industry control practices. The industry has also indicated that the emissions data from the NCASI test program for these tanks is suspect. The industry is collecting additional information on current operation, age, emissions, and control practices for these tanks to supplement information already provided to EPA.

EPA is considering whether distinguishing between types of weak black liquor storage tanks is appropriate. Specifically, EPA is considering the appropriateness of a distinction in age since newer tanks may be structurally able to withstand a vacuum. EPA is

interested in any data on the age of the controlled tanks and the types of controls in use. EPA is also interested in comments on whether age is an appropriate parameter to consider for determining control applicability.

Questions remain as to what level of control represents the MACT floor for these different types of tanks. EPA will continue to discuss these issues with industry and consider all available information to resolve the MACT floor questions prior to promulgation.

Several commentors also stated that pre-washer knotter and screening systems should not be controlled. Based on the data available regarding current control technology levels in the industry and the range of emission potential for these systems, EPA believes the control of pre-washer knotter and screening systems represents a floor-level of control. However, industry has raised concerns about the information submitted in the NCASI voluntary survey prior to proposal because the survey respondents were not clear as to their meaning when they reported knotter systems as controlled, not controlled, or not vented. The survey responses also did not indicate if the screening systems were located before or after washing. Therefore, as with black liquor tanks, questions remain concerning what level of control represents the MACT floor for these equipment systems. Industry is collecting additional information concerning the current operation, emissions, equipment, and control levels in these systems to supplement the information already provided. EPA is interested in any additional data or information concerning the type of and control of emission points in the knotter and screening systems, both pre and post-washer. EPA will re-evaluate the MACT floor level of control for these sources prior to promulgation.

At proposal, EPA characterized pulping wastewater and condensate streams to be controlled as those with HAP concentrations above 500 ppmw. However, commentors said that the 500 ppmw level was an inappropriate determinant for wastewater streams controlled at the MACT floor and provided data to name each stream to be treated. Based on review of these stream definitions and data submitted by the industry to characterize these streams, EPA is inclined to agree that the 500 ppmv is inappropriate level and that naming the streams better identifies the streams to be controlled at the MACT floor. EPA now considers the subject wastewater streams to be foul condensates and is inclined to adopt the following definitions of foul condensates and ancillary equipment:

1. Foul condensates—any liquid streams originating from the following process areas or equipment: batch digester relief and blow gas system condensates; batch digester blow heat recovery system condensates; continuous digester system flash steam condensates; continuous digester chip steaming vessel condensates; turpentine decanter underflow; non-condensible gas (NCG) system condensates; NCG system low point drains; and condensates from the weak liquor feed stage(s) in the evaporator system. Where vapors or gases from the digester, turpentine recovery, NCG, and/or evaporator systems are segregated into low-HAP and high-HAP concentration fractions through multistage, differential, or selective condensation, only the high-HAP fraction stream is considered foul condensate. If condensate segregation is not performed on the process areas or equipment identified above, the entire volume of condensate generated, produced, or associated with the process area or equipment shall be considered foul condensate.

2. Evaporator system—any and all equipment associated with increasing the solids content of spent cooking liquor including, but not limited to, pre-evaporators, evaporators (direct and indirect contact), and concentrators.

3. Condensate segregation—the practice of generating, producing, or isolating a high-HAP concentration-low flow rate condensate stream from process vent vapors or gases in order to maximize the HAP mass and minimize the condensate volume sent to subsequent treatment.

4. Segregated condensate stream (high-HAP fraction)—any condensate stream that contains at least 65 percent by weight of the total HAP mass (measured as methanol) that is present in the vapor stream prior to condensation or isolation.

EPA is requesting comment on this named stream approach and on whether the definitions shown above and on the pulping process equipment systems discussed earlier, accurately represent the sources of emissions to be controlled at the MACT floor and clearly define them for purposes of compliance determinations.

EPA also re-evaluated control requirements for steam stripping—the technology on which MACT for these wastewater streams is based. The proposed standards required that the pulping wastewater streams subject to control must meet one of the following: Recycle to a controlled piece of process equipment, reduce the HAP concentration to below 500 ppmw, reduce total HAP or methanol by 90 percent, use the proposed design steam stripper, or hardpipe the stream to biological treatment. New performance data on all the currently operated steam strippers were submitted after proposal (Pulp and Paper Water Docket item 20,027 attachment 3). The new data indicates that the best performing steam strippers representing the floor level of control achieve a combination of high percent methanol removal, high methanol mass removal, and low outlet methanol concentration. Because methanol is a good indicator of total HAP removal for pulping processes and associated wastewater, any one of these parameters demonstrates that total HAP are being removed from the condensate streams and therefore are not emitted to the atmosphere. Based on that data, EPA now considers that mass removal and outlet concentration are valid parameters to set control limits in addition to percent removal as at proposal. The rule would allow mills to: (1) Choose any wastewater treatment device as long as the device achieves one of the three parameters and as long as the wastewater is conveyed to the treatment device in an enclosed conveyance system; or (2) recycle the wastewater streams to a piece of equipment meeting the control requirements presented below.

EPA has evaluated the data in the NCASI condensate study (docket item IV–J–32) and agrees with industry that bleached kraft mills generate more HAP in pulping wastewaters than unbleached kraft mills primarily because bleached kraft mills tend to digest the pulp longer. While unbleached kraft mills can achieve the same percent methanol removed as bleached kraft mills, unbleached kraft mills cannot attain the same mass removed or outlet concentration as bleached mills. Therefore, EPA currently intends to distinguish between bleached and unbleached mills for the purpose of setting MACT level of control for pulping wastewater.

The new industry data on steam stripping technologies indicates that the MACT floor level of control for pulping wastewater at both bleached and unbleached kraft mills is treating the foul condensate wastewater streams to remove 92 percent of the HAP content (measured as methanol). The data indicates that steam strippers achieving the 92 percent control also achieve an equivalent outlet concentration of less than 330 and 210 ppmw measured as methanol, or remove 9.2 and 5.9 pounds of methanol/ADTP across the treatment

device, respectively for bleached and unbleached wastewater streams. Mills would be allowed to use one of three equivalent limits to show compliance.

EPA still intends to keep the provisions for recycling to enclosed equipment and hardpiping foul condensates to a mill's biological wastewater treatment plant. EPA is considering soluble BOD as a compliance parameter alternative for biological treatment compliance (docket items IV–D1–27, IV–D1–75, IV–D1–79, and IV–E–44). EPA is interested in any comments concerning this compliance approach. EPA is also re-considering the need for a design steam stripper.

New source MACT requirements have not changed since proposal. MACT for new sources is based on the best level of control achieved from similar sources. In other words, this technology was selected because it is used by the best controlled similar source, as required by section 112 (d) (3). The best controlled similar sources have the same level of control as existing sources. In addition, the best controlled source also controls deckers and post washer screen systems by not venting or enclosing and routing vents to a control device.

B. Sulfite

The level of control for the sulfite industry in the December 17, 1993 proposal was the same as for all mill types (see previous discussion on kraft mills). This section explains the level of the standard under consideration for the projected sulfite subcategory. In summary, EPA has reviewed what sources are being controlled, the performance of the control technologies, and options for implementation and setting emission standards for the sulfite industry.

EPA has reviewed public comments and industry data to evaluate the emission sources controlled at the best performing mills for HAP reductions. Pulping area sources controlled at the best performing existing mills are the digesters, evaporators, and red stock washer system vents (later referred to as the ''selected vents''). These sources are the same vents as proposed except that knotters or deckers which follow washers in the sulfite mills are now excluded from control for existing sources because they are not part of the MACT floor. Additionally, control of pulping wastewater with steam strippers has been dropped from consideration since sulfite mills do not employ stream strippers.

Many public comments stated that the control technology basis of the standard for sulfite mills should not be combustion as proposed, since very few mills combust emissions from the selected vents. The data clearly indicate which emission sources are being collected and vented to reduce or capture and recover SO_2 emissions, which in turn reduces HAP emissions by some degree. Sulfite mills use a combination of the acid plant and separate scrubbing systems (e.g., nuisance scrubbers) to control and capture SO_2 emissions. EPA and industry have been meeting, collecting, and analyzing data to determine the degree of HAP emission reduction achieved in these control devices or systems designed to collect SO_2 emissions. Recently, NCASI provided a summary of the available industry emissions data and American Forest and Paper Association (AF&PA) made recommendations to EPA on the MACT standards for sulfite mills (docket items IV–D1–87, IV–D1–88, and IV–D1–94). In summary, AF&PA recommended that certain named air emission sources be vented to existing SO_2 recovery systems and that ammonium- and magnesium-based sulfite mills could not recycle condensates with annual average methanol concentrations exceeding 500 ppmw to pulping and chemical recovery equipment unless the equipment was being vented to an SO_2 recovery device or unless the total emissions from the all pulping and chemical recovery equipment do not exceed 2.5 pounds methanol per ton of oven-dried pulp (lb/ODTP).

EPA has used the concept of naming both the sources to be controlled and the control device on all the other pulping subcategories. However, for those other subcategories, the named controls are well understood and emission reduction performance was well documented. Named control devices for the other subcategories were specified to meet either a known percent reduction standard, equipment design standard (e.g., 98 percent control or operate at 1600 degrees Fahrenheit and 0.75 second residence time for incinerators), or the named control device is known to operate in a manner to destroy the emissions to a certain level (i.e., venting to lime kilns or recovery boilers reduces emissions by at least 98 percent due to very high operating temperatures). However, for SO_2 recovery devices or systems at sulfite mills there are many combinations of systems used with various desired SO_2 capture efficiencies. Some of these systems have been shown to be better than others in reducing HAP emissions. Therefore, simply naming existing SO_2 control systems as the HAP control device does not set a known HAP level of performance for sulfite mills. EPA must evaluate and set the HAP emission limits achieved by the best performing existing sources (in this case, the best performing five mills since there are less than 30 sources (section 112(d)(3))).

For this evaluation, EPA considered various types of performance measurement standards for the sulfite industry. Options include equipment and work practice standards, percent reduction standards, and/or emission limit (concentration or mass) standards for each or a combination of streams. As discussed earlier an equipment and work practice standard is not appropriate. Also, EPA considers that using a standard that combines emission streams instead of setting individual stream limits provides the best fit, least expensive, and most flexible standard since existing mills already use various combinations of SO_2 control technologies for different and varying types of emission streams. Thus, a mill could use any combination of controls plus add-on controls or process changes that best fit the existing facility to get the same emission reduction. EPA evaluated percent reduction and emission limit standards and found that limits could be set, based on the best available information. The discussion on how those limits were determined is found later in this section.

Based on EPA's review of the quantity and quality of data and the variability in the industry, EPA does not intend to set these limits as continuous emission limits. Rather, EPA intends that several initial performance tests be performed using the average of three one-hour tests when the mill is operating under normal operating conditions to determine if the control system meets the emission standard. During the performance test, process and control equipment parameters will be required to be monitored and matched with the emission limits to determine the operating and monitoring conditions to be monitored for long-term compliance with the standard. EPA has used this approach on other standards to provide flexibility in process operation while assuring compliance.

Under this program, the owner or operator of the source will recommend and demonstrate to the permitting authority the appropriate equipment parameters to be monitored, and the allowable range for those parameters to demonstrate compliance with the emission standard. This recommendation would include the data collected during the performance test supplemented by engineering

assessments and equipment manufacturer's recommendations. The source would not be out of compliance with the standard when the source operates outside those operating conditions if the source reports (prior to any EPA compliance or enforcement action) and documents that the episode is during a start-up, shut down, or malfunction as defined in section 63.2 of the General Provisions. And, the source must demonstrate that conditions have changed and a retest of the initial performance test shows compliance with the emission standard.

EPA is considering establishing two emission limit strategies to demonstrate compliance: mass balance and percent reduction of the selected vents. Since only methanol data was available for determining either standard, methanol would be used in this case as a surrogate for total or individual HAP emission standards. From the recent NCASI summary of sulfite data, it is clear that calcium-based sulfite mills have lower emissions because they do not have the extensive recovery system that ammonium and magnesium-based mills require. Therefore, emission standards for calcium-based mills will be considered separately from ammonium and magnesium-based mills.

Section 112 of the Act requires EPA to establish limits based on at least the average of the five best controlled mills when there are less than 30 mills. The data set available to EPA to set a mass limit and percent reduction limit is limited; however the available data indicates that the average of the three existing calcium-based mills emit a total of 0.02 lb methanol/ODTP from vents where the selected sulfite vent emissions are collected and processed. The data set indicates that the average emissions from the top five ammonium-based and magnesium-based mills are a total of 0.45 lb methanol/ODTP from the vents where the selected sulfite vents are collected and processed. Additionally, the total of the selected vent emissions does not account for the total air emissions from these systems since scrubbers are used in the SO_2 recovery systems. The scrubbers transfer some of the HAP from the vents to wastewater that is subsequently sewered. Air emissions from the sewered recovery system wastewater occur in the mill's open wastewater collection and processing equipment due to volatilization. These air emissions from wastewater can be calculated using EPA's WATER8 Emission Model available on the TTN (under Chief BBS, Emission Estimation Software, file: water8.zip).

EPA reviewed all the sulfite wastewater data available and the amount volatilized from an average wastewater system (calculated to be 6 percent lost for methanol using WATER8) and estimates that an average sulfite mill emits 0.63 lb methanol/ODTP. Estimates from industry provided earlier in the year also indicated similar results. Industry has agreed to provide details on sulfite mill wastewater collection and treatment systems to better estimate the emissions from those systems since wastewater emissions may be a significant portion of the total HAP mass emission rate. The total average mass emissions from the selected sulfite mill vent control systems at the best performing mills (including vents and wastewater air emissions) are estimated to be 0.65 and 1.10 lb methanol/ODTP for calcium-based and ammonium and magnesium-based mills, respectively. Using the appropriate value, a mill could then achieve the emissions reduction under this total mass emission standard across the selected vents, and the connected recovery system vent and wastewater emissions.

As noted earlier, industry recommended a much higher vent mass emission limit of 2.5 lb methanol/ODTP in the industry's sulfite mill recommendation on limits for recycling wastewater. Industry representatives stated that the 2.5 lb methanol/ODTP estimate was derived from the same data set and they derived a similar estimate as the 0.45 lb methanol/ODTP value discussed above. However, the industry representatives increased the value (from 0.45 to 2.5) to take into account variability of testing procedures, mill operating conditions, and the types of products produced. Industry is currently documenting their variability calculations and rationale and providing it to EPA and the rulemaking docket. EPA currently believes that the approach discussed earlier for implementing these emission limits will adequately account for variability. However, EPA will consider the industry rationale and data.

EPA does not have data to support or deny the industry's 500 ppmw recommendation. Industry is recommending condensate streams exceeding 500 ppmw of methanol should not be allowed to be used/recycled in the pulping or chemical recovery area to process equipment vented directly to the atmosphere unless it meets 2.5 lb methanol/ODTP. EPA requests data and comments on this approach.

The second emission limit approach under consideration for sulfite mills is setting a mass reduction of HAP emissions from the applicable emission points. Industry tested two SO_2 nuisance scrubbers and found that while one reduced vent emissions of methanol by 95 percent and emissions of total HAP by 94 percent, the other SO_2 scrubber increased HAP emissions. Since nuisance scrubbers are only one part of the recovery system for most mills, the scrubber efficiency alone does not represent what the total system is controlling. A second approach was developed that used the mass emission limit derived above and data on the amount of methanol generated. An industry engineering estimate indicates that between 15 and 20 lb methanol/ODTP generated in the sulfite process. Of the amount generated, as much as 8 lbs methanol/ODTP may be emitted from the selected vents as shown in the recent NCASI summary of sulfite data. Comparing this amount to the mass emission rates (0.65 and 1.1 lbs methanol/ODTP) discussed above at the best performing mills, 92 and 87 percent of the methanol is removed across the total selected sulfite mill vent control system for calcium-based and ammonium and magnesium-based mills, respectively. In conclusion, mills would have to meet either the mass emission or the mass percent reduction standard across their control system to be in compliance.

Industry has indicated concern over the numerical mass limits and percent reductions discussed in this notice because they are based on a limited data set and because HAP reductions resulting from control devices installed originally for SO_2 control is not well understood. EPA will review and consider additional data being collected by this industry and other public commentors to set a HAP level of performance for sulfite mills prior to promulgation and will adjust these numerical values as necessary. EPA solicits comments on the two emission limit strategies for sulfite mills discussed above and solicits comments on the appropriate numerical values for these strategies.

New source MACT is based on the best level of control achieved at baseline. The data shows the best controlled sulfite mills control the same emission sources as the requirements for existing sources and also control weak or spent liquor tanks, strong liquor storage tanks, and acid condensate storage tanks. The best sulfite mills also have non-venting knotter and screening systems. Therefore, new source MACT is the same as existing source MACT, as well as, the control of the aforementioned storage tanks and the

installation of non-venting knotter and screening systems. EPA currently plans to require new sources to meet the same mass emission limit or percent reduction as discussed for existing sources.

C. Semi-chemical

The proposed standards did not differentiate between pulping types; therefore, the owners or operators of new or existing semi-chemical mill sources were required to comply with the same standards as kraft pulping. EPA is considering changing the MACT requirements for semi-chemical mills to be the control of LVHC vents only (as defined in section VI.A). Data show that the MACT floor level of control at semi-chemical mills is collecting LVHC vent emissions and reducing emissions to the same level as previously proposed in 1993 and discussed earlier in this notice for kraft mills.

EPA considered whether it would be appropriate to go beyond the MACT floor at semi-chemical mills to control some of the additional larger emitting process systems, such as pulp washer systems, that would be controlled at kraft mills. However, data indicates that emissions from semi-chemical mills are generally much less than at kraft mills. Therefore, considering the smaller emission reduction and the costs to control units beyond the floor, EPA is inclined to set MACT for semi-chemical mills at the floor (controlling LVHC vent emissions).

In evaluating the information and through discussions with representatives from semi-chemical mills, EPA is aware that the best controlled mills collecting and controlling LVHC vents tend to be collocated with kraft mills. EPA considered whether a distinction between collocated and stand-alone semi-chemical mills should be made for the purpose of setting MACT requirements. EPA determined that there is no difference in the nature of the vents being collected, and the level of control is technically feasible and can be achieved at a reasonable cost; therefore, there is no need to distinguish between these types of mills. EPA estimates that the control of the LVHC vents at a typical semi-chemical mill will reduce emissions by 160 Mg of HAP per year and 1,700 Mg of VOC per year; the cost-effectiveness for a typical stand-alone semi-chemical mill will range from $1,000 to $3,000/Mg of HAP. Industry cost estimates fall within that range (docket item IV–D1–62, IV–D1–86, IV–D1–89, IV–D1–90, and IV–D1–92). Semi-chemical mill representatives also believe the control of LVHC vents is a reasonable level of control for stand-alone mills as well (docket item IV–D1–72 and IV–E–68). Therefore, EPA now considers the control of the LVHC vents at both types of mills to be MACT and a distinction is not warranted.

The MACT level of control for HAP emissions from semi-chemical mill wastewater is no control. EPA is not aware of any semi-chemical mills treating process wastewaters with steam strippers as is found in the kraft industry. Since semi-chemical mills generate less HAP than the kraft process, and therefore, lower HAP-containing streams, EPA does not consider going beyond the floor to control semi-chemical wastewater streams to be appropriate.

New source MACT is based on the best level of control at similar sources. Data indicate the best controlled semi-chemical mills combust the same LVHC emissions plus the pulp washing system emissions. EPA anticipates the trend in industry will be to install washer systems with lower flow rates. This in turn allows for less expensive control systems. The costs are also reduced at new sources since the controls can be considered and planned into new equipment installation as opposed to retrofitted.

Therefore, new source MACT would be the same as existing source MACT plus the control of the pulp washing systems. EPA has not had a recent opportunity to discuss this contemplated new source control level with the affected mills and public and solicits comments and data on the appropriate levels of control for new sources at these mills.

D. Soda

As discussed previously in section V, subcategorization, EPA currently plans to establish separate MACT standards for soda mills. Based on information and data obtained since proposal, EPA now considers the control of LVHC vents (as defined in section VI. A) at these mills to be MACT.

Data available to EPA indicate that soda mills do not currently control any of the equipment that is subject to the MACT requirements for kraft mills. However, EPA has determined that the emissions from soda mills are similar to kraft mills and the control costs are similar to stand-alone semi-chemical mills. Therefore, EPA considers going beyond the floor to control LVHC vent emissions at soda mills to be an appropriate level of control for MACT for these mills, taking into consideration the costs of achieving the controls as well as the other factors enumerated in section 112(d)(2). EPA estimates that control of the soda mill LVHC system vents, at a typical mill, will reduce emissions by 130 Mg of HAP per year and 1,500 Mg of VOC per year.

Data show that no soda mills currently practice steam stripping to control HAP's in wastewater. EPA initially does not believe the costs of control of these streams to be warranted, within the meaning of section 112(d)(2). Therefore, the MACT for the control of HAP in wastewater would be no control.

The new source requirements are based on the best level of control at similar sources. Data show that no soda mills are currently practicing any level of HAP control. However, the control of washing systems is demonstrated at similar sources (i.e., semi-chemical and kraft washing systems). Therefore, as discussed in section VI.C for semi-chemical mills, EPA now considers the control of washing systems for new sources to be part of MACT. Therefore, new source MACT for soda mills would be the same as new source MACT for semi-chemical mills (LVHC and washing system controls). EPA has not had a recent opportunity to discuss these contemplated new and existing source control levels with the affected mills and public, and solicits comments and data on the appropriate levels of control at these mills.

E. Bleaching

EPA is considering changing the proposed MACT requirements for bleach plants. EPA is also considering making a distinction between requirements for papergrade versus dissolving grade mills. Changes to the proposed MACT standard would include only requiring controls for chlorinated HAP's. The control requirements to achieve chloroform reductions would be based on a combination of compliance with the future BAT requirements imposed under the Clean Water Act (only for papergrade bleach mills) and the enclosure of all bleaching equipment and routing the vents to a scrubber for all bleach stages where chlorinated bleaching agents are introduced to control the other chlorinated HAP's (at all bleach mills). As at proposal, a mill would be allowed to use chlorine as a surrogate for compliance with these other chlorinated HAP's around the scrubber. Control of non-chlorinated HAP's (with methanol as a surrogate), as required at proposal, would be dropped because data indicate that the best controlled mills do not, in fact, achieve control of these pollutants. The rationale for these changes under consideration is set forth below.

The proposed standards require owners or operators of new or existing sources to enclose and vent all bleaching component emission points into a closed vent system routed to a control device. The proposed MACT was based on caustic scrubbing as the control device. Vents or enclosed process equipment with volumetric flow rates or total HAP concentration below certain specified limits were not subject to control. EPA requested comment on whether MACT should also include process changes and if a separate MACT standard for chloroform is appropriate. Based on data received, EPA now considers the chlorinated HAP limit to be based on the emissions reduction achieved using a combination of scrubbing and process modifications. Therefore, EPA is considering setting a MACT standard for both chloroform and other chlorinated HAP's (chlorine as a surrogate).

Industry provided data for existing bleach plant emission estimates and scrubber efficiencies. The data clearly indicates that mills practice significant control of chlorine and chlorine dioxide through the use of caustic scrubbing (docket item II–I–24). However, existing bleach plant scrubbers are operated with high recirculation rates which result in no removal for methanol and other organic HAP compounds (docket item IV–D1–34). The data also shows reduced chloroform and other chlorinated HAP emissions with process changes (docket item II–I–10); however, the data indicate that there are no significant increases in non-chlorinated HAP emissions. Therefore, EPA currently plans to drop the total HAP percent reduction limit for methanol and other nonclorinated organic HAP's.

As discussed earlier, EPA is evaluating two types of bleaching processes; the distinction is necessary for the purpose of setting standards for chloroform. These two types of processes are papergrade bleaching and dissolving grade bleaching, to be defined the effluent guidelines portion of the cluster rule. The average emission limitation of the best controlled papergrade bleaching processes result from control of chloroform and the other chlorinated HAP emissions through a combination of caustic scrubbing, high levels of chorine dioxide substitution, and eliminating the use of hypochlorite. The average emission limitation of the best controlled dissolving grade bleaching processes also control emissions of the other chlorinated HAP through caustic scrubbing but tend to use hypochlorite and lower levels of chlorine dioxide substitution. Therefore at this time, EPA has been unable to identify the appropriate process modifications for which to base the chloroform emission control level.

EPA's Office of Water (OW) is currently planning to revise its technology basis for limits based on results of ongoing studies by dissolving mills of alternative process technologies different from those which served as the proposed effluent guidelines. Significant objectives of these studies include the extent to which hypochlorite use can be reduced and chlorine dioxide substitution increased in order to reduce generation and release of chlorinated organic pollutants, such as chloroform, while maintaining dissolving pulp properties acceptable to end users of these pulps. When data for these studies become available, EPA will revise its proposed effluent limitations and BAT technology option as appropriate, and evaluate data to set chloroform MACT standards for dissolving grade mills. EPA is interested in any data concerning chloroform emissions from dissolving grade bleaching processes and requests comment on an appropriate chloroform MACT for new or existing dissolving-grade bleach plants.

As proposed, emissions of the other chlorinated HAP (or chlorine as a surrogate) are to be reduced by 99 percent. EPA is considering also allowing mills to meet an outlet concentration below 10 parts per million by volume (ppmv) of HAP from the scrubber exhaust as an alternative to the 99 percent reduction standard. Commentors asked for an alternative level to the 99 percent reduction standard because high substitution rates reduce the bleach vent emissions to the extent that 99 percent reduction across the scrubber is not attainable. Based on the review of data, the 10 ppmv standard is considered equivalent to the outlet of scrubbers achieving 99 percent removal (docket item II-I–24). EPA also is considering whether a mass limit on the scrubber exhaust would be an appropriate equivalent alternative, and solicits comment and data on the need and appropriate level for a mass limit.

For papergrade bleaching processes, compliance with OW's BAT option for papergrade bleaching (anticipated to be based on at least 100 percent chlorine dioxide substitution and no hypochlorite use) is at least as stringent as the MACT floor (high chlorine dioxide substitution). Therefore, EPA plans to specify papergrade BAT as compliance for chloroform at paper grade bleach plants. EPA requests comments on whether an alternative equivalent numerical limit for chloroform is needed for papergrade bleaching processes.

EPA's intent for bleaching wastewater is unchanged from proposal (i.e., no control). New source MACT for bleach plants would be the same as existing source MACT for both papergrade and dissolving grade bleach plants. The installation and operation of the totally chlorine free (TCF) bleaching process meets all the bleaching process MACT standards for papergrade bleaching and would constitute compliance.

VII. Compliance Extension for Kraft Mills

EPA is committed to the goals of the cluster rule, and believes that the cluster rule will ultimately result in lower overall compliance costs, while still providing environmental and human health protection. However, EPA recognizes the unique compliance and timing issues that the cluster rule may create. EPA has identified one situation that may warrant additional compliance time to fully realize the goals of this rule. EPA is inclined to agree with industry representatives who have stated that additional time is warranted for brownstock washers and oxygen delignification units at kraft mills. EPA believes the additional time would ensure that the maximum degree of overall multi-media pollution reduction is achieved, without requiring unnecessary compliance costs.

Many kraft mills are currently considering the addition of oxygen delignification (OD) to their pulping process lines by the year 2000. The addition of OD has been shown to have significant environmental benefit. An OD unit reduces the need for chlorinated chemical application in the bleaching process, which results in reduced loadings of chlorinated pollutants to the air and into the bleach plant effluent. Less water is required in the bleaching process which, in turn, brings a mill closer to the ''closed mill'' design, with zero water discharge. EPA is strongly committed to pollution prevention efforts such as these. There is also a cost savings for the industry by using OD in the form of reduced chemical usage and less net energy usage.

To gain the maximum benefit from adding OD units, the brownstock washers typically need to be redesigned to improve pulp washing. The trend in the industry is toward newer washing technologies that are more efficient, require smaller space in the mill, are less polluting and easier to control. EPA encourages the use of these pollution prevention technologies, but recognizes the evaluation and implementation of

these technologies would add time and expense to the compliance activities for these sources.

EPA is particularly concerned that if mills had to control vents on brownstock washers within the 3-year compliance period, time constraints would dictate that they retrofit their current washers with a vent gas collection system. Once such a collection system is installed, mills would likely postpone installation of OD or choose not to install it at all; as discussed earlier, installation of OD generally requires brownstock washer upgrades. The upgraded washers plus the new OD system would require a differently designed gas collection system. Once mills commit capital to retrofit their current equipment, they would be very unlikely to entertain technologies such as OD that would require tearing out and rebuilding or replacing the gas collection system within a few years. (In such a case, there is a serious question whether imposition of a standard that results in foregoing substantial cross-media environmental benefits could be MACT. *Portland Cement Association* v. *Ruckelshaus*, 486 F.2d 375, 385–86 at n.42 (DC Cir. 1973); *Essex Chemical Corp.* v *Ruckelshaus*, 486 F.2d 427, 439 (DC Cir. 1973), EPA must consider non-air environmental impacts in determining what constitutes a ''best'' technology.)

EPA considers the installation of improved washers and OD to be an important step toward totally chlorine free bleaching. Total chlorine free bleaching, while still evolving, provides significant benefits such as elimination of chlorinated pollutants to the environment and allows bleach plant effluents to be recycled to the mill. These benefits result in a large reduction in mill water intake and moves a mill further toward the closed mill concept.

This additional design and mill modification can be a lengthy process. EPA wants to allow sufficient time for each mill to fully consider all pollution control options. EPA also recognizes that the pulp and paper industry will be implementing both water and air rules essentially at the same time; many of the changes a mill will need to implement to comply with the water requirements must be considered before control of air emissions from the washer and OD systems can be enacted. Given the engineering requirements, capital expenditures, permitting requirements, and the time necessary to implement the water standards, EPA questions whether it is even possible to install controls for air emissions from OD and washers currently in place within 3 years.

Much of the discussion in this section is centered around OD. It must be pointed out that while OD may not be included in the control basis for BAT at kraft mills, EPA is considering taking a number of steps, this compliance extension being one, to encourage mills to adopt the technology. EPA's Office of Water, in a separate Federal Register notice to follow shortly, will address the process technologies that are likely to be considered as the underlying basis for BAT effluent limitations. EPA also will present a plan for incentives being considered for mills that have installed or will install technologies that achieve more stringent removal of pollutants from wastewater than is likely to be required based on BAT.

EPA is thus considering providing an additional 5 years beyond the 3-year compliance time for the remaining units for a total compliance time of 8 years from the date of promulgation. EPA believes this would allow sufficient time for a complete evaluation of all pollution control options. Some limited information on the status of their compliance activities for these sources would likely be required in their annual compliance report.

EPA is, of course, aware that section 112 (i) (3) (A) states that compliance with a MACT standard shall be no later than 3 years from the standard's effective date. EPA notes, however, that there are special circumstances present in this instance. First, as described above, a three year compliance period raises the likelihood of mills which might otherwise choose to install OD foregoing water quality and pollution prevention benefits if they are forced to retain their existing brownstock washing system in order to justify the capital cost of vent controls on that system. Second, as a legal matter, EPA could develop a rule with the same contemplated compliance date (i.e. of 2004) by simply rescheduling this part of the pulp and paper air rule into the so-called 10-year bin under section 112 (e) (1) (E), and rescheduling a 10-year rule. (Section 112 (c) (1) contemplates revisions in EPA's initial schedule, and EPA has been held to have continuing discretion to reschedule under a similar scheduling scheme in the Resource Conservation and Recovery Act. *Chemical Waste Management* v. *EPA*, 869 F. 2d 1526 at n. 2 (D.C. Cir. 1989).) Because of the benefits of the cluster rulemaking process, which allows EPA to develop and affected companies and members of the public to gauge the multi-media effect of contemplated rules at one time, EPA prefers to promulgate the standards at the same (or close to the same) time. EPA does not believe the cluster process needs to be abandoned to provide a compliance date it could achieve by other means.

Much of the rationale for the compliance extension is to encourage kraft mills to install superior water pollution-control technology, yet the extended compliance time line contemplated in this notice would be available to all kraft mills, whether or not they choose to adopt that superior technology. EPA solicits comments on whether such a compliance extension should only be available to mills that commit to install technologies that achieve more stringent removal of pollutants from wastewater than is likely to be required based on BAT.

VIII. Emissions Averaging

The proposed regulations did not contain provisions for emissions averaging; however EPA requested comments on the subject. EPA is interested in emissions averaging because it is equally protective, adds flexibility, and can also reduce the costs of compliance and testing. At proposal, EPA did not include an emissions averaging approach because of data limitations and concerns over how to implement an averaging approach due to concerns about process variability. Several commentors indicated support for emissions averaging on the basis of providing compliance flexibility for the industry, but stated that an individual approach to emissions averaging, such as contemplated at proposal, would be too burdensome and inappropriate for this industry. Conversely, some commentors indicated that emissions averaging would be difficult to enforce.

After proposal, the industry submitted a concept for compliance with the proposed NESHAP regulations that is an alternative type of emissions averaging that is unique and potentially more appropriate for this industry. While the proposed NESHAP regulations focus primarily on combustion of specific process vents, the industry provided preliminary information detailing an alternative compliance plan designed to reduce the amount of HAP's present in pulping condensate streams that are recycled to other process areas in the mill (docket item IV–D1–95). Recent industry data has indicated that a significant portion of emissions from process areas such as brownstock washing and causticizing area could be attributed to volatilization of compounds present in the recycled condensates. Reducing the pollutant concentration in the recycled condensates would, in turn, lower the amount of pollutants volatilized from process areas that receive recycled

condensates and reduce emissions from bleach plants and paper machines associated with HAP carry over from pulp washing processes.

The industry's compliance alternative, referred to as the ''Clean Water Alternative,'' consists of routing pulping area condensates to a biological reactor to remove the HAP's. The effluent from the reactor could then be used in other process areas in the mill (e.g., brownstock washing, causticizing area, etc.). The emission reduction achieved by the alternative would be associated with using condensates with lowered HAP concentrations throughout the mill.

The industry believes that significantly reducing the HAP concentration in recycle process waters using the biological reactor would achieve greater HAP emissions reduction across the whole source than the proposed NESHAP. EPA is currently evaluating whether the industry's clean water alternative would achieve or exceed the HAP emissions reduction achievable using the control techniques on which the proposed regulations are based. In addition, EPA will be evaluating secondary impacts associated with using the clean water alternative.

Conceptually, the industry's proposal would reduce emissions from process units that receive recycled condensates. Biodegradation of HAP compounds has been widely documented; however, this approach to emissions reduction has not been demonstrated in the pulp and paper industry.

While the industry's clean water alternative is innovative, additional information must be provided in order to make this proposal a viable compliance option. Industry supplied additional data to improve the emission factors (docket item IV–D1–59), but the data was not sufficient to address EPA's concerns about process variability. The types of information EPA is interested in obtaining to address these concerns are: (1) Detailed information, such as: emission calculations; assumptions used; references; typical process/condensate flow diagrams (if needed); data supporting relationship between stream concentration and air emissions; any other data/information necessary to support an independent evaluation of the industry's claims of performance; (2) strategies for demonstrating compliance with the NESHAP regulations, such as the specific reactor performance parameters to be monitored (e.g., inlet and outlet HAP concentration, hot water tank outlet HAP concentration, temperature of recycled water; identification of process equipment receiving treated condensates); and (3) methods for enforcing compliance with the NESHAP regulations using the industry's alternative, such as sufficient recordkeeping and reporting requirements associated with reactor operation.

IX. Relationship to Other Rules

A. New Source Review/Prevention of Significant Deterioration Applicability

To comply with the MACT portion of the pulp and paper cluster rule under development, mills will route vent gases from specified pulping emission points to a combustion control device for destruction. Mills may use steam strippers to reduce emissions from pulping wastewater. The incineration of sulfur-laden gases from pulping vents and/or steam stripper overheads has the potential to generate sulfur dioxide (SO_2). To a lesser degree, the use of supplemental fuels to support vent gas combustion and the generation of additional steam for steam strippers may increase emissions of SO_2, nitrogen oxides, particulate matter (PM and PM_{10}), and carbon monoxide.[1] For these reasons, commentors have indicated that compliance with the proposed cluster rule could trigger major NSR or PSD review.

Industry and some States have commented extensively on the potential problems resulting from the interaction of the cluster rule under development and NSR. They have indicated that in developing the rule, EPA did not take into account the impacts that would be incurred in triggering NSR. Commentors indicated that PSD or NSR review processes would: (1) Cost the pulp and paper industry significantly more for permitting and implementation of NSR and PSD requirements than predicted by EPA; (2) impose a large permitting review burden on State air quality offices; and (3) present difficulties for mills to meet the proposed NESHAP compliance schedule of three years due to the time required to obtain a pre-construction permit. Commentors indicated that compliance with the proposed rule would make permitting extremely complex, pointing out that in some cases, sources would be required by one set of regulations to install emissions controls and constrained from beginning construction on those controls in the absence of a permit by another set of regulations. The commentors also suggested that EPA provide an exemption from major source NSR and PSD review, preferably using the pollution control project exclusion.[2]

Based on evaluation of pollutant reductions, environmental, and energy impacts, EPA considers projects implemented to comply with the MACT portion of the cluster rule to be environmentally beneficial. EPA therefore considers these projects to be pollution control projects under current policy guidance issued in an EPA memorandum dated July 1, 1994. As discussed in the guidance, the exclusion does not affect any minor NSR permitting requirements in a State implementation plan, which also facilitates the safeguards outlined in the policy guidance. Further, EPA expects that projects undertaken to meet the MACT portion of the cluster rule will also qualify as PCP's under forthcoming NSR reform regulations.

EPA solicits public comment on its determination that control device projects installed to comply with the MACT portion of the cluster rule are environmentally beneficial and eligible for exemption from major NSR as PCP's under current policy guidance. EPA also solicits public comments on providing a specific exclusion in the major NSR rules for these types of controls installed to comply with the MACT portion of the cluster rule.

B. Boiler/Industrial Furnace/Resource Conservation and Recovery Act Applicability

The proposed pulp and paper NESHAP requires the use of steam stripping to remove HAP's, primarily methanol, from wastewater. After removal, the NESHAP would require the HAP-laden vent gases from the steam stripper to be sent to a combustion device for destruction. Several commentors indicated that sending the steam stripper overheads to a combustion device was not the most efficient and cost effective way to destroy vent gases due to the high

[1] Commentors raised similar concerns with respect to the technologies that would be installed to meet the proposed effluent limitations in the cluster rule. These issues will be addressed in the forthcoming water notice.

[2] A similar issue was resolved in the 1992 WEPCO rulemaking, where EPA amended its PSD and nonattainment NSR regulations as they pertain to electric utilities, by adding certain pollution control projects to the list of activities excluded from the definition of physical or operational changes, subject to certain safeguards. Pollution control projects were defined as ''any activity or project undertaken [at an existing electric utility steam generating unit] for purposes of reducing emissions from such a unit.''

In a July 1, 1994 guidance memorandum issued by EPA (available on the TTN Bulletin Board), EPA extended a limited pollution control project exclusion for source categories other than electric utilities. The guidance indicated that unless information regarding a specific case indicates otherwise, add-on controls and fuel switches to less polluting fuels can be presumed, by their nature, to be environmentally beneficial.

moisture content and variable heat value of these vent gases. The commentors recommended sending the stripper vent gases to a rectification column followed by condensation to obtain a concentrated condensate (primarily methanol). The concentrated condensate could then be burned in an on-site combustion device as fuel.

This approach to condense and burn the concentrated condensate takes advantage of the condensate's energy value and should assure substantial destruction of HAP's due to the MACT standard. However, as explained below, under current rules, condensing the steam stripper vent gases could result in RCRA regulation of the condensate, including regulation of the combustion unit.

As proposed, the combustion of steam stripper vent gas does not trigger the BIF regulations because the methanol-laden vent gas is not a RCRA hazardous waste—it is not listed as a hazardous waste, nor does it exhibit a hazardous waste characteristic. However, if the methanol from the steam stripper overheads is condensed before burning, the flash point of the liquid drops to below 140 degrees Fahrenheit, and the liquid may therefore be identified as hazardous waste because it exhibits the ignitability characteristic (set out in 40 CFR § 261.21). To avoid the imposition of RCRA BIF regulations, commentors recommended incorporating a ''clean fuels'' exemption into the pulp and paper NESHAP so that the condensate can be burned for energy recovery without the combustion unit also being subject to the RCRA rules.

The ''clean fuels'' exemption is a recommendation from EPA's Solid Waste Task Force (SWTF) to allow recovery of energy from ''clean'' waste-derived fuels such as ethanol, methanol, and hexane. The recommendation is contained in ''Re-engineering RCRA for Recycling'' (EPA 530–R–94–016, November 1994). The ''clean fuels'' exemption was developed by the SWTF to promote burning for energy recovery hazardous waste fuels that are considered hazardous only because they exhibit the ignitability characteristic (i.e., have a flash point below 140 degrees Fahrenheit).

The industry submitted information detailing the composition of condensates derived from steam stripper overhead gases (docket items IV–D1–51 and IV–D1–56). However, the determination if the condensates meet the requirements for the clean fuels exemption has not yet been conducted by EPA's Office of Solid Waste. Indeed, the soon-to-be proposed standard for hazardous waste combustion units proposes exclusions based on a comparable fuel test (rather than a risk-based test of how ''clean'' the fuel is) involving a comparison with fossil fuels.

EPA does not believe as an initial matter that RCRA regulation of combustion of the condensate is needed. Although the clean fuel and comparable fuel approaches are too nascent for immediate national application, it still appears that this condensate could be combusted pursuant to the MACT standard without presenting risks warranting immediate RCRA control. The condensate does not appear to contain metal or chlorinated organic HAP's; a volatile HAP (methyl ethyl ketone at 1638 milligrams per liter (mg/l)) and a volatile compound (acetone at 2364 mg/l) were the maximum concentrations detected, and they would be substantially destroyed under the MACT standard. In addition, EPA believes that allowing the burning of this condensate does not produce any additional HAP's due to the high temperatures and residence times found in pulp and paper combustion devices that would be used to comply with the proposed MACT standard. Moreover, burning condensate will not increase the potential environmental risk over the burning of the steam stripper vent gases prior to condensation. Additionally, the use of the condensate as a fuel could reduce or eliminate the need for supplemental firing of fossil fuels in such combustion devices, thereby decreasing the emission of criteria pollutants (NO_X, PM, SO_2, CO). Consequently, EPA believes that regulation under RCRA is not necessary since the practice would not increase environmental risk, reduces secondary impacts, and would provide a cost savings. Further considerations of risk can appropriately be handled as part of the section 112(f) residual risk determination. For these reasons, EPA is proposing to exempt specific sources at kraft mills that burn condensates derived from steam stripper overheads from the BIF requirements of RCRA.

This decision is consistent with RCRA section 1006, which requires EPA to ''integrate all provisions of [RCRA] for purposes of administration and enforcement and * * * avoid duplication, to the extent practicable, with the appropriate provisions of the Clean Air Act * * *.'' EPA believes that the imposition of RCRA regulations in this instance could result in the types of unnecessary duplication that section 1006 is intended to prevent. EPA now considers that steam stripping with rectification followed by combustion of the concentrated condensate is MACT considering energy, economics, and air environmental impacts. Additional regulation under RCRA is redundant and not likely to result in any additional emission or risk reduction. Any further concerns on this issue would more properly be addressed through the section 112(f) residual risk process which requires EPA to assess the risk to public health remaining after implementation of the NESHAP under section 112(d). See generally 60 FR 32587, 32593 (June 23, 1995), and 59 FR 29570, 29776 (June 9, 1994) where EPA similarly found that RCRA regulation of secondary lead smelter emissions was unnecessary, at least until completion of the residual risk process.

EPA believes the potential cost savings produced by allowing the burning of condensed steam stripper vent gases would be significant. Industry estimates that annual cost savings would be approximately $850,000 per mill, or $100 million for the entire kraft industry. Cost savings would come primarily through the reduction in fossil fuel purchases.

C. Kraft New Source Performance Standards

EPA is considering whether the New Source Performance Standards (NSPS) for kraft mills and the proposed pulp and paper NESHAP standards may have some overlapping or redundant requirements. Possible areas of overlap in the two regulations are affected sources or emission points, monitoring, recordkeeping, and reporting requirements. EPA solicits comments on the potential overlap of the kraft NSPS and the proposed NESHAP standards.

The kraft NSPS established emission limits for PM and total reduced sulfur TRS compounds for the following new or modified emission sources located at kraft mills: recovery furnaces, digesters, multiple effect evaporators, lime kilns, brownstock washers, black liquor oxidation systems, condensate stripper systems, and smelt dissolving tanks. The pulp and paper NESHAP will establish national limits for total HAP emissions from the following sources at all types of new or existing chemical pulping mills: digester, evaporator, turpentine recovery, brown stock washer, and condensate stripper systems. Total reduced sulfur and HAP compounds are found in the process vents affected by both the NSPS and NESHAP regulations.

The kraft NSPS requires monitoring of the following parameters: opacity from the recovery furnace, TRS emissions from affected points, incinerator temperature, and process variables for any scrubber used for controlling

emissions from a lime kiln or smelt dissolving tank. The NESHAP requires monitoring of the following parameters or pieces of equipment: closed vent system, combustion device temperature, scrubber, steam stripper, biological treatment, and the wastewater collection system. While the NSPS requires monitoring of TRS emissions for the most part, the NESHAP focuses on monitoring the performance of specific pieces of equipment.

Recordkeeping duties specified in the NSPS include logging of daily opacity and TRS emissions data. For the specified collection or control devices used to comply with the NESHAP, the monitoring parameters identified in the rule must be recorded in a manner consistent with the General Provisions. EPA solicits data and comments on whether these different approaches create unnecessarily redundant or overburdensome monitoring or recording requirements.

The NSPS requires semi-annual reporting detailing the periods of excess emissions. Quarterly reports regarding excess emissions and continuous monitoring system performance are currently required by the proposed NESHAP. The NESHAP reporting frequencies are currently under review and will be revised to be no more stringent than the requirements specified in the General Provisions. Additionally, the NESHAP requires exceedance reports for startups, shutdowns, or malfunctions that are inconsistent with the source's specified operating procedures. One option under consideration by EPA is to allow the facility to comply with the NESHAP in lieu of complying with the NSPS for certain pieces of process equipment. EPA solicits data and comments on the extent to which these reporting requirements could or should be combined or reduced.

X. Standards for Mechanical Mills, Secondary Fiber Mills, Nonwood Mills and Paper Machines

A. Presumptive MACT Process

As previously mentioned in the Background Section, a Presumptive MACT was issued for the MACT III (i.e. mechanical wood pulping mills, secondary fiber deinking and nondeinking mills, nonwood pulping mills, and paper machines) source category in September of 1995. Presumptive MACT is an estimate of MACT based on an assessment of readily available information and through consultation with experts in State and local agencies, EPA, environmental groups, and the regulated industry. A primary purpose for Presumptive MACT is to assist State and local agencies, industry, and the public in Section 112(g) case-by-case MACT determinations and with the Section 112(j) hammer provision standards. The process is useful to enhance planning in the standards development process. Through the Presumptive MACT process issues can be identified and resolved early in the standards development process; the ''stakeholders'' can be identified; and the best method to develop MACT can be determined (e.g., traditional regulatory development, Adopt-A-MACT, Share-A-MACT, or proposing the Presumptive MACT as MACT).

B. Summary of the Presumptive MACT for MACT III Sources

For the MACT III source category, EPA contacted representatives of major industry, State, and environmental groups and held discussions with a team of State and industry representatives. The team evaluated the information that was available and established the Presumptive MACT. The pulp and paper Presumptive MACT is available on the Office of Air Quality Planning and Standards Technology Transfer Network (TTN) under the Clean Air Act Amendments, Title III Policy and Guidance Bulletin Board. The Presumptive MACT document is also available in the docket (see *SUPPLEMENTARY INFORMATION* section).

Limited information on the source category was identified during the Presumptive MACT process. The available information identified four potential sources for HAP emissions: pulping, wastewater from the pulping process, bleaching, and paper making. Of these, chlorine bleaching would be a likely source of HAP emissions, assuming operations in use are similar to those used by bleach plants at chemical wood pulping mills. Paper machines were also considered an emission source because of the use of paper additives and solvents. Nonwood pulping processes and the associated wastewater are potential sources of HAP emissions based on similarities between these and chemical wood pulping operations; however, the magnitude of the emissions could not be determined for these or the other potential sources from the available information. Information indicated secondary fiber deinking and nondeinking mills are not a significant source of HAP emissions (Docket A–95–31 item II–B–1).

Information on current control practices suggests the mills have no add-on controls in place for HAP emissions except on chlorine bleaching. There are, however, a number of control options that can be considered. Besides the add-on controls at bleach plants (scrubbers that remove chlorine and hydrogen chloride) chlorine-free bleaching may be in use at some mills. Methanol emissions from paper machines resulting from recycled water from the pulping process are to be addressed by the chemical wood pulping standards (see section IV Definition of Source); however, emissions from paper machines that result from the use of paper additives and solvents were addressed by the Presumptive MACT. The Presumptive MACT suggested these emissions may be reduced through substituting additives and solvent for nonHAP or lower-HAP alternatives. MACT III for pulping operations, low volume-high concentration gas streams may be routed to a combustion device (as would be required in the MACT I discussed earlier in this notice). Lastly, high concentration wastewater streams may be treated through biological treatment or by steam stripping of the HAP and controlling emissions from the steam stripper.

One of the conclusions of the Presumptive MACT was to proceed with MACT standard development through the traditional rulemaking process. EPA has since reconsidered this position, given the findings during the Presumptive MACT process and EPA's current budget limitations. EPA has now decided to propose the Presumptive MACT as MACT.

C. Area/Major Source Discussion

No information was identified during the Presumptive MACT process to suggest area sources associated with the MACT III source category warrant listing as a category of area sources, pursuant to Section 112(c)(3) of the Act. Consequently, only major sources were evaluated for this category. EPA also has no evidence that any facilities that are solely nonwood mills are major emission sources in and of themselves. Major sources are sources within a contiguous area that emit or have a potential to emit, 10 tpy or more of any HAP or 25 tpy or more of any combination of HAP. Industry has published information in an NCASI Technical Bulletin, Number 677 (Docket A–95–31 item II–D–13), on two emission points at a thermomechanical pulping mill. The two emission points were the refiner condenser vent and the chip steaming condenser vent. Total HAP emissions estimated from the two points tested at this mill were approximately 8 tons per year. It is not

known if remaining emission points not tested at this mill emit enough additional HAP to be a major source, or if a larger thermomechanical mill would be a major source. NCASI also published a Technical Bulletin, Number 649 (Docket A–95–31 item II–D–12) on emissions from operations that bleach and brighten secondary fibers. This bulletin was based on sampling conducted in 1991 and 1992. Due to an increase in the demand for secondary fiber, these mills have increased in size since the 1991/1992 sampling program. Therefore, large stand alone secondary fiber mills may exist that have HAP emissions large enough to be major sources. Where these MACT III mills are collocated at kraft, sulfite, semi-chemical, and soda mills that are major sources, they will be subject to MACT standards; however, the only emission sources that would be affected by the MACT III proposed standard are the MACT III bleach plants and possibly the paper machines (for emissions resulting from solvent or additive use). EPA knows of no additional bleach plants that would be subject to MACT standards because of their collocation at a MACT I mill that is a major source. Paper machines will only be affected if EPA decides to establish additive and/or solvent substitution as MACT.

D. Proposed MACT III

The information gathered during the Presumptive MACT process indicates that there are no air pollution control devices in place on MACT III sources except for chlorine bleaching processes. Based on this finding, the floor for these sources is no control. Further, available information indicates any add-on controls would not be cost effective for these sources. Therefore, EPA has decided not to require controls beyond the floor. The MACT proposed here for the MACT III sources is no add-on controls for pulping and the associated wastewater, paper machines, and nonchlorine bleaching.

Bleach plants at MACT III sources collocated with MACT I sources are presently regulated under the MACT I standard (see Section VI.E, Level of Standards). Based on information provided by industry, EPA believes traditional bleach plants using chlorinated bleaching agents, such as those found at Kraft mills, that are located at stand-alone MACT III mills are presently controlled with scrubbers that remove chlorine and hydrogen chloride for process or worker safety reasons. EPA is not aware of any better control that could be used. Therefore, control of air emissions from these bleach plants is already in place and the proposed MACT for bleach plants at stand-alone MACT III facilities is no additional control.

EPA is proposing no MACT standard for chemical additives and solvents at paper machines at this time. EPA continues to investigate the use of HAP chemicals in papermaking, the magnitude of HAP emissions, and the viability of chemical substitution that would reduce HAP emissions. An example of chemical substitution is substitution of HAP-containing additives and solvents with lower HAP or non-HAP organic compounds. If information becomes available regarding the floor or cost-effective HAP controls beyond the floor, EPA will propose a MACT standard for additive and solvent usage on paper machines in the future.

E. Request for Information

Additional information is being collected by industry groups, which began a testing program in September 1995. This program is designed to evaluate emissions from mechanical pulping processes, secondary fibers pulping processes, and paper machines. Industry plans to have the report on this sampling program available in January of 1997. EPA has also requested any available information on HAP emissions from nonwood mills from States with these mills; however, limited data are expected to be available. EPA is requesting any information on uncontrolled bleaching using chlorinated bleaching agents at stand-alone MACT III sources. To supplement the information collected during the Presumptive MACT and the more recent industry and EPA efforts, EPA is requesting data and comments on its proposal for the MACT III source category.

List of Subjects in 40 CFR Part 63

Air pollution control, Hazardous air pollutants, Pulp and paper mills.

Dated: March 1, 1996.

Richard S. Wilson,

Assistant Administrator for Air and Radiation.

[FR Doc. 96–5397 Filed 3–7–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 180

[PP 4E4418/P643; FRL–5353–2]

RIN 2070–AB18

Lactofen; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: EPA proposes to establish a tolerance for the combined residues of the herbicide lactofen in or on the raw agricultural commodity snap beans at 0.05 part per million (ppm). The proposed regulation to establish a maximum permissible level for residues of the herbicide was requested in a petition submitted by the Interregional Research Project No. 4 (IR–4).

DATES: Comments, identified by the document control number [PP 4E4418/P643], must be received on or before April 8, 1996.

ADDRESSES: By mail, submit written comments 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: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, 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 should not be submitted through e-mail. Information marked as CBI 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. 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.

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 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PP 4E4418/P643]. No CBI should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in SUPPLEMENTARY INFORMATION of this document.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington,

DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA 22202, (703) 308–8783, e-mail: jamerson.hoyt@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition (PP) 4E4418 to EPA on behalf of the Agricultural Experiment Stations of Arkansas, Florida, Georgia, Oregon, Tennessee, and Virginia. This petition requests that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), amend 40 CFR 180.432 by establishing a tolerance for the combined residues of lactofen, 1-(carboethoxy)ethyl-5-[2-chloro-4-(trifluoromethyl)phenoxy]-2-nitrobenzoate, and its associated metabolites containing the diphenyl ether linkage expressed as lactofen in or on the raw agricultural commodity snap beans at 0.05 ppm. The scientific data submitted in the petition and other relevant material have been evaluated.

The toxicological data considered in support of the proposed tolerance include:

(1) A 1–year feeding study with dogs fed diets containing 0, 40, 200, or 1,000/3,000 ppm with a no-observed-effect level (NOEL) of 200 ppm (equivalent to 5 milligrams (mg)/kilogram (kg)/day). Systemic effects observed at the high dose level include decreased body weight, renal dysfunction, a significant decrease in erythrocytes, hemoglobin, and hematocrit, and a significant increase in blood platelets.

(2) A 2–year feeding/carcinogenicity study in rats fed diets containing 0, 500, 1,000, or 2,000 ppm with a NOEL for systemic effects of 500 ppm (equivalent to 25 mg/kg/day). Increased pigmentation of the liver and kidney were observed in male and female rats at the 1,000 and 2,000 dose levels. There was an increased incidence of cellular alterations and neoplastic nodules (benign) in the liver of rats administered 2,000 ppm (100 mg/kg/day).

(3) An 18–month carcinogenicity study in mice fed diets containing 10, 50, or 250 ppm with statistically significant increases in liver adenomas and carcinomas, and in the combined incidence of liver tumors (adenomas and carcinomas) in high dose males. Statistically significant increases in the incidences of liver adenomas and in combined liver tumors (adenomas and carcinomas) were observed in high dose females. Systemic effects include an increase in liver/body weight ratios and enlarged liver cells in all treated males and the mid- and high-dose females.

(4) A developmental toxicity study in rats given 0, 15, 50, or 150 mg/kg by oral gavage with no developmental toxicity observed under the conditions of the study. Evidence of fetotoxicity (bent ribs) was observed at the 150 mg/kg dose level.

(5) A developmental toxicity study in rabbits given 0, 1, 4, or 20 mg/kg/day by oral gavage with no evidence of developmental toxicity.

(6) A 2-generation reproduction study in rats fed diets containing 0, 50, 500, or 2,000 ppm with a NOEL at 50 ppm (equivalent to 2.5 mg/kg/day) for reproductive and systemic effects. Reproductive effects observed at the lowest-observed-effect level (500 ppm) include reduced mean pup weight and increased pup heart and liver weights.

(7) Lactofen did not cause an increase in chromosomal aberrations when tested with Chinese hamster ovary cells, was negative in a mammalian cell forward mutation assay, and did not induce unscheduled DNA synthesis in isolated rat hepatocytes. Lactofen did have a low covalent binding index to mouse liver DNA *in vivo* and was positive in the Ames Salmonella/microsome plate test using strain 1538.

Lactofen has been classified by the Office of Pesticide Program's, Health Effects Division, Carcinogenicity Peer Review Committee (CPRC) as a Group B2 carcinogen (probable human carcinogen). Lactofen met the criteria of a B2 carcinogen in that it induced an increased incidence of malignant tumors or combined malignant and benign tumors in mice and rats. Although an increase in malignant tumors was not seen in rats, the Committee felt that a B2 classification was appropriate since a tumor response was seen in two species at the same site. In addition, lactofen is structurally similar to acifluorfen, nitrofen, oxyfluorfen and fomesafen, which have all been shown to produce liver tumors in rodents.

Dietary risk assessments for lactofen indicate that there is minimal risk from established tolerances and the proposed tolerance for snap beans. Dietary risk assessments were conducted using the Reference Dose (RfD) and the cancer potency factor for lactofen to assess chronic risk from lactofen residues in the human diet.

The RfD for lactofen is 0.002 mg/kg of body weight/day. The RfD is based on the lowest-observed effect level (1.5 mg/kg/day) from the 18–month mouse feeding study and an uncertainty factor of 1,000. An uncertainty factor of 1,000 was used to calculate the RfD since a NOEL could not be established from the mouse study. Available information on anticipated residues and/or percent of crop treated was used in the analysis to estimate the Anticipated Residue Contribution (ARC) of existing uses of lactofen and the proposed use on snap beans. The ARC from existing uses and the proposed use utilizes less than 1 percent of the RfD for the U.S. population and all population subgroups.

The upper-bound carcinogenic risk from dietary exposure to lactofen is calculated at 4.3×10^{-7}. The carcinogenic risk for lactofen was calculated using the ARC estimates for dietary exposure from existing uses and the proposed use on snap beans and a Q^* of 0.16 $(mg/kg/day)^{-1}$.

The nature of lactofen residues in snap beans is adequately defined for purposes of this tolerance. The residues of concern in snap beans are lactofen and its metabolites containing the diphenyl ether linkage. An adequate analytical method is available for enforcement purposes. The method is available in the *Pesticide Analytical Manual, Volume II* (PAM II).

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

Based on the information and data considered, the Agency has determined that the tolerance established by amending 40 CFR part 180 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

A record has been established for this rulemaking under docket number [PP 4E4418/P643] (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.

Under Executive Order 12866 (58 FR 51735, Oct. 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: February 28, 1996.

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 § 180.432, *Lactofen; tolerances for residues*, by revising paragraph (a) to read as follows:

§ 180.432 Lactofen; tolerances for residues.

(a) Tolerances are established for the combined residues of lactofen, 1-(carboethoxy)ethyl-5-[2-chloro-4-(trifluoromethyl)phenoxy]-2-nitrobenzoate, and its associated metabolites containing the diphenyl ether linkage expressed as lactofen in or on the following raw agricultural commodities:

Commodities	Parts per million
Beans, snap	0.05
Soybeans	0.05

* * * * *

[FR Doc. 96–5538 Filed 3–7–96; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 300

[FRL–5436–5]

National Oil and Hazardous Substances Pollution Contingency Plan National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to delete Newport Dump Superfund Site, Wilder, Kentucky, from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 4 announces its intent to delete the Newport Dump Site (the Site) from the National Priorities List (NPL) and requests public comments on this proposed action. On May 16, 1988, EPA issued a notice announcing its intent to delete this site and others. The notice is being revised to conform to the most recent Site conditions. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended. EPA and the Commonwealth of Kentucky have determined that the Site poses no significant threat to public health and the environment and therefore, further remedial measures pursuant to CERCLA are not appropriate.

DATES: Comments may be submitted by midnight April 17, 1996.

ADDRESSES: Comments may be mailed to: Liza I. Montalvo, Remedial Project Manager, North Superfund Remedial Branch, U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, N.E., Atlanta, GA 30365.

Comprehensive information on this Site is available through the public docket which is available for viewing at the Newport Dump site information repositories at the following locations:

Campbell County Library, 403 Monmouth, Newport, KY, 41071.
U.S. EPA Record Center, 345 Courtland Street, N.E., Atlanta, GA, 30365.

FOR FURTHER INFORMATION CONTACT: Liza I. Montalvo, U.S. EPA Region 4, 345 Courtland St., N.E., Atlanta, GA 30365, 404–347–3555 Ext. 2030 or 1–800–435–9233 Ext. 2030.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Environmental Protection Agency (EPA) Region 4 announces its intent to delete the Newport Dump site, Wilder, Kentucky, from the National Priorities List (NPL), Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, and requests comments on its deletion. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of these sites. As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions in the unlikely event that conditions at the site warrant such action.

The EPA will accept comments on the proposal to delete this Site for thirty days after publication of this notice in the Federal Register.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses the procedures that

EPA is using for this action. Section IV discusses the Newport Dump Site and explains how the Site meets the deletion criteria.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that releases may be deleted from, or recategorized on the NPL where no further response is appropriate. In making a determination to delete a release from the NPL, EPA shall consider, in consultation with the state, whether any of the following criteria have been met:

(i) Responsible parties or other parties have implemented all appropriate response actions required;

(ii) All appropriate responses under CERCLA have been implemented, and no further action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the site above levels that allow for unlimited use and unrestricted exposure, EPA's policy is that a subsequent review of the site will be conducted at least every five years after the initiation of the remedial action at the site to ensure that the site remains protective of public health and the environment.

III. Deletion Procedures

The following procedures were used for the intended deletion of this site: (1) EPA Region 4 has recommended deletion and has prepared the relevant documents, (2) The Commonwealth of Kentucky has concurred with the deletion decision, (3) Concurrent with this Revised Notice of Intent to Delete, a local notice has been published in local newspapers and has been distributed to appropriate federal, state and local officials, and other interested parties. This local notice announces a thirty (30) day public comment period, provides an address and telephone number for submission of comments, and identifies the location of the local site repository; and (4) Region 4 has made all relevant documents available in the Regional Office and local site information repository.

Deletion of the Site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management. As mentioned in Section II of this Notice, § 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions.

For deletion of this Site, EPA Region 4 will accept and evaluate public comments on EPA's Revised Notice of Intent to Delete before making a final decision to delete. If necessary, the Agency will prepare a Responsiveness Summary to address any significant public comments received.

A deletion occurs when the EPA Regional Administrator places a final action in the Federal Register. Generally, the NPL will reflect deletions in the final update following the Notice. Public notices and copies of the Responsiveness Summary will be made available to local residents by Region 4.

IV. Basis for Intended Site Deletion

The following site summary provides the Agency's rationale for the proposal to delete this Site from the NPL.

A. Site Background

The Newport Dump Site is a former municipal landfill located in the City of Wilder in Campbell County, Kentucky. Contiguous to the western boundary of the Site is the Licking River, a tributary of the Ohio River.

B. History

The 39 acre Site was originally used by the City of Newport for the disposal of residential and commercial wastes from its opening in the late 1940's until its closure in 1979. During this period the Kentucky Department of Natural Resources and Environmental Protection Cabinet (KDNREPC) cited the City of Newport for numerous waste disposal violations and the Site was eventually purchased by the Northern Kentucky Port Authority. In 1982, the Newport Dump Site was evaluated by the Hazard Ranking System (HRS) and received a score of 37.96 which ranked the Site number 359 in Group 8 on the National Priorities List (NPL). The basis for this NPL ranking was that the Newport Dump Site contained over 1,000,000 cubic yards of both hazardous and non-hazardous commercial waste, the Site was adjoined on both the south and west boundaries by surface water stream and river, respectively and across the Licking River on the west was a potable water intake serving 75,000 nearby residents.

C. Characterization of Risk

A Remedial Investigation and Feasibility Study ensued and discovered several inorganic contaminants, i.e., barium, chromium, nickel and organic compound, toluene, were leaching into the Licking River slightly above health base levels established by the Clean Water Act's Maximum Contaminant Levels (MCLs). A Record of Decision (ROD) signed at EPA Region 4, Atlanta, Georgia on March 27, 1987 selected the following response: monitoring groundwater and subsurface gas migration, construction of a leachate collection system and regrading revegetation of the 39 acre Site to prevent erosion. An Action Memo to authorize a removal action was signed in June 1987. This remedy was constructed and placed into operation within seven (7) months of the signing of the ROD and completed during December 1987. Groundwater, surface water, soil and sediment sampling were accomplished during the construction and post construction phases. Except for the waste source, the sampling results listed negligible (well below the MCL criteria) to non-detectable contaminant levels in the adjacent Licking River, and in both on-site and off-site media demonstrated no significant or potentially harmful migration of contaminants to off-site receptors.

D. Operation and Maintenance

EPA Region 4 has performed the first year of Operation and Maintenance (O&M) activities as mandated in the ROD, which included multimedia monitoring of groundwater, surface water, underground gas migration, and leachate. In October 1992, the City of Newport entered into an agreement with EPA Region 4 to continue to perform O&M work at the Site. The City of Newport began such activities in June 1993.

E. Five-Year Review

EPA finalized the first Five-Year Review for the Newport Dump Site in July 1993, in which groundwater, surface water, leachate, sediment and gas samples were collected. Groundwater data was compared to the MCL (July 1992), the Alternate Concentration Limits in the Newport ROD, and background levels. Surface Water data was evaluated using MCLs, July 1992, Water Quality Criteria (WQC), December, 1992 and Kentucky Surface Water Standards, January 1992. It was concluded that the contaminants detected in the ground water, surface water, and sediment do not pose a threat to human health and the environment, and that there appears to be no contribution from the landfill to these medias. Subsurface gas samples were analyzed for volatile organic compounds (VOCs) and methane. Hazardous gases were detected in three of the gas wells, however, only methane was detected above its lower explosive limit (LEL). These wells will continue to

be monitored, and methane field screening techniques will be performed on a quarterly basis to ensure gas is not migrating off-site.

F. Explanation of Significant Differences

In January 1995, EPA Region 4 issued an Explanation of Significant Differences (ESD) for the Newport Dump Site to provide information on modifications to the selected remedy as originally described in the ROD, and to notify the public of O&M activities being conducted at the Site. The actions documented in the ESD included: the installation of a new drainage culvert, the construction of a french drain, and the shut down of the leachate collection system. In May 1990, EPA Region 4 discontinued use of the leachate collection system because it appeared to be collecting groundwater, and operating the system was not providing a higher degree of protection to the environment. Since turning the system off, no problems have been encountered, and no significant increases in contamination in the surface water in the Licking River have occurred. In fact, the levels of contaminants in the leachate samples collected in the Five-Year Review were consistent with the surrounding groundwater.

At this time, all appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate.

G. State Concurrence to Delete Newport Dump Site

EPA, with concurrence of the Commonwealth of Kentucky, believes that the following criterion for deletion have been met: (1) EPA has implemented all appropriate response actions required; and (2) All appropriate response under CERCLA has been implemented. Subsequently, EPA is proposing deletion of Newport Dump Site from the NPL. Documents supporting this action are available from the docket.

Dated: February 23, 1996.

Phyllis P. Harris,

Acting Regional Administrator, U.S. EPA Region 4.

[FR Doc. 96–5530 Filed 3–7–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 300

[FRL–5436–8]

National Oil and Hazardous Substances Pollution Contingency Plan National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to delete A.L. Taylor Superfund Site, Brooks, Kentucky from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 4 announces its intent to delete the A.L. Taylor Site (the Site) from the National Priorities List (NPL) and requests public comments on this proposed action. In July, 1988, EPA issued a notice announcing its intent to delete this Site. Prior to the final determination to delete the Site the Agency adopted a policy of waiting until after a five-year review of a site to consider delisting. The first five-year review of the A.L. Taylor Site has been completed, and the results indicated that the remedy is protective of the human health and environment. Therefore, this notice is being revised to account for recent Site conditions. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended. EPA and the Commonwealth of Kentucky have determined that the Site poses no significant threat to public health and the environment and therefore, further remedial measures pursuant to CERCLA are not appropriate.

DATES: Comments may be submitted by April 17, 1996.

ADDRESSES: Comments may be mailed to: Liza I. Montalvo, Remedial Project Manager, North Superfund Remedial Branch, U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, N.E., Atlanta, GA 30365.

Comprehensive information on this Site is available through the public docket which is available for viewing at the A.L. Taylor Superfund Site information repositories at the following locations:

Ridgeway Memorial Library, 127 Walnut Street, Shepherdsville, KY, 40165.

U.S. EPA Record Center, 345 Courtland Street, N.E., Atlanta, GA, 30365.

FOR FURTHER INFORMATION CONTACT: Liza I. Montalvo, U.S. EPA Region 4, 345 Courtland St., N.E., Atlanta, GA 30365, 404–347–3555 Ext. 2030 or 1–800–435–9233 Ext. 2030.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Environmental Protection Agency (EPA), Region 4, announces its intent to delete the A.L. Taylor Site, Brooks, Kentucky, from the National Priorities List (NPL), Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300, and requests comments on its deletion. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of these sites. As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions in the unlikely event that conditions at the site warrant such action.

The EPA will accept comments on the proposal to delete this Site for thirty days after publication of this notice in the Federal Register.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this action. Section IV discusses the A.L. Taylor Superfund Site and explains how the Site meets the deletion criteria.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that releases may be deleted from, or recategorized on the NPL where no further response is appropriate. In making a determination to delete a release from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate fund-financed response under CERCLA have been implemented, and no further action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the site above levels that allow for unlimited use and unrestricted exposure, EPA's policy is that a subsequent review of the site will be conducted at least every five years after the initiation of the remedial action at the site to ensure that the site remains protective of public health and the environment.

III. Deletion Procedures

The following procedures were used for the intended deletion of this Site: (1) EPA Region 4 has recommended deletion and has prepared the relevant documents, (2) The Commonwealth of Kentucky has concurred with the deletion decision, (3) Concurrent with this Revised Notice of Intent to Delete, a local notice has been published in local newspapers and has been distributed to appropriate federal, state and local officials, and other interested parties. This local notice announces a thirty (30) day public comment period, provides an address and telephone number for submission of comments, and identifies the location of the local site repository; and (4) Region 4 has made all relevant documents available in the Regional Office and local site information repository.

Deletion of the Site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management. As mentioned in Section II of this Notice, § 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions.

For deletion of this Site, EPA Region 4 will accept and evaluate public comments on EPA's Revised Notice of Intent to Delete before making a final decision to delete. If necessary, the Agency will prepare a Responsiveness Summary to address any significant public comments received.

A deletion occurs when the EPA Regional Administrator places a final action in the Federal Register. Generally, the NPL will reflect deletions in the final update following the notice. Public notices and copies of the Responsiveness Summary will be made available to local residents by Region 4.

IV. Basis for Intended Site Deletion

The following Site summary provides the Agency's rational for the proposal to delete this Site from the NPL.

A. Site Background

The A.L. Taylor Site, sometimes referred to as ''The Valley of the Drums,'' is a 13-acre site located in Brooks, Bullitt County, Kentucky, near the community of Brooks. The Site is approximately 1.3 miles west of Interstate 65 and 1.7 miles northwest of Brooks, Kentucky, off of State Highway 1020. The Site is bordered to the north and west by woods and to the south and east by several private rural residences and a golf course.

B. History

The A.L. Taylor Site was first identified as a waste disposal site by the Kentucky Department of Natural Resources and Environmental Protection Cabinet (KDNREPC) in 1967. The paint and coating industries in the Louisville area were the primary waste generators using the Site. Solvent wastes, from these generators, were disposed in drums by burning the wastes in the open pits. Some drums were emptied into open pits, cleaned and recycled. Soil from the nearby hillsides was used to cover the pits. During the later years of operation, thousands of drums were stored on the ground surface.

KDNREPC first became involved with the Site in 1967 after receiving reports of a fire that had been burning for approximately one week. After investigating the Site, the State noted that an approved sanitary landfill could be operated by Mr. A.L. Taylor at this location with proper permitting. However, Mr. Taylor did not apply for a sanitary landfill permit, and continued receiving and disposing of waste on the Site, under the business name of the A.L. Taylor Drum Cleaning Service, until November 1977.

In January 1979, at the request of KDNREPC, EPA responded to releases of oil and hazardous substances at the A.L. Taylor Site. Under the authority of Section 311 of the Clean Water Act, the EPA Emergency Response Branch addressed the releases of pollutants into Wilson Creek by constructing interceptor trenches and a temporary water treatment system, securing leaking drums, and segregating and organizing drums on site. The EPA operated and maintained the temporary treatment system on site until December 1979, when the KDNREPC assumed responsibility for the system.

The EPA's final count of drums located on the Site after the 1979 emergency response action was 17,051 drums, of which 11,628 were empty. In 1980, KDNREPC contacted five Responsible Parties who identified and removed approximately 20 percent of the drummed waste remaining on the surface. The five generators contacted include: Ford Motor Co.; Reliance Universal, Inc.; Louisville Varnish Co.; George W. Whitesides Co.; and Kurfee's Coating, Inc. Following this removal, about 4,200 drums remained.

C. Characterization of Risk

In 1981, an EPA inspection revealed that deteriorated and leaking drums, were again discharging pollutants into Wilson Creek. EPA, responding under the emergency provisions of CERCLA, upgraded the existing treatment system and moved the remaining 4,200 drums from the Site for recycling or disposal. The Site was then regraded to promote positive drainage towards Wilson Creek, thus reducing the amount of ponded water and minimizing surface erosion. Although, these measures eliminated the drummed waste from the surface, contaminated soils and buried drums remained on site.

Analytical data was collected during several site actions, including the two immediate removals and the Remedial Investigation. In all, approximately 140 compounds were identified. The chemicals found most often and in the highest concentrations were: xylene; acetone; toluene; phthalates; methyl ethyl ketone; vinyl chloride; fluoranthene; dichloroethylene; methylene chloride; anthracene; alkyl benzene; aliphatic acids.

PCBs were detected in low concentrations and several metals, including barium, zinc, copper, strontium, magnesium, and chromium, were detected in concentrations exceeding background levels.

The highest concentrations of organic contaminants detected on-site, other than from drum samples, were from liquid samples collected in pits which EPA constructed to test for subsurface contamination. Some of the same compounds were detected in water samples from borings located down-gradient of these test pits. A Feasibility Study was completed in 1982 by Ecology and Environment, Inc., and a Record of Decision (ROD) was finalized by EPA in June 1986. The ROD identified groundwater and surface water (Wilson Creek) as potential routes of exposure to hazardous substances, and selected a final remedy for the Site.

In April 1987, the remedial measures selected in the ROD were commenced by Haztech, Inc. These measures included the installation of a clay cap, a perimeter drainage system, monitoring wells, and a security fence.

In the fall of 1988, reseeding and regrading of the cap was found to be necessary due to erosion problems. In March 1989, all remedial construction was completed.

D. Operation and Maintenance

Operations and Maintenance (O&M) activities were performed by Ebasco Services, Inc. The O&M activities included groundwater sampling over five quarters from September 1988, through February 1990. The Commonwealth of Kentucky will be conducting the remaining 29 years of routine O&M with funds they received

from a cost recovery settlement with responsible parties for the Site.

E. Five-Year Review

EPA finalized the first Five-Year Review for the A.L. Taylor Site in June 1992, in which groundwater, surface water, leachate, sediment and gas samples were collected. The review concluded that the remedy was still protective of the human health and environment.

F. State Concurrence to Delete A.L. Taylor Site

EPA, with concurrence of the Commonwealth of Kentucky, believes that the following criterion for deletion have been met: (1) EPA has implemented all appropriate response actions required; and (2) All appropriate response under CERCLA has been implemented. Consequently, EPA is proposing deletion of A.L. Taylor Site from the NPL. Documents supporting this action are available from the docket.

Dated: February 20, 1996.

Phyllis P. Harris,

Acting Regional Administrator, U.S. EPA Region 4.

[FR Doc. 96–5531 Filed 3–7–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 440

[MB–071–P]

RIN 0938–AG36

Medicaid Program; Coverage of Personal Care Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: In accordance with the provisions of section 13601(a)(5) of the Omnibus Budget Reconciliation Act of 1993, which added section 1905(a)(24) to the Social Security Act, this proposed rule would specify the revised requirements for Medicaid coverage of personal care services furnished in a home or other location as an optional benefit, effective for services furnished on or after October 1, 1994. In particular, this proposed rule would specify that personal care services may be furnished in a home or other location by any individual who is qualified to do so. Additionally, we are proposing two minor changes to the Medicaid regulations concerning home health services.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on May 7, 1996.

ADDRESSES: Mail written comments (one original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: MB–071–P, P.O. Box 7517–0517, Baltimore, MD 21207.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses: Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room No. C5–11–17, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code MB–071–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Terese Klitenic (410) 786–5942.

SUPPLEMENTARY INFORMATION:

I. Background

Title XIX of the Social Security Act (the Act) authorizes grants to States for medical assistance (Medicaid) to certain individuals whose income and resources are insufficient to meet the cost of necessary medical care. The Medicaid program is jointly financed by the Federal and State governments and administered by the States. Within Federal rules, each State chooses eligible groups, types and ranges of services, payment levels for most services, and administrative and operating procedures. The nature and scope of a State's Medicaid program is described in the State plan that the State submits to HCFA for approval. The plan is amended whenever necessary to reflect changes in Federal or State law, changes in policy, or court decisions.

Under section 1902(a)(10) of the Act, States must provide certain basic services. Section 1905(a) of the Act defines the services States may provide as medical assistance. Personal care services historically have been permitted under the Secretary's discretionary authority under current section 1905(a)(25) of the Act until the enactment of legislation, described below. Currently, regulations concerning personal care services are located at 42 CFR 440.170(f).

II. Legislation Concerning Personal Care Services

Before the enactment of the legislation discussed below, a State had the option to elect to cover personal care services under its Medicaid State plan. Although not specifically mentioned in section 1905(a) of the Act, personal care services could be covered under section 1905(a)(22) of the Act (redesignated as section 1905(a)(25) of the Act on November 5, 1990), under which a State may furnish any additional services specified by the Secretary and recognized under State law. In § 440.170(f), the Secretary specified that personal care services may be covered.

Section 4721 of the Omnibus Budget Reconciliation Act of 1990 (OBRA ′90) (Pub. L. 101–508, enacted on November 5, 1990) amended section 1905(a)(7) of the Act to include personal care services as part of the home health services benefit and to impose certain conditions on the provision of personal care services, effective for services furnished on or after October 1, 1994. This amendment would have had a significant effect since, under section 1902(a)(10)(D) of the Act, home health services are a mandatory benefit for all Medicaid recipients eligible for nursing facility services under the State plan. Thus, had section 1905(a)(7) of the Act not been further amended (as discussed below) before the effective date of section 4721 of OBRA ′90, personal care services would have become a mandatory benefit for all recipients eligible for nursing facility services, effective October 1, 1994.

Before the provisions of OBRA ′90 became effective, the Omnibus Budget Reconciliation Act of 1993 (OBRA ′93) (Pub. L. 103–66) was enacted on August 10, 1993. Section 13601(a)(1) of OBRA ′93 amended section 1905(a)(7) of the Act to remove personal care services from the definition of home health services. Additionally, section 13601(a)(5) of OBRA ′93 added a new paragraph (24) to section 1905(a) of the Act, to include payment for personal care services under the definition of medical assistance. Under section 1905(a)(24) of the Act, personal care services furnished to an individual who is not an inpatient or resident of a hospital, nursing facility, intermediate care facility for the mentally retarded, or institution for mental disease is an optional benefit for which States may provide medical assistance payments.

The statute specifies that personal care services must be: (1) Authorized for an individual by a physician in accordance with a plan of treatment or (at the option of the State) otherwise authorized for the individual in accordance with a service plan approved by the State; (2) provided by an individual who is qualified to provide such services and who is not a member of the individual's family; and (3) furnished in a home or other location. This amendment is effective October 1, 1994. Therefore, as a result of the legislative changes made by OBRA '93, personal care services continue to be an optional State plan benefit, and are now authorized under section 1905(a)(24) of the Act, effective for services furnished on or after October 1, 1994.

III. Provisions of the Proposed Regulations

A. Personal Care Services in a Home or Other Location (§ 440.167)

As historically used in the Medicaid program, personal care services means services related to a patient's physical requirements, such as assistance with eating, bathing, dressing, personal hygiene, activities of daily living, bladder and bowel requirements, and taking medications. These services primarily involve ''hands on'' assistance by a personal care attendant with a recipient's physical dependency needs (as opposed to purely housekeeping services). These tasks are similar to those that would normally be performed by a nurse's aide if the recipient were in a hospital or nursing facility. Although personal care services may be similar to or overlap some services furnished by home health aides, skilled services that may be performed only by a health professional are not considered personal care services. Alternatively, services that require a lower level of skill such as personal care services may also be provided by home health aides in the home under the home health benefit.

The above description of personal care services is based on the definition of personal care services originally set forth in Part 5, Section 140, of the Medical Assistance Manual (the precursor of the State Medicaid Manual) and reflects States' experiences in providing these services. We plan to publish a definition of personal care services in the State Medicaid Manual in the near future. Until that time, States should use the above description of personal care services as a guide in setting parameters for this optional benefit. To provide States with maximum flexibility in providing personal care services, we are providing guidelines for this benefit in a manual issuance, rather than codifying it in the regulations.

Currently, provisions regarding personal care services in a recipient's home are set forth at § 440.170. This section of the regulations defines the additional services that States may furnish as any other medical care or remedial care recognized under State law and specified by the Secretary. Under § 440.170(f), personal care services in a recipient's home means services prescribed by a physician in accordance with the recipient's plan of treatment, and furnished by an individual who is (1) qualified to provide the services, (2) supervised by a registered nurse, and (3) not a member of the recipient's family. The existing regulations do not provide for personal care services furnished in settings other than the recipient's home.

To conform the regulations to the provisions of section 1905(a)(24) of the Act (as added by section 13601(a)(5) of OBRA '93), we propose to add a new § 440.167, ''Personal care services in a home or other location.'' We would specify that personal care services are services furnished to an individual who is not an inpatient or resident of a hospital, nursing facility, intermediate care facility for the mentally retarded, or institution for mental disease, that are: (1) authorized for the individual by a physician in accordance with a plan of treatment or (at the option of the State) otherwise authorized for the individual in accordance with a service plan approved by the State; (2) provided by an individual who is qualified to provide such services and who is not a member of the individual's family; and (3) furnished in a home, and if the State chooses, in another location.

Since section 1905(a)(24) of the Act does not require that the services be supervised by a registered nurse, we would not require such supervision in proposed § 440.167. While section 13601(a)(1) of OBRA '93 eliminated the statutory requirement for supervision by a registered nurse, the versions of the bill passed by both the House and Senate (H.R. 2264) contained this requirement. The nurse supervision requirement was apparently dropped while the bill was in conference; however, the conference report does not specifically refer to this change (H. Conf. Rept. No. 2133, 103rd Cong., 1st sess., page 833, (1993)). We believe our proposal reflects statutory intent to eliminate the requirement for such supervision. Moreover, since extensive medical knowledge or technical skill is not required to provide personal care services, we believe that supervision by a registered nurse is not necessary in most cases. However, we are soliciting public comments concerning the need to retain the requirement that personal care services be provided under the supervision of a registered nurse or another supervisory individual, such as a medical social worker.

Under our proposal, States that elect to offer the personal care services benefit must cover personal care services provided in the home but may also choose to cover personal care services provided in other locations. We believe that this proposal is consistent with the intent of the statute to expand the possible settings where personal care services may be covered under the Medicaid program. We note that coverage of personal care services outside the home is not optional with respect to those individuals who require personal care services that are medically necessary to correct or ameliorate conditions discovered as a result of a screen performed under the Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) program.

We also considered two other options for implementing the provision of OBRA '93 that allows States to cover personal care services furnished outside the home. One option was to require States that elect to offer the personal care services benefit to cover such services in both the home *and* other locations. However, section 1905(a)(24)(C) of the Act refers to services ''furnished in a home *or* other location,'' and we believe that this option would unnecessarily limit States' flexibility in implementing the personal care services benefit. Moreover, it could work against the best interests of recipients if States choose not to offer the personal care services benefit at all because of the expense involved in covering the services both inside and outside the home.

We also considered allowing States electing to offer this benefit to cover the services either in the home or in other locations. Since many States historically have covered these services when furnished in the recipient's home, we do not believe that it would be consistent with statutory intent to allow States to choose to cover personal care services only in locations other than the home. That is, States that have previously covered personal care services furnished in the home should not be allowed to eliminate this location and opt to cover the services only when provided outside of the home. Again, we believe that the purpose of section 1905(a)(24) of the Act is to add to the possible settings where

States may provide personal care services, not to decrease the amount of services currently being offered. Thus, we believe that our proposed policy is the most appropriate interpretation of the statute, is in the best interest of recipients, and gives States the discretion necessary to operate their programs in an efficient manner.

We propose to leave to the State's option the decision of whether personal care services are to be authorized by a physician in accordance with a plan of treatment, or otherwise authorized in accordance with a service plan approved by the State. Similarly, we would permit States to determine, through development of provider qualifications, which individuals are qualified to provide personal care services (other than family members). Again, we believe that these proposed provisions would allow States to maintain a high level of flexibility in providing and defining optional personal care services. We note that home health aides employed by home health agencies may sometimes provide personal care services. Home health aides that provide only personal care services under Medicaid need only meet the qualifications set forth at § 484.36(e) (and not the other qualifications for home health aide services).

Section 1905(a)(24)(B) of the Act specifies that, for Medicaid purposes, personal care services may not be furnished by a member of the individual's family. To date, we have not defined ''family member'' for purposes of the personal care services benefit. Thus, each State that offers this benefit makes its own determination as to who is considered a family member for purposes of personal care services. To provide for more clarity and consistency in this regard, we propose to define family members under new § 440.167(b) as spouses of recipients and parents (or step-parents) of minor recipients. This definition is essentially identical to the one that applies to personal care services provided under a home and community-based waiver (see section 4442.3.B.1. of the State Medicaid Manual). We believe that spouses and parents are inherently responsible for meeting the personal care needs of their family members, and, therefore, it would not be appropriate to allow Medicaid reimbursement for such services. States would continue to have the flexibility to expand upon the definition of family members at § 440.167. That is, States could further restrict which family members can qualify as providers by extending the definition to apply to family members other than spouses and parents.

We note that our proposed definition of family member would only apply for purposes of the personal care services benefit in § 440.167 and not for other Medicaid benefits that allow reimbursement for family members. Because we recognize that States have developed their own definitions of ''family members'' for purposes of the personal care services benefit, we welcome comments on our proposed definition.

Since personal care services are now an optional benefit under section 1905(a)(24) of the Act, we would remove current § 440.170(f), which provides for coverage of personal care services in a recipient's home as part of any other medical care or remedial care recognized under State law and specified by the Secretary.

B. Proposed Changes Concerning Home Health Services (§ 440.70)

We are proposing several changes to the regulations concerning home health services. Currently, § 440.70(a)(2) provides that home health services must be furnished to a recipient on his or her physician's orders as part of a written plan of care that the physician reviews every 60 days. Section 440.70(b) lists the services that constitute home health services and thus are subject to the plan of care requirements. Section 440.70(b)(3) specifies that these services include medical supplies, equipment, and appliances suitable for use in the home. We have found that in many cases, once a recipient's need for medical supplies, equipment, and appliances is indicated by a physician, that need is unlikely to change within 60 days. Thus, absent changes in a recipient's condition, we do not believe that a recipient's need for medical equipment necessitates routine inclusion in a plan of care reviewed every 60 days by a physician.

Modification of the plan of care and physician review requirements for medical equipment would decrease physicians' paperwork burden as well as the time and costs involved with these requirements. Accordingly, we would revise § 440.70(b)(3) to provide that physician review of a recipient's need for medical supplies, equipment, and appliances suitable for use in the home under the home health benefit would be required annually. We believe that the requirement for annual review of medical supplies and equipment would allow States flexibility in furnishing home health services while providing an appropriate level of oversight. Frequency of further review of a recipient's continuing need for the equipment on other than an annual basis would be determined on a case-by-case basis depending on the nature of the item prescribed. A recipient's need for supplies or pieces of equipment that generally tend to be used on a long-term basis would not be reviewed as frequently as equipment that is usually used only temporarily. For example, review of the need for a wheelchair need not be as frequent as review of the need for an oxygen concentrator. In all cases, a physician's order for the equipment would be required initially.

Additionally, § 440.70(d) now defines a home health agency for purposes of Medicaid reimbursement as a public or private agency or organization, or part of an agency or organization, that meets requirements for participation in Medicare. We propose to revise this definition to indicate that in order to participate in Medicaid, the agency must meet Medicare requirements for participation as well as any additional standards the State may wish to apply that are not in conflict with Federal requirements. This proposed change reflects the long standing principle in the Medicaid program that affords States flexibility in establishing Medicaid program requirements tailored to their own specific needs. Under this proposal a State would have the option of imposing additional standards on home health agencies for participation in Medicaid beyond the Medicare conditions of participation.

Finally, we are making a technical change to § 440.70(c) to remove an obsolete reference to subparts F and G of part 442.

IV. Impact Statement

A. Background

For proposed rules such as this, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless we certify that a proposed rule will not have a significant economic impact on a substantial number of small entities. For purposes of a RFA, States and individuals are not considered small entities. However, providers are considered small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operation of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan

Statistical Area and has fewer than 50 beds.

We are not preparing a rural impact statement since we have determined, and we certify, that this proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of section 1905(a)(24) of the Act, this proposed regulation would revise the regulations to incorporate the new statutory requirements concerning personal care services. In accordance with the statute, we are proposing that the services must be: (1) Authorized for the individual by a physician in accordance with a plan of treatment or (at the option of the State) otherwise authorized for the individual in accordance with a service plan approved by the State; (2) provided by an individual who is qualified to provide such services and who is not a member of the individual's family; and (3) furnished in a home or other location.

In general, the provisions of this proposed rule are prescribed by section 1905(a)(24) of the Act, as added by section 13601(a)(5) of OBRA '93. The most significant change required under the statute is that, as of October 1, 1994, the settings in which States may elect to cover personal care services have been expanded to include locations outside the home. We believe that this statutory provision will increase Medicaid program expenditures independently of the promulgation of this rule. The primary discretionary aspect of this rule is our proposal that States electing to offer the personal care services benefit must cover the services in the home and may choose to cover them in any other location. As discussed in section III.A of this preamble, we considered requiring States that elect to offer the personal care services benefit to cover such services in both the home and other locations. We also considered allowing States to cover the services either in the home or in other locations. However, we believe that our proposed policy is the most appropriate interpretation of the statute and gives States the discretion necessary to operate their programs in an efficient manner and in the best interest of their recipients.

As noted above, the major provisions of this proposed rule are required by the statute. Thus, costs associated with these proposed regulations are the result of legislation. However, to the extent that a legislative provision being implemented through rulemaking may have a significant effect on recipients or providers or may be viewed as controversial, we believe that we should address any potential concerns. In this instance, we believe it is desirable to inform the public of our estimate of the substantial budgetary effect of these statutory changes. The statutorily driven costs have been included in the Medicaid budget baseline. In addition, we anticipate that a large number of Medicaid recipients and providers, particularly home health agencies, will be affected. Thus, the expansion of settings where personal care services may be furnished represents an expansion of Medicaid benefits that, if exercised by States, would likely have significant effects, particularly on Medicaid recipients.

B. Impact of New Personal Care Services Provision

1. Overview

This analysis addresses a wide range of costs and benefits of this rule. Whenever possible, we express impact quantitatively. In cases where quantitative approaches are not feasible, we present our best examination of determinable costs, benefits and associated issues.

It is difficult to predict the economic impact of expanding the settings where personal care services may be covered under Medicaid to locations outside the home. We do not know the exact number and type of personal care services furnished by individual States or how much these services currently cost. Currently, approximately 32 States offer coverage for personal care services, and we do not have cost data from all of those States. States also differ in their definitions of personal care services and rules concerning who may furnish them. Since we do not have a full picture of the scope or cost of the different services, it is difficult for us to quantify the impact these changes will have. Other unknown factors regarding the future provision of personal care services include which States now offering the personal care services benefit will choose to cover services furnished outside the home, how many additional States will opt to offer coverage, how many Medicaid recipients will elect to utilize these services in States in which the services have not been covered, and the type and costs of these specific services. We believe that the majority of those individuals who qualify for these services will elect to utilize this benefit. Thus, although costs to States will rise as they begin to pay for the additional services, there would be substantial benefits to some providers and to Medicaid recipients as described in detail below.

2. Effects Upon Medicaid Recipients

Permitting States that elect to offer the personal care services benefit the option of covering these services in locations outside the home will have a positive effect on recipients. In States where coverage has been provided only for personal care services in the home, this proposed rule may expand the types of personal care services available and/or the settings where recipients may receive these services. Expansion of personal care services or settings could help improve the quality of life for these recipients as well as for recipients who have not been receiving personal care services. It also would save money for some Medicaid recipients or their families since they would no longer have to pay for these services. No data are available on the number of recipients or family members who are currently paying for these services. However, since only 32 States currently pay for personal care services, we believe that a substantial number of recipients who receive these services are paying for them out of pocket.

3. Effects on Providers

By expanding the range of settings in which Medicaid will cover personal care services, we anticipate that this proposed rule will increase the demand for such services. We believe this effect will be viewed as beneficial to providers of personal care services. If the increase in demand for such services is sufficient, the number of providers of personal care services may increase.

4. Effects on Medicaid Program Expenditures

This proposed rule would implement the provisions of section 1905(a)(24) of the Act by specifying that personal care services are an optional State plan benefit under the Medicaid program. The proposed rule would allow States the option to cover personal care services furnished in a home or other location, effective for services furnished on or after October 1, 1994. Table 1 below provides an estimate of the anticipated additional Medicaid program expenditures associated with furnishing these services outside the home, beginning on October 1, 1994. This estimate was made using various assumptions about increases in utilization by current recipients, adjusted for age, as well as assumptions about the induced utilization that would result from the availability of these services. We have assumed a utilization increase of 5 percent for the aged and 10 percent for the non-aged, and an overall induction factor of 10 percent. We have

also assumed that the option of providing personal care services outside the home would affect only those States that represent 33 percent of Medicaid personal care spending. Given these assumptions, our estimate based on Federal budget projections is shown in Table 1, which also provides a breakdown of these costs. The first row of figures shows the costs of providing this optional State plan benefit. The second row shows the administrative costs associated with furnishing these services. We estimate the following costs to the Medicaid program:

TABLE 1.—PERSONAL CARE SERVICES OUTSIDE THE HOME

	Federal medicaid cost estimate (in millions)*			
	FY 1996	FY 1997	FY 1998	FY 1999
Services	$230	$280	$350	$430
Administration costs	10	10	15	15
Total	$240	$290	$365	$445

*Figures are rounded to the nearest $5 million. We note that the costs associated with these proposed regulations are the result of legislation and due to the interpretation of statutory changes already in effect. Therefore, these costs have been included in the Medicaid budget estimates.

5. Effects on States

As stated above, the coverage of personal care services is optional except when such services are medically necessary to correct or ameliorate medical problems found as a result of a screen under the EPSDT program. Many States currently do not cover optional personal care services. In those States that do offer the personal care services benefit, services furnished outside the home previously could not be covered. Therefore, there may be a substantial economic impact on States that decide to provide coverage for personal care services furnished outside the home. The varying State definitions of personal care services, and rules concerning who may furnish them, make it difficult to estimate accurately the potential increases in expenditures for those States that choose to expand coverage of personal care services to include services furnished outside the home. However, Table 2, which is based upon the same data and assumptions used to formulate the Federal expenditures shown in Table 1, estimates the cost to States.

TABLE 2.—PERSONAL CARE SERVICES OUTSIDE THE HOME

	State cost estimate (in millions)*			
	FY 1996	FY 1997	FY 1998	FY 1999
Services	$175	$210	$265	$325
Administration costs	5	10	10	10
Total	180	220	275	335

*Figures are rounded to the nearest $5 million.

C. Conclusion

The provisions of this proposed rule are required by section 1905(a)(24) of the Act. We believe that the provisions of this rule adding personal care services as an optional State plan benefit and expanding the possible settings for covering personal care services to locations outside the home will benefit providers, recipients and their families.

As shown above in Tables 1 and 2, the costs to the Federal government and States associated with paying for personal care services furnished outside the home are substantial. There may be some minor off setting of costs if the number of admissions to nursing facilities decreases as a result of these provisions, but we have no data to determine the potential savings, if any. Regardless of any possible savings, the economic impact of these provisions is attributable to the statutory changes mandated by OBRA '93.

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

VI. Response to Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a final rule, we will respond to the comments in the preamble to that document.

List of Subjects in 42 CFR Part 440

Grant programs-health, Medicaid.

42 CFR part 440 is proposed to be amended as set forth below:

PART 440—SERVICES: GENERAL PROVISIONS

1. The authority citation for part 440 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

Subpart A—Definitions

2. In § 440.70, the introductory text of paragraph (a) and the first sentence of the introductory text of paragraph (b) are republished and paragraphs (a)(2), (b)(3), (c) and (d) are revised to read as follows:

§ 440.70 Home health services.

(a) ''Home health services'' means the services in paragraph (b) of this section that are provided to a recipient—

* * * * *

(2) On his or her physician's orders as part of a written plan of care that the physician reviews every 60 days, except

as specified in paragraphs (b)(3) (i) and (ii) of this section.

(b) Home health services include the following services and items. * * *

* * * * *

(3) Medical supplies, equipment, and appliances suitable for use in the home.

(i) A recipient's need for medical supplies, equipment, and appliances must be reviewed by a physician annually.

(ii) Frequency of further physician review of a recipient's continuing need for the items is determined on a case-by-case basis, based on the nature of the item prescribed;

* * * * *

(c) A recipient's place of residence, for home health services, does not include a hospital, nursing facility, or intermediate care facility for persons with mental retardation.

(d) ''Home health agency'' means a public or private agency or organization, or part of an agency or organization that meets requirements for participation in Medicare and any additional standards legally promulgated by the State that are not in conflict with Federal requirements.

* * * * *

3. A new § 440.167 is added to read as follows:

§ 440.167 Personal care services

(a) *Personal care services* means services that are furnished to an individual who is not an inpatient or resident of a hospital, nursing facility, intermediate care facility for persons with mental retardation, or institution for mental disease that are—

(1) Authorized for the individual by a physician in accordance with a plan of treatment or (at the option of the State) otherwise authorized for the individual in accordance with a service plan approved by the State;

(2) Provided by an individual who is qualified to provide such services and who is not a member of the individual's family; and

(3) Furnished in a home, and at the State's option, in another location.

(b) For purposes of this section, *family member* means a parent (or step parent) of a minor recipient or a recipient's spouse.

4. In § 440.170, paragraph (f) is removed and reserved.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: October 6, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 96–5511 Filed 3–7–96; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

Radio Broadcasting Services; Esperanza, PR, Christiansted, VI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of petition.

SUMMARY: The Commission denies the petition for reconsideration filed by Esperanza Broadcasters which requests the allotment of Channel 258B to Esperanza, Puerto Rico, as the community's first local aural broadcast service. To accommodate the allotment at Esperanza, petitioner also requests the substitution of Channel 293B for Channel 258B at Christiansted, Virgin Islands, and the modification of Station WVIQ(FM)'s license accordingly. The Commission found that the petition was prematurely filed since it is contingent upon the outcome of the on-going proceeding in MM Docket 91–259 and that the petitioner failed to comply with the provisions of Section 1.401(d) which require that a copy of the petition be served on all affected licensees, in this case, the licensee of Station WVIQ(FM).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order,* adopted February 20, 1996, and released March 4, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–5436 Filed 3–8–96; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 96–27; RM–8750]

Radio Broadcasting Services; Pullman, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Keith E. Lamonica proposing the allotment of Channel 249A at Pullman, Washington, as the community's third local commercial FM transmission service. Channel 249A can be allotted to Pullman in compliance with the Commission's minimum distance separation requirements with a site restriction of 8. 8 kilometers(5.5 miles) east to avoid a short-spacing to the construction permit site for Station WLKY(FM),Channel 250C1, Milton-Freewater, Oregon. The coordinates for Channel 249A at Pullman are North Latitude 46–44–37 and West Longitude 117–03–34. Since Pullman is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been requested.

DATES: Comments must be filed on or before April 25, 1996 and reply comments on or before May 10, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Keith E. Lamonica, 760 SE. Carolstar, Pullman, Washington 99163 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 96–27, adopted February 20, 1996, and released March 4, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter

is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–5433 Filed 3–7–96; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 96–25; RM–8752]

Radio Broadcasting Services; Forest Acres, SC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Kuhel Communications proposing the allotment of Channel 232A at Forest Acres, South Carolina, as the community's first local aural transmission service. Channel 232A can be allotted to Forest Acres in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 232A at Forest Acres are North Latitude 34–01–09 and West Longitude 80–59–24.

DATES: Comments must be filed on or before April 25, 1996 and reply comments on or before May 10, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Shaun A. Maher, Esq., Smithwick & Belendiuk, P.C., 1990 M Street, NW., Suite 510, Washington, DC 20036 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 96–25, adopted February 16, 1996, and released March 4, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–5432 Filed 3–7–96; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 96–26; RM–8749]

Radio Broadcasting Services; Booneville, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by James P. Gray proposing the allotment of Channel 287A at Booneville, Kentucky, as the community's first local aural transmission service. Channel 287A can be allotted to Booneville in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 287A at Booneville are North Latitude 37–28–36 and West Longitude 83–40–30.

DATES: Comments must be filed on or before April 25, 1996 and reply comments on or before May 10, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: James P. Gray, 10 Trinity Place, Fort Thomas, Kentucky 41075 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 96–26, adopted February 16, 1996, and released March 4, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–5431 Filed 3–7–96; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 76

[MM Docket No. 93–215; FCC 95–502]

Cable Television Rate Regulation; Cost of Service Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission adopted the Second Report and Order and First Order on Reconsideration in MM Docket 93–215 to refine existing cost of service rules and to create final rules governing standard cost of service showings filed by cable operators seeking to justify rates for regulated cable services. In a Further Notice of Proposed Rulemaking

(''FNPRM''), the Commission proposes use of an operator's actual debt cost and capital structure to determine the final cost of capital (or rate of return). The FNPRM requests comment regarding the method to determine the value of equity and debt, including the use of a market valuation of equity to establish the proportion of equity in an operator's capital structure.

DATES: Comments are due May 7, 1996. Replies are due June 6, 1996.

FOR FURTHER INFORMATION CONTACT: Tom Power, Cable Services Bureau, (202) 416–0800.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Further Notice of Proposed Rulemaking in MM Docket No. 93–215, FCC 95–502, adopted December 15, 1995 and released January 26, 1996.

The complete text of this Further Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc. (''ITS Inc.'') at (202) 587–3800, 2100 M Street, NW., Suite 140, Washington, DC 20017.

I. Further Notice of Proposed Rulemaking

A. Non-Unitary Rates of Return

1. Although a unitary rate of return applied to all cable operators simplifies the administrative burdens of estimating an operator's rate of return, it squeezes a wide variety of risk profiles into the same regulatory box. We tentatively conclude that risk variables among cable operators may be sufficiently widespread to justify consideration of an alternative rate of return methodology tailored more closely to the financial circumstances of individual cable operators. At the same time, we recognize the risk that individualized rates of return could involve highly detailed and potentially burdensome capital cost determinations in rate cases. Thus, if we adopt a more tailored rate of return methodology, we will nonetheless retain the current presumptive rate, and its concomitant procedures for overcoming that presumption, as an alternative to any new methodology.

2. The capital markets have recognized a significant measure of risk within the cable industry. Cable stocks trade at significant premiums relative to the overall equity market and cable companies often have high debt costs due to low investment grades. In addition, a fair proportion of homes passed by cable do not subscribe to the service, suggesting consumers and businesses do not regard cable as a traditional utility service. We believe it may be necessary to recognize such risk diversity in the cable industry and no longer presume that a single rate of return should be applied to all cable operators making cost of service showings. We seek comment on an alternative to the presumptive 11.24% rate of return. This alternative would provide an equity cost estimate that recognizes the historic growth orientation of cable investors and would allow actual debt cost and use company specific capital structures.

B. Cost of Equity

3. We propose to use the capital asset pricing model (''CAPM'') as a method to estimate the cost of cable equity as an alternative to the discounted cash flow (''DCF'') approach used in the initial Cost Order, 59 FR 17975 (April 15, 1994). As a general matter, the DCF method relies heavily on the consistent payout of dividends as a key part of its formula, a factor that does not apply generally to equities. The absence of dividends may reflect fundamental differences in the strategic nature of cable business operations and the operation of companies whose stocks make up a broad stock index such as the S&P 400. A formula designed to measure a future dividend or income stream may not be an appropriate model for estimating the rate of return demanded by investors who are willing to forgo an income stream in favor of growth through reinvested cash flow. The CAPM attempts to quantify the risk necessary to induce an investor to follow this kind of growth-oriented strategy. Under CAPM, equity cost is calculated by assigning an equity premium to a company's stock that is commensurate with the stock's systematic risk (risk that cannot be avoided through equity diversification). Under this model, a stock's equity rate of return is equal to the risk-free rate (obtainable on a risk-free government debt instrument) plus a premium based on the systematic risk of a given security (the beta).

4. The Commission, in the Cost Order, decided against using the CAPM to determine equity cost due to concerns that insider holdings and monopoly profit expectations would distort the measurement of risk associated with providing regulated cable services. Based on data submitted in response to the Further Notice, we tentatively conclude that it is unnecessary to reject alternative methods of measuring equity cost. The Commission's initial decision to forgo the use of the CAPM stemmed from a concern that insider decisions could overstate the size of the risk premium assigned to cable stocks under the CAPM. A systematic review of the relationship between insider holdings and movements in stock price, however, was not conducted and data submitted in response to the Further Notice, do not support the assertion that cable insiders exaggerate the stock prices of their companies.

5. In addition, with respect to monopoly expectations in cable stock prices, we do not have sufficient data to determine the extent of the relationship, if any, between the existence of monopoly power and the stock price volatility premium assigned to cable company stocks.

6. In establishing an equity cost for cable companies, we propose to rely on data from the cable industry itself rather than forgo such direct evidence of industry cost in favor of some other surrogate industry or stock group. In the Cost Order, we developed an equity cost estimate based on a selected quartile of the S&P 400. As set forth above, however, we do not believe it necessary to eschew reliance on betas of publicly-traded cable stocks as part of the cable equity cost calculation. Using data submitted to the Commission in response to the Further Notice, the Commission examined betas for 11 cable companies that derive the vast majority of their revenues from regulated cable services. Recognizing that cable industry investment in recent years has focused on long term revenue potential from unregulated services, we have limited our analysis of betas to the years 1987 through 1992. Based on data submitted to the Commission, the average beta for cable industry equity investment is 1.42. This indicates that, on average, cable equities are 42% more volatile than the general stock market.

7. Because we propose to examine an investment period of several years, we propose to use the risk-free rate of the average yields on five-year U.S. Treasury Notes after 1987. Based on Federal Reserve data, the average yield on five-year U.S. Treasury Notes from 1987 through the third quarter of 1995 is 7.27%. Although this yield exceeds the current yield on five-year notes, this figure is an average that accounts for numerous rate fluctuations over an extended time period. We believe an average risk-free rate may be appropriate for selecting a cost of equity for cable because the equity cost estimate would be relied upon in cost of service filings for at least the period preceding an operator's next major rate filing.

Moreover, we proposed to update this rate to account for subsequent interest rate changes.

8. Consistent with the CAPM approach, we estimate the average return on investment in the general equity market. Using the S&P 500 from 1987 through the third quarter of 1995, the average compounded return has been 13.53%. Applying the CAPM formula, the general equity market premium above the risk-free rate of return is 6.26% (13.53%–7.27%). The 1.42 beta for cable equity investment multiplied by 6.26% provides a cable equity premium of 8.89 percentage points above the average risk-free rate. Adding the risk-free rate to the cable equity premium results in an equity cost figure of 16.16%. We propose that the average cost of equity for investment in cable operators providing regulating cable services is 16.16%. We propose to adjust the figures used to estimate the equity cost periodically. We ask comment on this approach.

9. We also request comment on a method that would, consistent with the goal of maintaining administrative feasibility, adjust the equity cost to reflect extraordinary financial risk. For example, should the Commission consider debt-to-cash flow multiples as a mechanism to quantify risk levels? We solicit data to establish equity cost figures above and below the proposed 16.16% average equity cost estimate for operators with debt burdens significantly above and below the average in our sample.

C. Cost of Debt

10. The other principal component of the overall cost of capital is the cost of debt. In the Cost Order, we relied on debt cost estimates for the cable industry specifically and concluded that the range for the average cost of fixed rate debt established by information submitted in the cost of service proceeding was 7.8% to 8.65%. The Commission noted the substantial proportion of floating rate debt among cable entities and determined that a cautious estimate would place average debt cost at 8.5%.

11. We propose to rely on more direct estimates of capital cost by gauging an operator's debt cost to its actual cost. This debt cost would encompass fees or other premiums that the operator may pay to obtain debt financing. We invite comment on this proposal.

D. Capital Structure

12. In the Cost Order, we decided against using embedded capital structures and market equity values to establish the capital structure used to calculate the overall rate of return. We indicated that a capital structure range may be more appropriate for the debt-laden cable industry and set that range at 40% to 70% debt and used that range in setting the overall capital cost.

13. We tentatively conclude, however, that actual, i.e., individualized, capital structures should be applied to the estimation of the overall cost of capital. The estimation of debt costs is relatively straightforward because the cost of debt can be documented and certified by independent accounting services. Because debt costs can be measured directly, we tentatively conclude that reliance on the actual percentage of debt in an operator's capital structure will ensure the most accurate estimation of interest costs. Thus, if an operator elected not to rely on the presumptive 11.25% rate of return in favor of the alternative capital cost measure described in this Order, we would look to the actual capital structures of the operator to determine the appropriate overall capital cost.

14. Estimating the amount of equity in an operator's structure is a complex proposition. Many operators have a negative net worth. We recognize, however, that, in the case of several publicly-traded cable companies, the stock of operators with negative book values trades in significant volumes in the open market. While public utility regulation has relied traditionally on book value estimations of equity in determining capital structures for regulated utilities, it may be appropriate to take note of the equity transactions in the cable industry that occur frequently, including the decisions of cable investors to pay multiples of cash flow for cable systems that, based on book value, should be worth less than nothing.

15. In order to rely on actual capital structures, however, we must ensure that measurement of the equity proportion filters out a ''premium'' for anticipated gains in unregulated services. As we consider this alternative, however, we recognize that several issues must be addressed and resolved. Moreover, we remain committed to an approach that is administratively feasible. To assist the Commission in this endeavor, we request comment on the following issues:

a. What mechanism or analysis should guide the Commission in estimating the equity proportion of an operator's capital structure that is dedicated to regulated services?

b. How should the Commission estimate the proportion of equity in an operator's capital structure when that operator is not publicly-traded?

c. Should the Commission rely on the book value of debt or the market value of debt in estimating the proportion of debt in an operator's capital structure?

d. Can the Commission develop a reasonable estimate of an operator's capital structure by combining the market value of its equity and the book value of its debt?

e. If market capitalization is used to measure the proportion of equity in an operator's capital structure, will increases in the operator's stock price drive up subscriber rates by increasing the proportion of equity in the operator's capital structure? If so, how can the Commission ensure that reliance on market capitalization measures for equity will not unduly impact subscriber rates?

III. Regulatory Flexibility Analysis

16. Pursuant to Section 603 of the Regulatory Flexibility Act, the Commission has prepared the following initial regulatory flexibility analysis (''IRFA'') of the expected impact of these proposed policies and rules on small entities:

The proposals, if adopted, will not have a significant effect on a substantial number of small entities.

List of Subjects in 47 CFR Part 76

Cable television, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–5426 Filed 3–7–96; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Chapter X

[STB Ex Parte No. 528]

Disclosure, Publication, and Notice of Change of Rates and Other Service Terms for Rail Common Carriage

AGENCY: Surface Transportation Board, DOT.

ACTION: Advance Notice Of Proposed Rulemaking.

SUMMARY: The ICC Termination Act of 1995 (ICCTA) eliminated the tariff and tariff filing requirements formerly applicable to rail carriers, but imposed in lieu thereof certain obligations to disclose common carriage rates and service terms as well as a requirement

for advance notice of an increase in such rates or change in service terms. The ICCTA requires the Board to promulgate regulations to administer these new obligations by June 29, 1996. The Board seeks public comment on appropriate regulations for that purpose, and encourages the affected interest groups to discuss and seek mutually agreeable regulations to propose.

DATES: Comments are due on April 8, 1996.

ADDRESSES: Send comments (an original and 10 copies) referring to STB Ex Parte No. 528 to: Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue NW., Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (ICCTA), enacted on December 29, 1995, abolished the Interstate Commerce Commission (ICC) and transferred responsibility for the economic regulation of rail transportation to a new Surface Transportation Board (the Board). *See* ICCTA Section 101 (abolition of the ICC). *See also* new 49 U.S.C. 701(a) (establishment of the Board), as enacted by ICCTA Section 201(a). The transfer took effect on January 1, 1996. *See* ICCTA Section 2 (effective date).[1]

The substantive provisions of the new law differ in several important respects from the former law. As pertinent here, the former law required that rail carriers file with the ICC *tariffs* containing the specific rates and charges (or the basis for calculating them) for their common carriage transportation services. Rail carriers had to adhere to the rates and terms contained in their tariffs. *See* former 49 U.S.C. 10761 and 10762. *See also* 49 CFR part 1314 (1995).

The ICCTA eliminated the rail tariff requirements, effective January 1, 1996. Accordingly, no new rail carrier tariffs are to be filed with the Board, and the rail carrier tariffs that were previously filed with the ICC are no longer effective tariffs as of January 1, 1996. The ICC regulations at 49 CFR part 1314, governing rail carrier tariffs, are likewise not effective as of that date and are being formally repealed in another proceeding recently initiated by the Board.

Nevertheless, new 49 U.S.C. 11101(b) and (d) require disclosure of rail common carriage rates and service terms. New 49 U.S.C. 11101(c) further requires that rail carriers, when providing common carriage, not increase their rates or change their service terms without advance notice. Finally, new 49 U.S.C. 11101(e) requires rail carriers to adhere to the rates and service terms published or otherwise made available under new 49 U.S.C. 11101(b)–(d).[2]

New 49 U.S.C. 11101(f) directs the Board to establish rules to implement the requirements of new 49 U.S.C. 11101. In accordance with this directive, we intend to promulgate new regulations to implement the requirements of new 49 U.S.C. 11101(b), (c), and (d). We do not believe that implementing rules are required for new 49 U.S.C. 11101(a), which simply reenacts the longstanding common carrier obligation that the carrier provide transportation or service on reasonable request. We believe that this obligation, which has been well developed through case law, is best addressed on a case-by-case basis.

Similarly, our preliminary view is that implementing rules are not required for new 49 U.S.C. 11101(e), which requires a rail carrier to provide transportation or service in accordance with the rates and service terms, and any changes thereto, as published or otherwise made available under new 49 U.S.C. 11101(b), (c), or (d). This requirement appears to be clear on its face.

The regulations implementing new section 11101 would appear to apply to any transportation or service provided by a rail carrier subject to our jurisdiction under new 49 U.S.C. 10501, with two exceptions. They would not apply, it would seem, to transportation or service provided by a rail carrier (1) under a contract pursuant to former 49 U.S.C. 10713 or new 49 U.S.C. 10709, or (2) covered by an exemption issued under former 49 U.S.C. 10505 or new 49 U.S.C. 10502, to the extent that such exemption remains in effect and applies to rate notice and disclosure requirements.

The new regulations would first need to address the requirement of new 49 U.S.C. 11101(b) that a rail carrier promptly provide to any person, on request, its rates and other service terms. It would appear that this requirement applies both to the disclosure of an existing rate (and related service terms) and to the establishment of a new rate (and related service terms) where none exists.

In the situation where the carrier has existing rates covered by the rate information request, the provisions of 49 U.S.C. 11101(b) and (f) require the carrier ''immediate[ly]'' to disclose its ''rates and service terms, including classifications, rules, and practices'' to any person requesting such information. We seek suggestions for a rule that would implement these provisions in a way that would provide the rate requester with complete information about all relevant terms and conditions. We also seek input on whether we should attempt to define the word immediately, or instead should simply establish general guidelines to be applied on a case-by-case basis, setting up broad parameters governing disclosure.

There may be instances in which a shipper or prospective shipper requests the carrier to establish a rate for a type of traffic for which no existing rate is in place. Again, the provisions of 49 U.S.C. 11101(b) appear to require that the rail carrier provide a rate, as well as any related charges and service terms, promptly. We seek input on whether we ought to define the word promptly, or instead should simply adopt broadly applicable guidelines.

The new regulations also need to address the requirement of new 49 U.S.C. 11101(c) that a rail carrier may not increase a common carriage rate or change a common carriage service term without first giving 20 days' notice to any person who, within the previous 12 months, (1) has requested that rate or term under new subsection (b), or (2) has made arrangements with the carrier for a shipment that would be subject to the increased rate or changed term. It seems to us that the advance notice requirement would apply to known users of the transportation or service to which the increase or change is applicable (i.e., a person who has made a shipment within the past year or has already made arrangements for a future shipment) and also to known prospective users of such transportation or service (i.e., a person who has requested that rate to be established). Our preliminary view is that it would not be necessary or appropriate to require a carrier to keep a record of and notify all persons who have requested rate information but are not users of the

[1] The ICCTA also made several changes to the rail regulatory authority that had been administered by the ICC. In this notice, when referring to the provisions of the United States Code affected by ICCTA we use the word *former* to refer to the law in effect prior to January 1, 1996, and the word new to refer to the law in effect on and after January 1, 1996.

[2] A central feature of both the old and new law is the requirement that a rail carrier adhere to its established rates. Therefore, as a transition matter, a question that arises is whether a rail carrier must continue to adhere to its established rates and service terms—those that were in effect (in tariffs on file with the ICC) on December 31, 1995—unless and until changed in a manner consistent with the requirements of new section 11101. Otherwise, it could be argued that there could be a break in the continuity of rates that Congress did not intend.

affected transportation service. We request comment on what guidance, if any, should be given for determining which members of the shipping public are covered by the 20-day notice period.

We note that the notice requirement does not apply to a rate decrease, which a carrier may apply without notice. Similarly, it would not seem that the notice requirement should apply to, and hence delay, a change in service terms that is clearly beneficial to shippers. Our initial view is that it is not necessary to establish rules addressing how to determine whether a service change is clearly beneficial to shippers. Commenters may wish to address this issue.

The new regulations also need to address the publication requirement of new 49 U.S.C. 11101(d), which requires railroads to ''publish, make available, and retain for public inspection [their] common carrier rates, schedule of rates, and other service terms,'' and any changes thereto, for the transportation of agricultural products (including grain, as defined in 7 U.S.C. 75, and all products thereof) and fertilizer. It should be noted that the publication requirement for these commodities is in addition to the disclosure and notification requirements of new subsections (b) and (c). This additional requirement reflects Congress' concern that broad dissemination of market information on a timely basis is particularly critical to the agricultural sector of the economy, given the seasonal nature of its transportation needs and the short time frame within which such needs must be met.

It would seem that the required publication could be provided by the rail carrier itself or by an agent (e.g., a publishing service or another rail carrier) acting at the rail carrier's direction. It would also seem that these publications would need to be made available to all interested persons, but that the rail carrier or its agent should be able to impose reasonable charges for such publications.[3] We seek comment on how best to implement this provision. Again, we request input on how to interpret the requirement that publication of any proposed or actual changes be made promptly.

Finally, the new regulations should provide for the required information to be supplied either in writing or in electronic form. It would appear that the form chosen would depend upon the technical capacities of the carrier to transmit, and of the requester to receive, the information.

Request for Comments

We invite all interested persons to comment and to offer suggestions for the new regulations. We encourage affected interest groups to discuss these new requirements with each other and to seek a mutually agreeable set of regulations that would meet the needs of all affected interests—both shipper and carrier, and both large and small.

Comments (an original and 10 copies) must be in writing, and are due on April 8, 1996.

We encourage any commenter that has the necessary technical wherewithal to submit its comments as computer data on a 3.5-inch floppy diskette formatted for WordPerfect 5.1, or formatted so that it can be readily converted into WordPerfect 5.1. Any such diskette submission (one diskette will be sufficient) should be in addition to the written submission (an original and 10 copies).

Small Entities

Because this is not a notice of proposed rulemaking within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), we need not conduct at this point an examination of impacts on small entities. We will certainly welcome, of course, any comments respecting whether regulations that commenters may suggest would have significant economic effects on any substantial number of small entities.

Environment

The issuance of this advance notice of proposed rulemaking will not significantly affect either the quality of the human environment or the conservation of energy resources. Furthermore, we would not expect that regulations suggested for implementing new 49 U.S.C. 11101 would significantly affect either the quality of the human environment or the conservation of energy resources. We certainly welcome, of course, any comments respecting whether suggested revisions would have any such effects.

Authority: 49 U.S.C. 721(a) and 11101.

Decided: February 29, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96–5515 Filed 3–7–96; 8:45 am]

BILLING CODE 4915–00–P

[3] Of course, to accommodate particular segments of the agricultural sector, it would seem that carriers could, at their discretion, continue to issue more narrowly focused publications as well.

Research and Special Programs Administration

49 CFR Part 195

[Docket No. PS–144; Notice–1]

Risk-Based Alternative to the Pressure Testing Older Hazardous Liquid and Carbon Dioxide Pipelines

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The Research and Special Programs Administration (RSPA) invites representatives of industry, state, and local government, and the public to an open meeting to discuss a proposal by the American Petroleum Institute (API) for a risk-based alternative to the pressure testing older hazardous liquid and carbon dioxide pipelines rule (see Attachment). The purpose of this meeting is to obtain public views before RSPA considers API's proposal.

DATES: The meeting will be held on March 25, 1996, from 1:00 p.m. to 5:00 p.m. Written comments, in duplicate, are due by April 15, 1996.

ADDRESSES: Interested persons should submit written comments in duplicate to Dockets Unit, room 8421, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

The meeting will be held at the U.S. Department of Transportation, Nassif Building, 400 Seventh Street, SW, room 9230–34, Washington, DC. Non-federal employee visitors are admitted into DOT headquarters building through the southwest entrance at Seventh and E Streets, SW.

FOR FURTHER INFORMATION CONTACT: Mike Israni, (202) 366–4571, regarding the subject matter of this document, or the Dockets Unit (202) 366–5046, for copies of this notice, the attachment or other material referenced in this notice.

SUPPLEMENTARY INFORMATION: On June 7, 1994, RSPA issued a final rule (59 FR 29379) requiring the hydrostatic pressure testing of certain older hazardous liquid and carbon dioxide pipelines. On June 23, 1995, API filed a petition on behalf of many liquid pipeline operators expressing strong concerns about the pressure testing rule in its present form and proposing a risk-based alternative to the pressure testing rule. API argued that its proposal would allow operators to focus resources for a greater reduction in the overall risk from pipeline accidents. In addition, RSPA has received a few requests for waivers of compliance with the June 7, 1994, final rule.

RSPA wants to carefully evaluate the API proposal because RSPA has been working actively with the pipeline industry to develop a risk management framework for pipeline regulations. RSPA realizes that substantial planning is required before pressure testing of older pipelines. Operators need time to prepare pipeline systems for testing and to arrange for personnel and equipment to conduct the tests. System changes and actual testing must be coordinated with operations to minimize the impact on refineries, distributors, and users of the transported products. Also, operators need time to assure that testing is done safely, with the least environmental risk, and in accordance with applicable Federal and State regulations. Therefore, RSPA issued a notice (60 FR 54328; October 23, 1995) of an extension of the time for compliance to allow for evaluation of the API petition.

On January 31, 1996, RSPA held a meeting with the representatives of API to explore technical details of the API's proposal. Main features of the API's risk-based proposal are as follows:

(a) Highest priority is given to the highest risk facilities; lowest risk facilities are excepted;

(b) Consequence factors such as location, product type, and release potential are taken into consideration when setting testing priorities;

(c) Best available technology is applied to verify pipeline integrity; and

(d) Timing of tests is based on risk.

It is important to note that current rule does not require any continuing effort to reassess the pipeline; however, under API's risk-based alternative, the operator may be obliged to reassess the risk classification on a continuing basis.

It should also be noted that in the API's risk-based proposal, there may be many pipelines that would not be hydrostatically tested. Those pipelines that pose the lowest risks would be excepted from testing. API's proposal provides for an alternative to hydrostatic testing in most cases where testing would be required. The alternative would be internal inspection using ''smart pigs.''

RSPA is concerned that the risk classifications in API's proposal do not specifically account for the probability of pipeline failures. RSPA is suggesting that this could be remedied by including consideration of the history of past failures for a particular pipeline system in the API proposal. The following versions of API Tables have been modified by RSPA to suggest such an approach.

TABLE 2.—RISK CLASSIFICATION

Hazard location indicator	Probability of failure indicator	Product/volume indicator	Risk classification
H	Any	Any combination	C
M	H	H/H	C
	M	Any combination	B
	L	L/L	A
L	H	H/H	B
	M	Any combination	B
	L	L/L	A

H=High, M=Moderate, L=Low.

TABLE 6.—PROBABILITY OF FAILURE INDICATORS (IN EACH HAZ. LOCATION)

Indicator	Failure history (Time-Dependent Defects)
H	Release >1000 bbls in last 5 years.
M	1 or more reportable incidents in last 5 years.
L	0 reportable incidents in last 5 years.

The API's proposal on risk-based alternative to the pressure testing rule is attached to this notice. RSPA is seeking comment on any of the above-described matters.

Issued in Washington, D.C. on March 4, 1996.

Richard B. Felder,

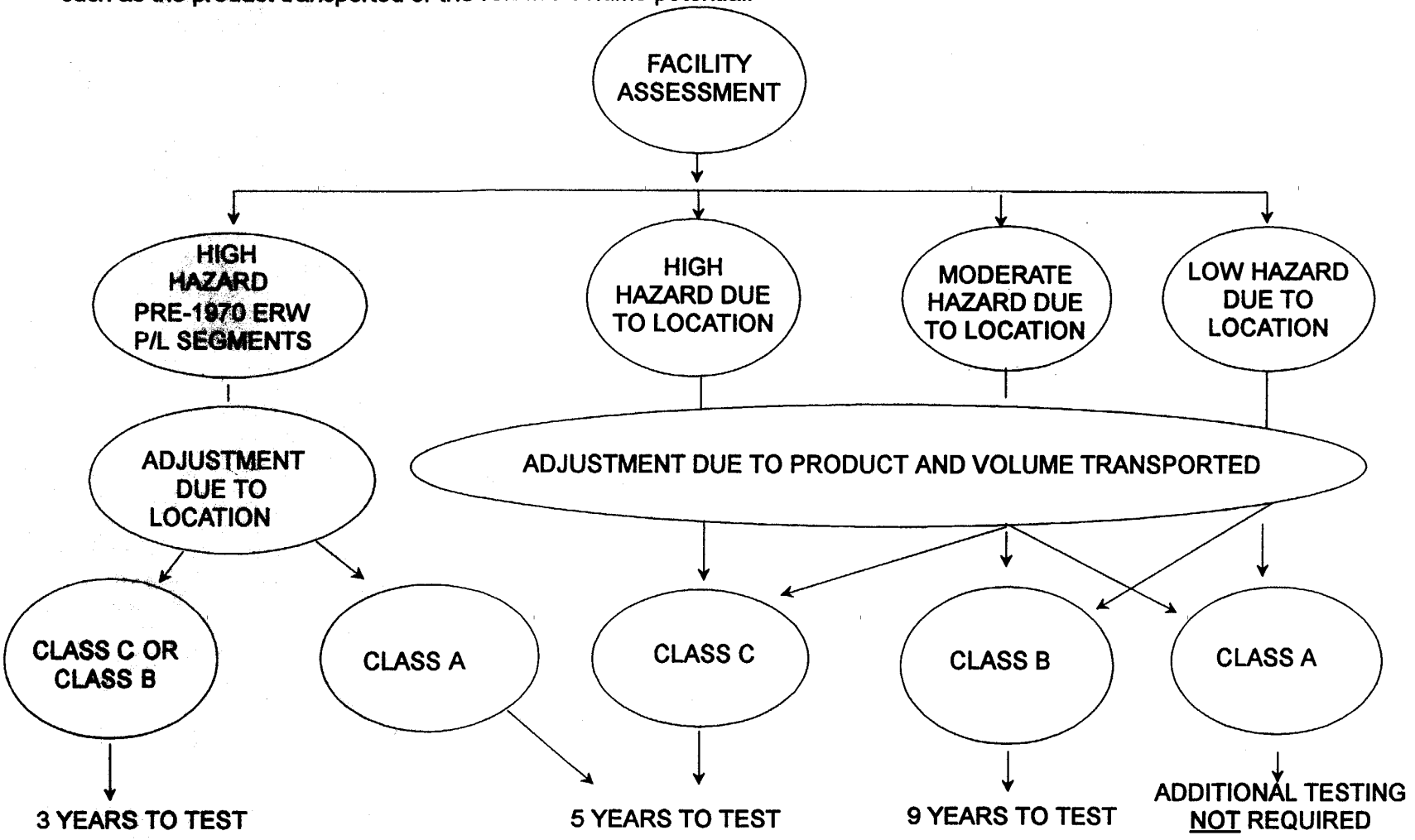
Associate Administrator for Pipeline Safety.

BILLING CODE 4910–60–M

BILLING CODE 4910-60-C

RISK-BASED ALTERNATIVE TO THE HYDROTEST RULE OVERVIEW

This risk-based alternative establishes test priorities based on the inherent risk of a given pipeline segment. The first step is to determine the classification based on the type of pipe or on the pipeline segment's proximity to populated (or, in the future, sensitive environmental) areas. Secondly, the classifications may then be adjusted based on other considerations, such as the product transported or the release volume potential.



API'S RISK-BASED ALTERNATIVE TO THE HYDROTEST RULE

Note: Italicized comments are included in order to help clarify the accompanying text of this proposed alternative to the Hydrotest Rule.

Risk-Based Hydrotest Rule

All previously grandfathered Class B and Class C pipeline segments, and Class A pipeline segments containing ''High Hazard'' pre-1970 ERW pipe shall either:

1. Show that a past pressure test has been completed. (Proof of a past pressure test has been demonstrated when records can be (recording charts, logs, applicable test specifications, employee or inspector log books or other company or project records made at the time of the test and which result directly from that test), the preponderance of which substantiates a successfully completed past test at 125% of the maximum operation pressure); or

2. Re-establish a maximum operating pressure at 80% of the highest operating pressure to which the pipeline was subjected for more than four or more continuous hours, which can be demonstrated by recording charts or logs made at the time the operations were conducted; or

3. Re-establish a maximum operating pressure in accordance with Subpart E—Pressure Testing and Table 1.

All previously grandfathered Class A pipeline segments that do not contain ''High Hazard'' pre-1970 ERW pipe and non-HVL pipelines which operate at less than 20% of SMYS are excepted from the above requirements. See Tables 2–5 for definitions of Class A, B, and C facilities. For the purposes of this rule, all pipeline segments containing ''High Hazard'' pre-1970 ERW pipe and considered a Class C or B facility shall be treated as the top priority for testing because of the higher risk which may exist due to susceptibility to longitudinal seam failures.

In all cases, operators should periodically review their facilities in order to reassess the classification which has been designated. Pipeline failures, changes in the characteristics of the pipeline route, or changes in service should all trigger a reassessment of the originally designated classification.

API's Risk-Based Alternative to the Hydrotest Rule

***Comment:* The following Table defines 4 levels of test requirements depending on the inherent risk of a given pipeline segment. The overall risk classification is determined based on the type of pipe involved, the facility's location, the product transported, and the relative volume of flow as determined from Tables 2–5.**

TABLE 1.—TEST REQUIREMENTS—MAINLINE SEGMENTS OUTSIDE OF TERMINALS, STATIONS, AND TANK FARMS

Pipeline Segment	Classification	Test deadline [1]	Test medium
''High Hazard'' Pre-70 Pipeline Segments.[2]	Class C or B	3 yrs [3]	Water only.
	Class A	5 yrs [3]	Water only.
All Other Pipeline Segments	Class C	5 yrs [4]	Water only.
	Class B	9 yrs [4]	Water/Liq. [5]
	Class A	Additional pressure testing not required.	

[1] If operational experience indicates a history of past failures for a particular pipeline system, failure causes shall be reviewed to determine whether the timing of the pressure test should be accelerated.

[2] All pre-1970 ERW pipeline segments may not require testing. All pre-1970 ERW pipe is not subject to the same susceptibility to longitudinal seam failures. In determining which ERW pipeline segments should be included in this category, operators should consider such factors as: the seam-related leak history of the pipe and pipe manufacturing information as available, which may include the pipe steel's mechanical properties, including fracture toughness; the manufacturing process and controls related to seam properties, including whether the ERW process was high-frequency or low-frequency, whether the weld seam was heat treated, whether the seam was inspected, the test pressure and duration during mill hydrotest; the cleanliness and quality control of the steel-making process; and, other factors pertinent to seam properties and quality.

[3] For those pipeline operators with extensive mileage of pre-1970 ERW pipe, any waiver requests for timing relief should be supported by an assessment of hazards in accordance with location, product, and volume considerations consistent with Tables 3, 4, and 5.

[4] A magnetic flux leakage or ultrasonic internal inspection survey may be utilized as an alternative to hydrotesting where leak history and operating experience do not indicate leaks caused by longitudinal cracks or seam failure.

[5] Pressure tests utilizing a hydrocarbon liquid may be conducted, but only with a liquid which does not vaporize rapidly.

API's Risk-Based Alternative to the Hydrotest Rule

***Comment:* Using LOCATION, PRODUCT, and VOLUME ''Indicators'' from Tables 3, 4 and 5, the overall risk classification of a given pipeline or pipeline segment can be established from Table 2. The LOCATION Indicator is the primary factor which determines overall risk, with the PRODUCT and VOLUME Indicators used to adjust to a higher or lower overall risk classification per the following table.**

TABLE 2.—FACILITY CLASSIFICATION—PIPELINE SEGMENTS

Location indicator	Product/Volume Indicators	Classification
H	Any combination	Class C.
	H/H	Class C.
M	All other combinations	Class B.
	L/L	Class A.
L	H/H	Class B.
	All other combinations	Class A.

Note: For Location and Product/Volume Indicators, see Tables 3, 4 and 5.

Risk-Based Alternative to the Hydrotest Rule

***Comment:* Tables 4 and 5 are used to establish the PRODUCT and VOLUME Indicators used in Table 2. The PRODUCT Indicator is selected from Table 4 as H, M, or L based on the acute and chronic hazards associated with

the product transported. The VOLUME Indicator is selected from Table 5 as H, M, or L based on the nominal diameter of the pipeline.**

TABLE 4.—PRODUCT INDICATORS

Indicator	Considerations	Product examples
H	Highly volatile and flammable	Propane, butane, NGL, ammonia.
	Highly toxic	Benzene, high H_2S content crude oils.
M	Flammable—flashpoint<100F	Gasoline, JP4, low flashpoint crude oils.
L	Non-flammable—flashpoint 100+F	Diesel, fuel, oil, kerosene, JP5, most crude oils.
	Highly volatile and non-flammable/non-toxic	CO_2

Considerations: The degree of acute and chronic toxicity to humans, wildlife, and aquatic life; reactivity; and, volatility, flammability and water solubility determine the Product Indicator. CERCLA RQ (Reportable Quantity) values can be used as an indication of chronic toxicity. NPA health factors can be used for rating acute hazards.

TABLE 5.—VOLUME INDICATORS

Indicator	Line size
H	≥18″
M	10″ – 16″ nominal diameters.
L	≤8″ nominal diameter.

API'S Risk-Based Alternative to The Hydrotest Rule

**Comment:* Table 3 is used to establish the LOCATION indicator used in Table 2. Based on the population (and possibly, in the future, environmental) characteristics associated with a pipeline facility's location, a LOCATION Indicator of H, M or L is selected. *Please note that the identification of those areas which are unusually sensitive to environmental damage (which will affect these LOCATION Indicators) is currently being addressed by OPS. These deliberations will determine the final characterizations of Environment LOCATION Indicators.*

TABLE 3.—LOCATION INDICATORS—PIPELINE SEGMENTS

Indicator	Population[1]	Environment
H	Non-rural areas	Currently, only population (rural or non-rural) will determine the LOCATION indicator. Once a definition of ''unusually sensitive areas'' has been established, the higher of the Population or Environment Indicator will determine the overall LOCATION Indicator.
M		See above.
L	Rural areas	See above.

[1]Pipeline segments transporting highly volatile or toxic products should consider the effects of potential vapor migration.

[FR Doc. 96–5489 Filed 3–7–96; 8:45 am]

BILLING CODE 4910–60–M

Surface Transportation Board

49 CFR Part 1312

[Ex Parte No. MC–211]

Revisions of Tariff Regulations—Indexes

AGENCY: Surface Transportation Board (Board).[1]

ACTION: Withdrawal of Proposed Rule.

SUMMARY: The Board is withdrawing a proposed rule regarding the indexing of tariffs because intervening legislation has made the rule unnecessary.

DATES: The withdrawal is made on March 8, 1996.

FOR FURTHER INFORMATION CONTACT: Michael L. Martin, (202) 927–6033; [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: In a Notice of Proposed Rulemaking published at 58 FR 42277 (August 9, 1993), the ICC proposed a rule to require tariffs to contain indexes, unless the information in the tariff is arranged in a pattern readily discernible to tariff users. The proceeding was initiated in part in response to a directive contained in a Senate report,[2] and in part in recognition of the burdens associated with using tariffs that could contain well over 100,000 unindexed pages.

Most, if not all, of the large, unindexed tariffs were discount tariffs that were filed by individual motor common carriers. However, the Trucking Industry Regulatory Reform

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Board. Section 204(b)(1) of the Act provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the Act. Although the motor carrier tariff filing provisions were sharply curtailed in the ICCTA and in prior legislation, they were not entirely repealed. Therefore, this pending proceeding is not being terminated pursuant to the provisions of section 204(b)(3) of the ICCTA, which calls for termination of cases that involve functions eliminated by the ICCTA. Rather, as a proceeding that was pending with the ICC prior to January 1, 1996, it is governed by the law in effect prior to January 1, 1996.

[2] Senate Report No. 102–351, dated July 30, 1992, accompanying the U.S. Department of Transportation and Related Agencies Appropriations Bill, 1993.

Act of 1994[3] repealed the tariff filing requirement for individually (as distinguished from collectively) set rates of motor common carriers of property (other than household goods and carriers involved with water carriers in the noncontiguous domestic trade), and voided such tariffs. Because the tariffs that precipitated the proposal for indexing are no longer filed, we are terminating this proceeding.

Authority: 49 U.S.C. 10321.

Decided: February 23, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96–5513 Filed 3–7–96; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 260

[Docket No. 950915231–6051–02; I.D. 120195B]

RIN 0648–AI45

Privatization of In-plant Seafood Inspections and Related Services

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

ACTION: Notice of availability; public meetings.

SUMMARY: On September 22, 1995, NOAA published a notice of inquiry in the Federal Register regarding in-plant seafood inspections and related services under the Agricultural Marketing Act of 1946 (the Act). It outlined an action NOAA was considering to provide direct inspection services by a private, for-profit entity, with continued NOAA oversight, and invited written recommendations and comments. The document also noted that NOAA had contracted for a study to determine the feasibility of implementing the plan. This document provides a summary of the comments and recommendations, the results of the study, describes NOAA's future actions, and announces meetings.

DATES: See **SUPPLEMENTARY INFORMATION** for meeting dates.

ADDRESSES: For copies of the feasibility study, contact the Director, Office of Industry Services, 1315 East-West Highway, Room 12553, Silver Spring, MD 20910. See **SUPPLEMENTARY INFORMATION** for meeting locations.

FOR FURTHER INFORMATION CONTACT: Sam McKeen, Director, Office of Industry Services at (301) 713–2355.

SUPPLEMENTARY INFORMATION: On September 22, 1995, NOAA published a notice of inquiry in the Federal Register (60 FR 49242), regarding the way it delivers in-plant seafood inspections and related services under the Act. The inquiry outlined an option NOAA was considering and invited written comments and suggestions. Under that option, direct inspection services would be provided by private parties with continued NOAA oversight. The inquiry recommended that comments take into account the following criteria that would fundamentally affect the viability of a privatized inspection program: (1) fair treatment of Government inspectors currently providing the services; (2) minimum modification of relationships with customers subscribing to the current program, and assurance that the internal operations of these customers need not be changed to accommodate a privatized system; (3) continued recognition by foreign governments of official indicia as indicating safety, wholesomeness and acceptability of products to which the indicia are affixed or to which they relate; (4) acceptance of the integrity of the privatized inspection program by harvesters, processors, wholesalers, retailers and consumers; and (5) likelihood of the continued economic viability of the private entity (or entities) providing the services into the indefinite future.

The approach that NOAA described in some detail involved the establishment of a private, employee-owned Corporation (the Corporation) that would acquire the voluntary seafood inspection program (the Program) and operate it subject to the oversight of NOAA. NOAA employees could become employees of the Corporation if they so elected, and would acquire an ownership interest therein by means of an Employee Stock Ownership Plan (ESOP). The Corporation would not necessarily be the only authorized entity to provide privatized inspection services. Other entities could apply to the Secretary of Commerce for authorization, and if they met applicable requirements (e.g., number of certified inspectors, percent of income from one source), they would also be authorized to conduct the services.

The inquiry also mentioned NOAA's plan to contract for a study to determine the feasibility of establishing an ESOP. It stated that if the study, discussions with affected or interested persons, or comments resulting from the inquiry indicate that the five criteria essential for the success of a privatized system are not likely to be met by the preferred option, NOAA will pursue other options for reinventing the way it delivers the service to the public.

Under NOAA Administrative Order 205–11, 7.01, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated authority to sign material for publication in the Federal Register to the Assistant Administrator for Fisheries, NOAA.

This document has been determined to be not significant for purposes of E.O. 12866.

Comments

The inquiry generated 88 responses during the formal comment period, most of which addressed the general concept of privatization. The responses included comments from seafood processors, seafood trade organizations, food marketing organizations, consumer advocacy groups, and interested agencies of the Federal Government. Responders categorized themselves as follows:

- Seafood processors/wholesalers/distributors - 32
- Employees - 29
- State and Federal Government agencies - 7
- Seafood retailers - 6
- Trade associations - 4
- Consumer groups - 2
- Members of congress - 2
- Private consultants - 2
- Private citizens - 2

A total of 86 comments opposed privatization (whether by ESOP or other, related means). Several responders who are current participants in the program stated that if the program were privatized, they would drop out of the program and hire their own inspectors. Comments that specifically addressed the ESOP proposal opposed it. Of the comments opposing transfer of the inspection function to the private sector, 59 did not discuss other options that might be preferable to the current situation. A further 13 of the negative comments recommended transferring the program to the U.S. Department of Agriculture or the U.S. Food and Drug Administration. Discussions with those agencies regarding transfer of the program were conducted prior to publication of the notice of inquiry in the Federal Register. Neither agency was interested in taking over the

[3] Pub. L. 103–311, 108 Stat. 1683, enacted August 26, 1994.

program. NOAA has, therefore, concluded that attempting to pursue that option further would not be useful. An additional 14 commenters who opposed transferring the program to a for-profit entity suggested formation of a ''government enterprise'' as a mechanism to ensure that the criteria outlined in the inquiry could be met while allowing a change in program structure to increase its efficiency.

Two comments supporting privatization were received from private inspection entities, one of which was a not-for-profit organization currently involved in standards-setting and inspection activities pursuant to government programs throughout the world. That organization expressed interest in assuming administration and operation of the entire voluntary seafood program.

Generally, each response opposing the proposal addressed concerns categorized and quantified as follows along with some of the comments:

(1) The integrity of the program would be in jeopardy—44 comments

Concerns revolve around the integrity of a private company funded by the very industry it inspects. This may be a conflict of interests. Federal inspectors are perceived to be objective.

(2) Acceptance by foreign markets either would not occur or was doubtful—38 comments

''Failure to maintain foreign confidence in our U.S. inspection program could result in serious economic problems for U.S. industry * * *this puts nearly 500 jobs and approximately $200 million of annual business [of the commenter] unnecessarily at risk.''

(3) The cost of the service would increase—34 comments

Commenters feel that Commerce fees have been based on a realistic non-profit basis and that private inspection is bound to cost more. The felt that seafood is already expensive; it would be impossible to absorb the extra costs and difficult to pass these additional costs along to the public.

(4) The proposal is contrary to the purpose of reinventing government—53 comments

One of the commenters stated that the proposal is not consistent with the clear intent of the Federal Workforce Restructure Act of 1994, H.R. 3345, that was signed into law with the clear mandate of promising ''the American people that we would create a Government that works better and costs less.'' (Bill Clinton, March 30, 1994)

(5) A private entity conducting inspection services would not be accepted by consumers—23 comments

Commenters are concerned about losing the ability to use the Federal inspection marks. They feel that it is the best way to communicate to their customers that their products meet Federal quality standards.

(6) The proposal would result in unfair treatment of inspectors and their livelihood may be compromised—23 comments

Commenters are concerned whether employee wages and total benefits would be equal to their current wages and benefits; inspectors would receive credit for seniority; privatization would offer equal pay and benefits; and whether employees would be treated fairly. They felt that failure to provide equal pay and benefits would lead to disruption in the work place.

(7) The economic viability of the program would be lost—20 comments

One commenter stated that if privatization of the inspection services occurs, their USDC inspection programs, or equivalent would have to be discontinued.

The Feasibility Study

The feasibility study analyzed seven options based on the degree to which they satisfied several criteria which, by NOAA's instruction, were unweighted in terms of importance. These criteria were based on those identified in the Federal Register document published on September 22, 1995. The study then summarized the feasibility of implementing these options. The options were devolution (turning inspection services over to the states), government corporation, contracting out, turning the program over to a non-profit corporation or to one of three types of private for-profit corporations. The study contractor researched existing ESOPs and other corporations and reviewed the program's legislative authorities and requirements. The study contractor interviewed inspectors, industry members who participate in the voluntary inspection program, and trade associations. The final report was formally presented to NOAA on November 30, 1995.

The contractor noted in its letter transmitting the final report that if preserving program integrity and minimizing negative impact on the inspection program customers are priorities, the analysis suggests that the Government Corporation option would be preferred. If, on the other hand, Commerce/NOAA's priority is to the maximize the financial access of the new organization and achieve the target employee reduction (the original impetus for the privatization analysis), the ESOP/Strategic Investor option (described in the document published in the Federal Register on September 22, 1995) best satisfies this combination of criteria. The report recommended that NOAA further analyze these two preferred options to determine which best satisfies the outlined criteria. Copies of the report are available from this office (see **ADDRESSES**).

NOAA's Future Action

In light of the comments received on the proposal to transfer inspection responsibilities under the voluntary seafood inspection program to a private, for-profit entity, NOAA has decided that it would be more in keeping with the spirit of the National Performance Review (NPR) and the interests of seafood producers and consumers to look to a different type of enterprise to continue this important work. The range of acceptable options has shifted as a result of the comments received. A for-profit, private enterprise is no longer under consideration. Possible options now appear to range from Government enterprise to a not-for-profit, private enterprise combining recognized experience and integrity with the technical and financial ability to assume responsibility for the entire program. The Government enterprise could take the form of a Government corporation or a ''performance- based, consumer-oriented'' agency extracted from NMFS supervision, directly responsible to the Administrator of NOAA or his/her designee and relieved from unnecessary bureaucratic constraints.

The Government corporation would be a separate, legal entity, created by Congress pursuant to the Government Corporation Control Act of 1945. The Government Corporation Control Act is not a general incorporation statute, so that each Government corporation possesses only those powers set forth in its charter, which itself must be an Act of Congress. The feasibility study recommended some charter provisions for a Government corporation that would be useful. These included authority to retain and use revenues without fiscal year limitation, exemption from the Federal Property and Administrative Services Act, and exemption from employee limitations without changing the Federal status of the employees.

The NPR is developing a series of initiatives in the context of constrained resources where good customer service will be an imperative. Creating performance-based agencies is one of these initiatives. The NPR is assisting agencies to change their internal cultures to create these performance-based, customer-oriented organizations.

The performance-based, customer-oriented organization would no longer be a component of the National Marine Fisheries Service, but would remain a Government agency within NOAA, providing services to the public under the policy oversight of the Administrator or his/her designee. It would be headed by a chief executive officer who would be accountable for achieving results. The new agency would have statutory authority to vary the rules for procurement, employees, etc., that ordinarily apply to federal agencies. Creation of a performance-based agency, like the creation of a Government corporation, would require Congressional action.

Implementation of the not-for-profit option, would require legislation authorizing NOAA to enter into a binding, long-term arrangement with a selected, private entity. The legislation would also establish conditions relating to the qualifications of the private sector partner, the rights of employees to transfer to the private entity, the legal acceptability of the examinations and certifications of the private entity, measures to ensure the integrity of the system, etc.

As indicated in the inquiry, the support of current customers and other interested persons is essential to the ''reinvention'' of the seafood inspection program in the time frame planned. NOAA desires to accomplish this ''reinvention'' in the simplest possible way that is acceptable to industry and consumers. Therefore, it will conduct additional meetings with interested persons and organizations at various locations in the United States according to the following schedule to provide all interested persons an opportunity to present further views on the remaining options. Prior to these meetings, a draft discussion paper detailing one of the Government enterprise options, this document and information about the specific meeting locations will be mailed to those who attended earlier meetings or received earlier correspondence from this agency on this issue. Other interested parties may obtain this information by contacting this office (see **ADDRESSES**).

The meeting dates and locations are as follows:

March 25, 1996—St. Petersburg, FL; March 26—Miami, FL; March 27—Mobile, AL; March 28—Indianola, MS; April 1—Boston, MA; April 3—Chicago, IL; April 4—Norfolk, VA; April 5—Philadelphia, PA; April 9—Los Angeles, CA; April 10—Seattle, WA.

Dated: February 29, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 96–5484 Filed 3–7–96; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 61, No. 47
Friday, March 8, 1996

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

Agricultural Marketing Service

Advisory Committee on Agricultural Concentration; Meeting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of meeting.

SUMMARY: In response to the need for advice on concentration and vertical integration in the agricultural sector, the Secretary of Agriculture established an advisory committee on agricultural concentration. The purpose of the committee is to provide advice regarding whether agricultural concentration exists and if so, the causes and effects of such concentration. Further, the committee is to provide advice related to the need for new legislation.

DATES: The second meeting of this committee will be Monday, March 25, at 9:00 a.m. through 12:00 p.m. Wednesday, March 27, 1996. The Committee has set aside Monday, March 25, 9 a.m.–5 p.m. to hear public views. Oral statements will be limited to five (5) minutes; written statements may be submitted at any time.

ADDRESSES: The meeting will be held at the Ramada Inn at St. Louis Airport, 9600 Natural Bridge Road, St. Louis, Missouri 63164.

FOR FURTHER INFORMATION CONTACT: Interested parties wishing to provide oral or written statements should contact Barbara Claffey, Assistant Deputy Administrator, Agricultural Marketing Service, at (202) 720–4276. Written statements may be mailed to Room 3069 South Bldg., 14th & Independence Ave S.W., Washington, D.C. 20096–6456. Written statements up to 10 pages in length may also be faxed, to the attention of Barbara Claffey, (202) 205–8023.

SUPPLEMENTARY INFORMATION: The purpose of the committee is to make findings and recommendations regarding the need for modification of laws to address any identified concentration or vertical integration in the agricultural sector, regarding the adequacy of price discovery or reporting in the livestock and poultry industries, regarding any necessary modification to departmental programs in order to address concentration, and regarding actions to take to ensure adequate rail car availability throughout the year.

The committee consists of 21 members including: a Chairperson; two Vice Chairpersons; nine representatives of producers from the cattle, hog, lamb, poultry, and grain sectors; two representatives of packers and processors from the livestock, poultry, and grain sectors; two representatives of shippers, handlers, and transporters consisting of one each from grain elevator and railroad sectors; one representative of the retailing sector; one individual with expertise in economics, competition, and/or finance; and three representatives of State government.

The committee is in the public interest in connection with the duties and responsibilities of the Department of Agriculture. Concentration in the agricultural sector is receiving increased attention in terms of its effect throughout the entire food industry.

Dated: March 5, 1996.

Lon Hatamiya,

Administrator.

[FR Doc. 96–5617 Filed 3–7–96; 8:45 am]

BILLING CODE 3410–01–P

Animal and Plant Health Inspection Service

[Docket No. 96–007–1]

National Animal Damage Control Advisory Committee; Notice of Solicitation for Membership

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of solicitation for membership.

SUMMARY: We are giving notice that we anticipate renewing the National Animal Damage Control Advisory Committee for a 2-year period. The Secretary is soliciting nominations for membership for this Committee.

DATES: Consideration will be given to nominations received on or before April 22, 1996.

ADDRESSES: Nominations received should be addressed to the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Clay, Director, Operational Support Staff, ADC, APHIS, 4700 River Road Unit 87, Riverdale, MD 20737–1234, (301) 734–7921 or e-mail: A347ADCOSS@ATTMAIL.COM.

SUPPLEMENTARY INFORMATION: The National Animal Damage Control Advisory Committee (Committee) advises the Secretary of Agriculture on policies, program issues, and research needed to conduct the Animal Damage Control (ADC) program. The Committee also serves as a public forum enabling those affected by the ADC program to have a voice in the program's policies.

The Committee Chairperson and Vice Chairperson shall be elected by the Committee from among its members.

Terms will expire for the current members of the Committee in June 1996. We are soliciting nominations from interested organizations and individuals to replace members on the Committee. An organization may nominate individuals from within or outside its membership. The Secretary will select members to obtain the broadest possible representation on the Committee, in accordance with the Federal Advisory Committee Act (Pub. L. 92–463) and U.S. Department of Agriculture (USDA) Regulation 1041–1. Equal opportunity practices, in line with USDA policies, will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by the Department, membership should include, to the extend practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Done in Washington, DC, this 4th day of March 1996.

Lonnie J. King,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–5581 Filed 3–7–96; 8:45 am]

BILLING CODE 3410–34–P

Forest Service

National Urban and Community Forestry Advisory Council; Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: the National Urban and Community Forestry Advisory Council will meet in Austin, Texas, April 4–6, 1996, with a tour of local projects, April 4, 9:00–4:30 p.m. The Council is comprised of 15 members appointed by the Secretary of Agriculture. The purpose of the meeting is to receive status reports from prior challenge cost-share grant recipients and to continue discussion on emerging issues in Urban and Community Forestry. The meeting will be chaired by Genni Cross of The Trust for Public Land/California ReLeaf. The meeting is open to the public and time will be provided at the beginning of each major agenda topic for public input. However, in order to schedule public input, time to speak must be requested by March 20, 1996. Council discussion is limited to Forest Service staff and Council members. Persons who wish to bring urban and community forestry matters to the attention of the Council may file written statements with the Council staff before or after the meeting.

DATES: The meeting will be held April 4–6, 1996.

ADDRESSES: The meeting will be held at the Four Points Hotel—ITT Sheraton, 7800 North Interstate Highway 35, Austin, Texas.

Send written statements and/or proposed agenda items to Suzanne M. del Villar, Executive Assistant, National Urban and Community Forestry Advisory Council, 1042 Park West Court, Glenwood Springs, CO 81601.

FOR FURTHER INFORMATION CONTACT: Suzanne M. del Villar, Cooperative Forestry Staff, (970) 928–9264.

Dated: March 4, 1996.

William L. McCleese,

Acting Deputy Chief, State and Private Forestry.

[FR Doc. 96–5574 Filed 3–7–96; 8:45 am]

BILLING CODE 3410–11–M

ASSASSINATION RECORDS REVIEW BOARD

Sunshine Act Meeting

DATES: March 18–19, 1996.

PLACE: ARRB, 600 E Street, NW., Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Review and Accept Minutes of Closed Meeting.
2. Review of Assassination Records.
3. Other Business.

CONTACT PERSON FOR MORE INFORMATION: Thomas Samoluk, Associate Director for Communications, 600 E Street, NW., Second Floor, Washington, DC 20530. Telephone: (202) 724–0088; Fax: (202) 724–0457.

David G. Marwell,

Executive Director.

[FR Doc. 96–5697 Filed 3–6–96; 12:00 pm]

BILLING CODE 6118–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1996 Test Census – Integrated Coverage Measurement (ICM) Activities (Independent Listing and Housing Unit Follow up).

Form Number(s): DT–1302, DT–1302A, DT–1314, DT–1377.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 511 hours.

Number of Respondents: 10,000.

Avg Hours Per Response: 2½ minutes.

Needs and Uses: The Census Bureau requests OMB approval of the activities and instruments associated with conducting the initial phases of ICM research in the 1996 Census Test. Prompted by the need to improve statistical methodology for estimating population coverage during the decennial census, the Bureau of the Census developed the ICM approach. In ICM, a sample of census blocks are separately enumerated during a census to obtain an independent roster. The independent roster is then compared to the census results to measure coverage of housing units and of persons in missed housing units and coverage of persons in housing units included in the census. The ICM approach was first tested in the 1995 Census Test. ICM Research in the 1996 Test Census will expand upon results from that earlier test. The instruments and procedures for the 1996 Test Census have been separately submitted to OMB for review. Additionally, the later stages of ICM research during the 1996 Test Census (personal interviewing and final follow ups) will be submitted separately at a later date, as they are still in the developmental stages.

Affected Public: Individuals or households.

Frequency: One–time.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Jerry Coffey, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Acting DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jerry Coffey, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: March 4, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–5471 Filed 3–7–96; 8:45 am]

BILLING CODE 3510–07–F

Bureau of Export Administration

Information Systems Technical Advisory Committee; Notice of Partially Closed Meeting

A meeting of the Information Systems Technical Advisory Committee will be held April 2 and 3, 1996, Room 1617M–2, in the Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenues, N.W., Washington, D.C. This Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to information systems equipment and technology.

April 2

Closed Session—9:00 a.m.–5:00 p.m.

1. Discussion of matters properly classified under Executive Order 12958, dealing with U.S. export control programs and strategic criteria related thereto.

April 3

General Session—9:00 a.m.–12:00 p.m.

2. Opening remarks by the Chairmen.
3. Presentation of papers or comments by the public.
4. Review of new and pending regulations.
5. Review of action item list and progress on issues.
6. Discussion on Committee organization.

Closed Session—1:00 p.m.–5:00 p.m.

7. Discussion of matters properly classified under Executive Order 12958, dealing with U.S. export control programs and strategic criteria related thereto.

The General Session of the meeting is open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that public presentation materials or comments be forwarded at least one week before the meeting to the address listed below: Ms. Lee Ann Carpenter, TAC Unit/OAS/EA Room 3886C, Bureau of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on October 10, 1995, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that a series of meetings or portions of meetings of these Committees and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of these Committees is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, D.C. For further information or copies of the minutes call Lee Ann Carpenter, 202–482–2583.

Dated: March 5, 1996.

Lee Ann Carpenter,

Director, Technical Advisory Committee Unit.

[FR Doc. 96–5577 Filed 3–7–96; 8:45 am]

BILLING CODE 3510–DT–M

International Trade Administration

[A–427–098]

Anhydrous Sodium Metasilicate From France; 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, the PQ Corporation, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on anhydrous sodium metasilicate (ASM) from France. This review covers Rhone Poulenc Chimie de Base (Rhone Poulenc), a manufacturer/exporter of this merchandise to the United States, and the period January 1, 1994 through December 31, 1994. The firm failed to submit a response to our questionnaire. As a result, we have preliminarily determined to use facts otherwise available for cash deposit and appraisement purposes.

Interested parties are invited to comment on these preliminary results.

Parties who submit argument in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: March 8, 1996.

FOR FURTHER INFORMATION CONTACT: Mark Ross or Richard Rimlinger, 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.

SUPPLEMENTARY INFORMATION:

Background

On January 12, 1995, the Department published in the Federal Register (60 FR 7995) a notice of ''Opportunity to Request an Administrative Review'' of the antidumping duty order on ASM from France. On January 18, 1995, the petitioner, PQ Corporation, requested an administrative review of Rhone Poulenc, a manufacturer/exporter of this merchandise to the United States. We initiated the review on February 15, 1995 (60 FR 8629). The Department is now conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (the Tariff Act).

Scope of the Review

Imports covered by the review are shipments of ASM, a crystallized silicate (NA_2 SiO_3) which is alkaline and readily soluble in water. Applications include waste paper de-inking, ore-flotation, bleach stabilization, clay processing, medium or heavy duty cleaning, and compounding into other detergent formulations. This merchandise is classified under Harmonized Tariff Schedules (HTS) item numbers 2839.11.00 and 2839.19.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers Rhone Poulenc and the period January 1, 1994 through December 31, 1994 (POR).

Use of Facts Otherwise Available

Following the initiation of this review, the Department sent Rhone Poulenc, the only known manufacturer/exporter of this merchandise to the United States, a questionnaire seeking information necessary to conduct a review of any shipments that firm may have made to the United States during the 1994 POR. Rhone Poulenc did not respond to the questionnaire. Because necessary information is not available on the record for the 1994 POR as a result of Rhone Poulenc withholding the requested information, we must make our preliminary determination based on facts otherwise available (section 776(a) of the Tariff Act).

The Department finds that, in not responding to the questionnaire, Rhone Poulenc failed to cooperate by not acting to the best of its ability to comply with a request for information from the Department. Therefore, pursuant to section 776(b) of the Tariff Act, we may, in making our determination, use an adverse inference in selecting from the facts otherwise available. This adverse inference may include reliance on data derived from the petition, a previous determination in an investigation or review, or any other information placed on record. Accordingly, in this case, we preliminary assign to Rhone Poulenc a margin of 60 percent, the margin calculated in the original investigation using information provided by Rhone Poulenc (*see* Anhydrous Sodium Metasilicate From France—Final Determination of Sales at Less Than Fair Value, 45 FR 77498 (Nov. 24, 1980)).

Because the margin selected for this review is based on information obtained in the course of an earlier segment of the proceeding, the Department is required, pursuant to section 776(c) of the Tariff Act, to corroborate this information to the extent practicable. This means that the Department must satisfy itself that the secondary information used has probative value (*See* Statement of Administrative Action accompanying the Uruguay Round Agreement Act, published in H. Doc. 103–106, 103d Cong., 2d Sess. at 870). In this case, the margin assigned to Rhone Poulenc is credible and relevant because it is based on data from the same producer to which the margin is being applied. This margin is also credible because it is reasonable to believe that, had Rhone Poulenc been selling in the United States at a lower margin of dumping, it would have provided the requested information. Finally, it is necessary to use this information because no other suitable information is available. This is a case-specific determination. Cases

involving other circumstances may require other approaches to corroboration.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that a margin of 60 percent exists for Rhone Poulenc for the period January 1, 1994 through December 31, 1994.

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may 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 the administrative review, including the results of its analysis of issues raised in any such written comments or at a hearing.

Upon completion of this administrative review, 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 administrative review for all shipments of ASM from France, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a0(1) of the Tariff Act: (1) the cash deposit rate for the reviewed company will be that established in the final results of this administrative review; (2) for exporters not covered in this review, but covered in previous reviews or the original less-than-value (LTFV) investigation, 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, previous reviews, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be that established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be 60 percent.

Because this proceeding is governed by an antidumping duty order (46 FR 1667, January 7, 1981), the ''all others'' rate for the purposes of this review will be 60 percent, the ''all others'' rate established in the final notice of the LTFV investigation (45 FR 77498, November 24, 1980).

These 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 Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: February 28, 1996.

Paul L. Joffe,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–5425 Filed 3–7–96; 8:45 am]

BILLING CODE 3510–DS–M

[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, Commerce.

ACTION: Notice of Preliminary Results of Countervailing Duty Administrative Reviews and Intent To Terminate 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. Termination of these two cases has been requested by the Government of Colombia (''GOC'') pursuant to 19 CFR 355.25(a)(2) and the procedures specified in 19 CFR 355.25(b)(2), and by certain producers and exporters of subject merchandise pursuant to 19 CFR 355.25(a)(3) and the procedures specified in 19 CFR 355.25(b)(3) in the event the Department denies the GOC's request to terminate. These reviews cover the period of review (''POR'') January 1, 1994, through December 31, 1994, and eleven programs. We preliminarily determine that the GOC and the producers/exporters of roses and minis have complied with the terms of the suspension agreements. We also preliminarily determine that the producers/exporters of subject merchandise have not used any program under review for a period of at least five consecutive years. Additionally, we preliminarily determine that the GOC and producers/exporters of the subject merchandise (respondents) have provided sufficient evidence for the Department to determine that it is likely that producers/exporters of subject merchandise will not in the future apply for or receive any net subsidy on the subject merchandise from those programs the Department has found countervailable in any proceeding involving Colombia or from other countervailable programs. Therefore, we preliminarily determine that respondents have met the requirements for termination of the countervailing duty suspended investigation on roses and other cut flowers and on miniature carnations as outlined in the Commerce Regulations.

We invite interested parties to comment on these results. Parties who submit arguments in this proceeding are requested to submit with any argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: March 8, 1996.

FOR FURTHER INFORMATION CONTACT: Rick Johnson or Jean Kemp, 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 in reference to the provisions as they existed on or after January 1, 1995, the effective date of amendments made to the Tariff Act in accordance with the Uruguay Round Agreements Act.

Background

On January 12, 1995, the Department published in the Federal Register (60 FR 2941) a notice of ''Opportunity to Request an Administrative Review'' for the 1994 review period. On January 31, 1995 the GOC and the Colombian Association of Flower Exporters (Asocolflores) requested administrative reviews of the suspended countervailing duty investigations covering roses and

minis for the 1994 period. On April 14, 1995, the Department initiated these reviews (60 FR 19017, 19018). 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 only. The written descriptions remain dispositive.

These reviews of the suspended investigations involve approximately 600 Colombian flower producers/exporters of roses, over 100 Colombian flower producers/exporters of minis, and the GOC. The suspension agreement for minis covers ten programs: (1) BANCOLDEX (funds for the promotion of exports); (2) Plan Vallejo; (3) Instituto de Fomento Industrial (IFI); (4) Fondo Financiero de Proyectos de Desarrollo (FONADE); (5) Financiero de Desarrollo Territorial (FINDETER); (6) Tax Reimbursement Certificate Program (''CERT''); (7) Free Industrial Zones; (8) Export Credit Insurance; (9) Countertrade; and (10) Research and Development. The suspension agreement for roses covers the ten programs listed above, as well as (11) Air Freight Rates.

Verification

As provided in Section 776(b) of the Tariff Act, we verified information provided by the respondents by using standard verification procedures, including inspection of programs at the appropriate administering agencies, onsite inspection of the manufacturers' facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. We verified the responses from four producers/exporters of both classes or kinds of merchandise under review for the period January 1, 1994 to December 31, 1994: Flores Condor de Colombia, Ltda, Flores Las Palmas, S.A., Splendid Flowers, Ltda, and Flores del Rio, S.A. Our verification results are outlined in the public versions of the verification reports.

Analysis of Programs

We examined the following programs subject to the terms of the suspension agreements:

(1) BANCOLDEX

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 exporters will not apply for, or receive any export financing from BANCOLDEX other than that offered on non-preferential terms, and at or above the established Department benchmark interest rates. For the period of review, the benchmark interest rates in effect for minis were nominal Depositos a Termino Fijo (DTF)+1 for short-term peso loans, and nominal DTF+1+.25/year for long-term loans. *See Miniature Carnations from Colombia; Final Results of Countervailing Duty Administrative Review (1989)*, 56 FR 14240 (April 8, 1991). For roses for the period of review, the benchmark interest rates in effect were 22.5% for short-term peso loans and 21% for long-term peso loans. *See Roses and Other Cut Flowers from Colombia; Final Results of Countervailing Duty Administrative Review and Revised Suspension Agreement (1983)*, 51 FR 44930, 44932 (December 15, 1986). There was no applicable benchmark for U.S. dollar loans for the POR.

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 four 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 established Department benchmark rates for exports of the subject merchandise to the United States and Puerto Rico in effect during the POR. Therefore, we preliminarily 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. We also preliminarily determine that no countervailable loans under the BANCOLDEX loan program have been used by exporters of the subject merchandise for a period of five consecutive years.

U.S. Dollar Loans

For the period of review, there were no applicable benchmark interest rates for U.S. dollar loans. However, for the purposes of determining whether termination of the suspension agreement is appropriate, we examined whether BANCOLDEX conferred any countervailable benefits upon exports of the subject merchandise to the United States and Puerto Rico during the POR with regard to BANCOLDEX U.S. dollar-denominated loans. We preliminarily determine that BANCOLDEX did not confer any countervailable U.S. dollar loans on subject merchandise during the POR (*See Memorandum to the File*, February 28, 1996). We also preliminarily determine that no countervailable loans under the BANCOLDEX loan program have been used by exporters of the subject merchandise for a period of five consecutive years.

(2) 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 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 exporter applied for Plan Vallejo benefits. Therefore, we preliminarily determine that this program has not been used for subject merchandise for a period of five consecutive years.

In addition, we verified that the four companies we examined at verification 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 to 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 2386 because flower exporters are ineligible to receive benefits for exports to the United States and Puerto Rico.

(3) 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 only to 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 the tasa de captación para corporaciónes (''TCC'') 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 percent 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 percent 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, therefore, are not countervailable.

Furthermore, we verified that no Colombian flower exporters received loans under the two export credit lines during the POR. We preliminarily determine that the GOC and the Colombian flower exporters of the subject merchandise were in compliance with the suspension agreements because IFI's export credit lines were not used by Colombian flower exporters of the subject merchandise during the POR. As we noted in *Roses and Other Cut Flowers From Colombia; Miniature Carnations From Colombia; Preliminary Results of Countervailing Duty Administrative Reviews of Suspended Investigations* (60 FR 42535, 42538, August 16, 1995) (1993 review), because flower exporters of the subject merchandise were eligible to apply for and receive IFI's export credit lines, the same short- and long-term benchmarks as for BANCOLDEX peso financing applied for the POR (*See* Section 1 above).

At verification, we determined that Colombian flower exporters did not apply for or receive any IFI short- and long-term export credits for the subject merchandise to the United States and Puerto Rico. Therefore, we preliminarily determine that IFI loans did not confer any countervailable benefits upon exports of the subject merchandise to the United States and Puerto Rico during the POR. Although no loans at preferential rates were received by exporters of the subject merchandise, the program itself has not been abolished. Rather, the above scenario constitutes non-use of the program. Therefore, we preliminarily determine that IFI's export credit line program has not been used by exporters of the subject merchandise for the period of review. We also preliminarily determine that exporters of the subject merchandise have not received countervailable loans under this IFI program since the Department began examining this program, in the 1993 review.

(4) 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. At verification, we found no evidence that Colombian flower producers/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 producers/exporters of the subject merchandise during the POR. Furthermore, we preliminarily determine that FONADE financing has not been used by producers/exporters of the subject merchandise since the Department began examining this program, in the 1993 review.

(5) Financiera de Desarrollo Territorial (FINDETER)

The Department has previously found Financiera de Desarrollo Territorial (''FINDETER'') financing to be not countervailable for exports of the subject merchandise (*Roses and Other Cut Flowers from Colombia; Miniature Carnations From Colombia; Preliminary Results of Countervailing Duty Administrative Reviews of Suspended Investigations*, 60 FR 42535–38, August 16, 1995). For the current review, the Department has examined this program and preliminarily finds it to be unchanged and therefore not countervailable for the subject merchandise.

Other Programs

In past reviews, the Department has found the following programs to have been abolished for the subject merchandise for a period of at least three consecutive years (*see, infra, Roses and Other Cut Flowers from Colombia; Preliminary Results of Countervailing Duty Administrative Review and Intent Not To Terminate Suspended Investigation*, 58 FR 52272–5, October 7, 1993; *Miniature Carnations From Colombia; Preliminary Results of Countervailing Duty Administrative Review and Intent Not To Terminate Suspended Investigation*, 58 FR 52269–72, October 7, 1993):

(6) Tax Reimbursement Certificate Program (''CERT'');

(7) Free Industrial Zones;

(8) Export Credit Insurance;

(9) Countertrade; and

(10) Research and Development.

For the current review, the Department has examined these programs and verified that they are unchanged from earlier reviews. Therefore, they remain abolished for the subject merchandise.

Program Specific to the Suspension Agreement on Roses and Other Cut Flowers

(11) Air Freight Rates

The Civil Aeronautics Board (Departmento Administrativo de la Aeronautica Civil, hereafter referred to as ''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.

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. Although no subsidies were received by exporters of the subject merchandise through this program, the program establishing minimum and maximum rates itself has not been abolished. Rather, the above scenario characterizes non-use of the program. Therefore, we preliminarily determine that this program has not been used by exporters of the subject merchandise for a period of five consecutive years.

Preliminary Results of Review

We preliminarily determine that the GOC and the producers/exporters of the subject merchandise have complied with all the terms of the suspension agreements during the period January 1, 1994 through December 31, 1994. We preliminarily determine that no countervailable benefits have been bestowed on subject merchandise, and furthermore, that producers/exporters of subject merchandise have not used the above programs for at least five years (or, in the case of programs only recently created, for the life of the program). Additionally, we note that the GOC has stated for the record that it will institute or maintain appropriate measures to ensure that export loan programs will be administered to guarantee that loans granted to recipients are comparable to commercial loans that a flower producer/exporter could obtain in the market, such as those alternative sources of financing available to agriculture in Colombia, and will not confer any loan program countervailable subsidies on flower producers/exporters. Furthermore, the GOC has certified that, for the subject merchandise, it shall not reinstate those programs which the Department has found countervailable, and it shall not substitute other countervailable programs. Finally, producers/exporters have certified that they will not apply for or receive any net subsidy on exports to the United States of subject merchandise from those programs that the Department has found countervailable in any proceeding involving Colombia or from other countervailable programs.

Therefore, we preliminarily determine that the GOC and the producers/exporters covered by this agreement have met the requirements for termination of the suspended countervailing duty investigations on roses and other cut flowers and miniature carnations, as required by 19 CFR 355.25.

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: February 28, 1996.

Paul L. Joffe,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–5439 Filed 3–6–96; 8:45 am]

BILLING CODE 3510–DS–P

[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 August 16, 1995, 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 period January 1, 1993 through December 31, 1993.

EFFECTIVE DATE: March 8, 1996.

FOR FURTHER INFORMATION CONTACT: N. Gerard Zapiain or Jean Kemp, 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 to the Uruguay Round Agreements Act (See 60 FR 80 (January 3, 1995)).

Background

On August 16, 1995, the Department published in the Federal Register (60 FR 42535) 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 2158 (January 18, 1983); *Roses and Other Cut Flowers From Colombia; Final Results of Countervailing Duty Administrative Review and Revised Suspension Agreement,* 51 FR 44930 (December 15, 1986); and *Miniature Carnations from Colombia; Suspension of Countervailing Duty Investigation,* 52

FR 1353 (January 13, 1987)). We have now completed this administrative review 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 this administrative review constitute two ''classes or kinds'' of merchandise: roses and minis from Colombia. During the period of review (''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 only. The written descriptions remain dispositive.

This review of the suspended investigations involves over 450 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 Germán Ribón E. en C. (roses and minis); Tuchany, S.A. (roses); Flores de Exportación, 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 (''CERT''); (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) Financiero 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. The POR is January 1, 1993 through December 31, 1993.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from the respondents, the GOC and Associación de Flores (''Asocolflores''); and the petitioners, the Floral Trade Council (''FTC''). Comments submitted consist of petitioner's case brief of November 17, 1994 and rebuttal brief of November 28, 1994; and respondent's rebuttal brief of November 28, 1994. Petitioner and respondents resubmitted identical comments to the issues addressed previously in the 1991–1992 administrative reviews of these suspension agreements. Therefore, the parties' comments refer to the record of the 1991–1992 reviews of these agreements. The Department has addressed the substance of parties' comments as they pertain to this POR.

Comment 1: 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 10790, 10793 (March 8, 1994); FTC Public Factual Submission at Exhibits 9 and 10 (August 1, 1992); FTC Public Request for Verification (July 23, 1993) submitted as part of the 1991–1992 reviews of these agreements).

Department's Position: We disagree with petitioner. At verification for the 1993 POR, the Department reviewed documentation provided by the six companies and by the Banco de la República (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 six 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 the 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 10790 (Comment 7) (March 8, 1994) and *Roses and Other Cut Flowers from Colombia: Miniature Carnations from Colombia: Final Results of Countervailing Duty Administrative Reviews of Suspended Investigations* 60 FR 42540 (August 16, 1995).

Comment 2: 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. 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. 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.

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. (See *Roses and Other Cut Flowers from Colombia: Miniature Carnations from Colombia: Final Results of Countervailing Duty Administrative Reviews of Suspended Investigations* FR 42540 (August 16, 1995). At verification for the 1993 POR, 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 six companies examined at verification, we examined several third-country sales, including sales to Panama and the Netherlands Antilles, by reviewing the 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 the allegation of transshipment or reshipment of the subject merchandise (See verification reports

for each company). 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 POR.

Comment 3: The FTC argues that because 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 or 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 the most recent 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 10790 (Comment 7) (March 8, 1994), and *Roses and Other Cut Flowers from Colombia; Miniature Carnations from Colombia; Final Results of Countervailing Duty Administrative Reviews of Suspended Investigations,* 60 FR 42541 (Comment 4) (August 16, 1995)).

Comment 4: 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 because the GOC does not have an up-to-date list of signatories during the 1991–1992 PORs (See *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 *Miniature Carnations from Colombia; Suspension of Countervailing Duty Investigation,* 52 FR 1353, and 1356 (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. (See *Roses and Other Cut Flowers from Colombia: Miniature Carnations from Colombia: Final Results of Countervailing Duty Administrative Reviews of Suspended Investigations,* 60 FR 42540 (August 16, 1995).

We have found that the GOC has not maintained an up-to-date list of signatories for both suspension agreements. Nonetheless, the record evidence indicates that signatories have been in full compliance with the agreement. At verification for this review, we analyzed the Colombian Customs Authority's export statistics of all flower companies exporting minis to the United States and Puerto Rico. The Department reviewed and verified at each GOC agency information for all producers of the subject merchandise, despite their signatory status. At the Central Bank, we checked computer records of exports with 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 BANCOLDEX, we reviewed and verified all PROEXPO/BANCOLDEX loans issued and outstanding in the POR (See also Government Verification Reports of May 27, 1994 and August 11, 1995) and we have determined that the Colombian flower growers/exporters have complied with the terms of the suspension agreements during the POR. 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 of the subject merchandise during the POR. 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 and reopen the investigations.

Comment 5: 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 Colombian 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 8906, and 8907 (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 because interest rates fluctuated widely between 19 and 32 percent during the 1991–1992 PORs, 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.

Department's Position: We disagree with petitioner. 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), *Miniature Carnations from Colombia; Final Results of Countervailing Duty Administrative Review and Determination Not To Terminate Suspended Investigation,* 59 FR 10790, (March 8, 1994), and *Roses and Other Cut Flowers from Colombia: Miniature Carnations from Colombia: Final Results of Countervailing Duty Administrative Reviews of Suspended Investigations,* 60 FR 42541 (August 16, 1995)).

At verification for the 1993 POR, 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. Because 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 receiving 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 petitioner's claim that the suspension agreements are not in the public interest.

To ensure timely updates of the benchmarks for BANCOLDEX financing, the Department requests 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 6: Petitioner asserts that the GOC did not comply with the suspension agreements regarding 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 rates published by the International Monetary Fund (''IMF'') or the (FFA/FINAGRO ''FINAGRO'') rates during those PORs, the Department would have found 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 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.

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. 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: We disagree with petitioner. The Department has determined in previous reviews that any changes to benchmark interest rates for the suspension agreements should be set prospectively, because suspension agreements are forward-looking. (See *Roses and Other Cut Flowers from Colombia: Miniature Carnations from Colombia: Final Results of Countervailing Duty Administrative Reviews of Suspended Investigations*, 60 FR 42542 (August 16, 1995)). Furthermore, the Department verified that the Colombian flower growers/ exporters of the subject merchandise have fulfilled the two distinct obligations in the suspension agreements during the 1993 POR: (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 (See verification reports for each company).

At verification for this review, the Department reviewed all loans issued by BANCOLDEX during the POR, in particular the six companies we examined 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 period, we did not compare the rate on an individual loan with the annual average DTF rate (See verification reports for each company). 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 POR, and that signatories complied with the terms of the suspension agreements for the BANCOLDEX programs during the POR.

Finally, the Department agrees with the respondents that because the suspension agreements are two separate agreements, it would be erroneous to apply the 1989 minis benchmark interest rates to the roses suspension agreement during this POR. We have applied the benchmark interest rate of each suspension agreement appropriately. Coincidentally, the rates in effect for each agreement are now identical. (See *Roses and Other Cut Flowers from Colombia: Miniature Carnations from Colombia: Final Results of Countervailing Duty Administrative Reviews of Suspended Investigations* 60 FR 42542 (August 16, 1995)).

Comment 7: 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. 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 8437, and 8439 (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 asserts that the FTC offers no basis upon which the Department could support a change from a FINAGRO based benchmark to a 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 countervailable subsidy (See *Final Affirmative Countervailing Duty Determination; Miniature Carnations from Colombia, 52 FR 32033, and 32037 (August 25, 1987); and Roses and Other Cut Flowers From Colombia; Final Results of Countervailing Duty Administrative Review and Revised Suspension Agreement*, 51 FR 44930, and 44,932 (December 15, 1986)).

Department's Position: We have determined that FINAGRO is a major intermediary lender to the agricultural sector, and therefore is an appropriate alternative basis for the Department's benchmarks. Because there is insufficient information on the record about non-government-related financing at commercial rates, we have determined that it is inappropriate to weight average the commercial interest rates. (See *Roses and Other Cut Flowers from Colombia: Miniature Carnations from Colombia: Final Results of Countervailing Duty Administrative Reviews of Suspended Investigations* 60 FR 42542 (August 16, 1995)).

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 petitioner 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, as verified, the most recent average official interest rate on all loans financed by FINAGRO through Caja Agraria, *i.e.*, nominal DTF plus 3.66 percentage points, is the appropriate benchmark for short-term financing. (See *Calculation Memorandum for Interest Rate Benchmark Methodology for BANCOLDEX Peso-and Dollar-Denominated Loans*, January 17, 1996, and Government Verification Report, Exhibit BR–1). Because 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 6 and 10).

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 interest rates are not determined on the basis of the size of flower growers (See BANCOLDEX resolution 007, article 6, paragraph d (June 16, 1993)).

The Department determines that the short- and long-term benchmarks for peso-denominated financing will become effective 14 days after the date of publication of the final results of these administrative reviews.

Comment 8: 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 commercial lending rates maintained by the Central Bank as 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: We disagree with petitioner. 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's rates conflicts with what we found at verification and because Caja Agraria's interest rates are similar to the rates offered by FINAGRO, FINAGRO's interest rates represent the best alternative source of financing for agricultural entities in Colombia (See *Roses and Other Cut Flowers from Colombia: Miniature Carnations from Colombia: Final Results of Countervailing Duty Administrative Reviews of Suspended Investigations*, 60 FR 42542 (August 16, 1995).

Comment 9: 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, because 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. 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 (See *Roses and Other Cut Flowers from Colombia: Miniature Carnations from Colombia: Final Results of Countervailing Duty Administrative Reviews of Suspended Investigations*, 60 FR at 42542 (August 16, 1995).

Comment 10: 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 POR.

Respondents state that, as noted in its original case brief in connection with the 1991–1992 annual review periods, BANCOLDEX's dollar-denominated loans are not financed by the GOC and are therefore non-countervailable.

Department's Position: We disagree with respondents. It is long-standing Department policy that loans from certain international institutions, such as the World Bank or the Inter-American Development Bank (IADB), are not countervailable subsidies. However, Dollar loans administered by BANCOLDEX are potentially countervailable and the Department has calculated dollar benchmarks accordingly (as discussed in Comment 11 below) (See *Roses and Other Cut Flowers from Colombia: Miniature Carnations from Colombia: Final Results of Countervailing Duty Administrative Reviews of Suspended*

Investigations 60 FR at 42543 (August 16, 1995).

Comment 11: 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 for the 1991–1992 review periods, the Department would find that the dollar-denominated BANCOLDEX loans issued during these 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 the review period.

Department's Position: The Department in its final results in connection with the 1991–1992 annual review periods agreed with respondents that the calculation of the dollar loan benchmark in the Department's preliminary results was incorrect because it was not necessarily representative of dollar-based interest rates in Colombia. (See *Roses and Other Cut Flowers from Colombia: Miniature Carnations from Colombia: Final Results of Countervailing Duty Administrative Reviews of Suspended Investigations*, 60 FR 42543 (August 16, 1995). We corrected this error in the 1993 preliminary results of review. Consequently, this issue does not apply to the current POR.

Comment 12: 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 6 and 10).

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 5), no Colombian flower grower/exporter would sign such an agreement where signatories would agree to a blanket commitment 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 nor will it terminate the suspension agreements, nor will it reopen the investigation. (See *Roses and Other Cut Flowers from Colombia: Miniature Carnations from Colombia: Final Results of Countervailing Duty Administrative Reviews of Suspended Investigations* 60 FR 42544 (August 16, 1995).

Refinancing Outstanding Dollar and Peso Loans

At the time of the final results of the 1991–1992 reviews, the GOC asserted that if any dollar loans needed 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 (See 52 FR 1355, para. II.B., 1986, and *Roses and Other Cut Flowers from Colombia; Miniature Carnations from Colombia; Final Results of Countervailing Duty Administrative Reviews of Suspended Investigations*, 60 FR 42544 (Comment 11) (August 16, 1995)).

For the 1993 POR, the Department 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.

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 period January 1, 1993, through December 31, 1993. In addition, we determine that the peso and 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 dollar loans to meet the new short- and long-term benchmarks is 90 days after publication of these final results in the Federal Register.

This administrative review 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: February 28, 1996.

Paul L. Joffe,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–5440 Filed 3–6–96; 8:45 am]

BILLING CODE 3510–DS–P

Notice: Change in Policy Regarding Currency Conversions

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') has revised its policy regarding currency conversions to conform to changes resulting from the Uruguay Round Agreements Act (''the URAA''). We are now announcing this change in methodology and the accompanying computer code and

requesting comments on this new methodology. At the end of a one-year test period, the Department will reexamine the methodology, make any needed changes, and prepare regulations.

DATES: *Effective Date:* The proposed policy is effective March 8, 1996 with respect to all investigations and reviews requested since January 1, 1995. The Department will consider all written comments concerning this methodology and the accompanying computer code received before December 31, 1996.

ADDRESSES: *Comments:* Address all written comments to Susan G. Esserman, Assistant Secretary for Import Administration, Central Records Unit, Room B–099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington DC 20230.

Computer Code: The computer code is available to the public as of March 8, 1996 on Internet at the following address: HTTP://WWW.ITA.DOC.GOV/IMPORT___ADMIN/RECORDS/. In addition, the computer code is available on 3.5'' diskettes in SAS 6.11 format and paper copies are available for reading and photocopying at Room B–099 of the Central Records Unit, Room B–099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Penelope Naas, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone: (202) 482–3534.

SUPPLEMENTARY INFORMATION: The URAA amended the Tariff Act of 1930 (''the Act'') to provide explicit guidance regarding the exchange rate to be used when converting currencies in antidumping proceedings (section 773A). In the Statement of Administrative Action accompanying the URAA, the Administration set out its intention that the Department would ''* * * promulgate regulations implementing the requirements of section 773A.'' In the ''Notice of Proposed Rulemaking and Request for Public Comments'' dealing with proposed antidumping and countervailing duty regulations, the Department announced its intention to implement the requirements of section 773A ''through an exchange rate model announced in a policy bulletin * * *'' (61 FR 7308; February 27, 1996.) Policy Bulletin 96–1, which follows, is a description of the exchange rate model.

As stated in the proposed regulations, we plan to use this model for one year and then evaluate its performance based on public comment. We will then alter the model as necessary and expand the regulations to provide more extensive guidance. The public is invited to comment on the model at any time prior to December 31, 1996. The computer code, through which the exchange rates will be selected is available on Internet and on disks from the Department. The Department also will make available on Internet lists of exchange rates for all currencies required in antidumping proceedings under the Act, as amended by the URAA.

Policy Bulletin 96–1: Import Administration Exchange Rate Methodology

Introduction

For the first time, the Uruguay Round Agreements Act (the ''URAA'') provides explicit guidelines for the selection of exchange rates that Import Administration (''IA'') will use in converting foreign currencies to U.S. dollars. Our past practice, specified in 19 CFR 353.60, has been to use the same exchange rates as the Customs Service.

Section 773A of the Tariff Act of 1930, as amended, (the ''Act'') provides that IA will convert foreign currencies at the exchange rates on the date of the U.S. sale, subject to certain exceptions. Those exceptions require IA to ignore ''fluctuations'' in the exchange rate and to provide respondents in an investigation at least 60 days to adjust prices after a ''sustained movement'' in the exchange rate.[1] Neither the Act nor the Antidumping Agreement (Agreement on Implementation of Article VI, GATT 1994) provide guidance on defining fluctuations or sustained movements.

The Statement of Administrative Action accompanying the URAA (the ''SAA'') provides that IA is to promulgate regulations implementing the currency conversion provisions of section 773A of the Act. (SAA at 841.) The proposed regulations do not provide the kind of detail necessary to define fluctuations and sustained movement. Instead, we intend to implement and test the model described in this bulletin for one year. We will then make any necessary revisions to the model based on our experience and public comment. Once that process is complete, we will promulgate regulations fully defining our practice.

We have designed the exchange rate model described below to define fluctuations and sustained movements with three goals in mind:

1. To implement the statutory requirements as simply as possible.

2. To ensure that all exporters, when they set their U.S. prices and whether under order or not, can know with certainty the daily exchange rate the Department will use in a dumping analysis.

3. To capture the model in simple computer code to reduce the administrative burdens on IA and other parties that wish to monitor exchange rates.

In brief, the model has been designed to convert a file of actual daily exchange rates to a file of ''official'' daily exchange rates. In this process, each actual daily exchange rate is classified as ''normal'' or ''fluctuating.'' An extended pattern of appreciating rates defines a ''sustained movement.'' Based on these classifications, the model assigns the appropriate official exchange rate for each day.[2]

Summary of the Model.

Step 1: Exchange Rate Used

The model classifies each daily rate as ''normal'' or ''fluctuating'' based on a ''benchmark'' rate. The benchmark is a moving average of the actual daily exchange rates for the eight weeks immediately prior to the date of the actual daily exchange rate to be classified.[3] Whenever the actual daily rate varies from the benchmark rate by more than two-and-a-quarter percent, the actual daily rate is classified as fluctuating. If within two-and-a-quarter percent, the actual daily rate is classified as normal.

Actual daily rates classified as normal are the official exchange rate for that day. However, when an actual daily rate is classified as fluctuating, the benchmark rate is the official rate for that day.

Step 2: Recognition Period

Whenever the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive

[1] Section 773A of the Act also specifies that, if it is established that a forward currency transaction (''hedging'') is linked to an export sale, IA may use the exchange rate specified in the forward contract to convert currency for that sale. The model described in this bulletin does not encompass this exception. When it is appropriate to employ the forward rate provision, it is a simple matter to substitute the forward rate for the results of the model.

[2] We are continuing to examine the application of the model in situations where the foreign currency depreciates substantially against the dollar over the period of investigation or the period of review. In those situations, it may be appropriate to rely on daily rates.

[3] The New York Federal Reserve Bank publishes exchange rates for Monday through Friday only, excluding holidays. We refer to these as the actual daily rate or reported days.

weeks (the recognition period), the model classifies the exchange rate change as a sustained movement. During the eight week recognition period, the model continues to classify each daily rate as normal or fluctuating and to substitute the benchmark rate for the actual daily rate when the daily rate is fluctuating.

Step 3: Adjustment for Sustained Movement

When there has been a sustained movement increasing the value of a foreign currency in relation to the dollar, respondents under investigation, but not review, are given 60 calendar days to correct their prices. The 60-calendar-day grace period begins on the first day after the recognition period. During that period, the official rate in effect on the last day of the recognition period will be the official rate in investigations. For reviews, the model continues to apply the eight-week average to determine whether daily rates are normal or fluctuating.

When a foreign currency has decreased in value in relation to the dollar, there is no adjustment required for a sustained movement, and the official rate generated by the model will normally apply to currencies depreciating against the dollar. However, in both investigations and reviews, whenever the decline in the value of a foreign currency is so precipitous and large as to reasonably preclude the possibility that it is only fluctuating, the lower actual daily rates will be employed from the time of the large decline.

The Starting Point

In order to provide certainty for all parties, we will start the model for all currencies as of January 1, 1992. We have chosen this date because the new law is effective for all reviews requested in January 1995 and thereafter. Generally, the earliest possible U.S. sale is 18 to 22 months prior to the anniversary month (18-month review period (first review) with U.S. sales generally made not earlier than 4 months before entry). By starting the model more than a full year prior to the earliest probable U.S. sale date, any distortion caused by the pattern of rates included in the initial benchmark will be eliminated before it can influence the exchange rate on the date of an actual U.S. sale.

Currently, a list of official rates starting with January 1, 1992, for the 30 exchange rates collected by the New York Federal Reserve Bank[4] is available on Internet and through the Central Records Unit. Shortly, all currencies for which there is a product under a dumping order will be posted and distributed. We will maintain these rates and update them quarterly using the Federal Reserve and other reliable sources.

Decision Rules in Greater Detail

The decision rules which follow have been programmed in SAS to convert a list of actual daily exchange rates to a list of official exchange rates for use in dumping investigations and reviews. We will use the file of official daily rates to select the exchange rate for each U.S. sale in our calculations. The following rules will apply:

1. Use the actual daily exchange rate[5] unless the actual daily rate varies by more than two and a quarter percent from the benchmark rate (''fluctuates''). The benchmark rate is defined as the moving average exchange rate of the 40 reported days immediately preceding the date of the exchange rate being tested and classified.[6]

2. When the actual daily rate fluctuates from the benchmark rate, use the benchmark rate until the daily rate fluctuates by more than five percent in the same direction from the benchmark rate for a period of 40 reported days, or approximately eight weeks.[7] In other words, the weekly average of the actual daily rates will be compared to the average benchmark rate for the same week. If the actual exchange rate average exceeds the benchmark average by five percent or more for eight consecutive weeks, a sustained movement in the value of the currency is deemed to have occurred.

3. In investigations, if a sustained movement has occurred, and the foreign currency has increased in value in relation to the U.S. dollar, continue to use the official rate from the last day of the recognition period for 60 days following the end of the recognition period. On the 61st day, we would return to comparing the actual daily rate to the benchmark rate.

Whenever the decline in the value of a foreign currency is so precipitous and large as to reasonably preclude the possibility that it is only fluctuating, use actual daily rates from the start of the recognition period.

Dated: March 4, 1996.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 96–5424 Filed 3–7–96; 8:45 am]

BILLING CODE 3510–DS–P

[4] The 30 exchange rates are collected by the New York Federal Reserve Bank from a sample of market participants. They are the noon buying rates in New York for cable transfers payable in foreign currencies. These rates are certified by the New York Federal Reserve Bank for customs purposes, as required by section 522 of the Act. The daily rates are published weekly by the Federal Reserve Bank Board of Governors in form H–10. In addition, the Chicago Federal Reserve Bank maintains an electronic file on a bulletin board (which any party can access by modem) of 30 of the currencies. When the need for a currency other than one of the 32 arises, we will identify another reliable source.

[5] The exchange rate on Saturday, Sunday, or holidays is the rate used for the previous reported day.

[6] The model is based on reported days. For example, the benchmark rate used is 40 reported days or approximately eight calendar weeks. Likewise, the exchange rate recognition period is 40 reported days or approximately eight weeks.

[7] To eliminate ''noise'' in the daily rates, when testing whether there has been a sustained movement, the model compares the eight average weekly rates for the recognition period to the benchmark rate. Daily rates are too volatile. (By using an average weekly rate, a single day's dip back into the normal range will not mask a sustained movement.) A sustained movement is deemed to have occurred when the average rate for each of the eight weeks of the recognition period deviates from the benchmark by more than five percent.

National Oceanic and Atmospheric Administration

[I.D. 030496A]

Western Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold a meeting of its Crustaceans Plan Team.

DATES: The meeting will be held on March 19, 1996, from 8:30 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at the Executive Center, 1088 Bishop St., Room 4003, Honolulu, HI; telephone: (808) 539–3000.

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1405, Honolulu, HI, 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The plan team will discuss and may make recommendations to the Council on the following agenda items:

1. Status of the stocks;
2. Review of Northwestern Hawaiian Islands (NWHI) experimental fishery;
3. Status of crustaceans amendment 9;

4. 1996 NWHI lobster quota;
5. Federal-State trap mesh size;
6. Concerns from the region (American Samoa, Guam/Northern Mariana Islands, Hawaii);
7. Crustaceans Fishery Management Plan Milestones (1997–1999);
8. Lobster research;
9. Vessel Monitoring System evaluation; and
10. Other business as required.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: March 5, 1996.

Richard H. Schaefer,

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

[FR Doc. 96–5571 Filed 3–7–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 030496B]

Western Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold a meeting of its Bottomfish and Seamount Groundfish Plan Team.

DATES: The meeting will be held on March 27 and 28, 1996, from 8:30 a.m. to 5:00 p.m., each day.

ADDRESSES: The meeting will be held at the Executive Center, 1088 Bishop St., Room 4003, Honolulu, HI; telephone: (808) 539–3000.

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1405, Honolulu, HI, 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The plan team will discuss and may make recommendations to the Council on the following agenda items:

1. 1995 annual report (including recommendations from American Samoa, Guam, Northern Mariana Islands, Hawaii and region-wide; improvement and standardization of models);
2. Status of Department of Land and Natural Resources progress with management plan for overfished Main Hawaiian Island onaga and ehu;
3. Reconsideration of Northwestern Hawaiian Islands management system (including biological and economic reviews);
4. Bottomfish Fishery Management Plan Milestones (1997–1999); and
5. Other business as required.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: March 5, 1996.

Richard H. Schaefer,

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

[FR Doc. 96–5572 Filed 3–7–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 030496C]

Western Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold a meeting of its Pelagics Plan Team.

DATES: The meeting will be held on March 20–21, 1996, from 8:30 a.m. to 5:00 p.m., each day.

ADDRESSES: The meeting will be held at the Executive Center, 1088 Bishop St., Room 4003, Honolulu, HI; telephone: (808) 539–3000.

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1405, Honolulu, HI, 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The plan team will discuss and may make recommendations to the Council on the following agenda items:

1. 1995 annual report (including recommendations from American Samoa, Guam, Northern Mariana Islands, Hawaii and region-wide; improvements to modules);
2. Pelagics Fishery Management Plan Milestones (1997–1999);
3. Status of Small Boat Pelagic Fisheries Working Group recommendations;
4. Explanation of 1994 decline in Hawaii swordfish landings;
5. Longline observer program: sampling design and 1-year data;
6. Longline bycatch issues (turtles, albatross, sharks);
7. Status of Pelagic Fisheries Research Program;
8. Swordfish research plans; and
10. Other business as required.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: March 5, 1996.

Richard H. Schaefer,

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

[FR Doc. 96–5573 Filed 3–7–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 022696C]

Endangered Species; Permits

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

ACTION: Issuance of permits 984 and 986.

SUMMARY: Notice is hereby given that NMFS has issued Permit 984 to Drs. Mary Moser and Steve Ross of the University of North Carolina (P423B), and Permit 986 to the US Fish and Wildlife Service. Both permits authorize the take of listed shortnose sturgeon (*Acipenser brevirostrum*) for the purpose of scientific research, subject to certain conditions set forth therein.

ADDRESSES: The applications, permits, and related documents are available for review by appointment in the following offices:

Office of Protected Resources, F/PR8, NMFS, 1315 East-West Hwy., Room 13307, Silver Spring, MD 20910–3226 (301–713–1401); or

Director, Southeast Region, NMFS, NOAA, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432 (813–893–3141).

SUPPLEMENTARY INFORMATION: Notice was published on December 4, 1995 (60 FR 62075) that an application had been filed by Drs. Mary Moser and Steve W. Ross of the Center for Marine Science

Research, NC, to take listed shortnose sturgeon as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–222). The applicants requested a 2-year permit to take shortnose sturgeon in the rivers of NC, to determine their distribution and habitat use. Adult shortnose sturgeon will be collected by gillnetting, weighed, measured, photographed, tagged, have tissue samples taken, and be released. Up to 10 of these adult shortnose sturgeon will be tagged with an ultrasonic transmitter, and tracked. Eggs and larvae will be collected to gather information on spawning sites. On February 14, 1996, as authorized by the ESA, NMFS issued Permit 984 authorizing this research.

Notice was published on September 28, 1995 (60 FR 50189) that an application had been filed by the US Fish and Wildlife Service. The applicant requested authorization for a 5-year scientific research permit to take listed shortnose sturgeon in the Southeast US. The purpose of the research is to develop strategies that can be applied by fisheries managers to aid in the recovery of shortnose sturgeon populations. Research will be conducted mainly on non-releasable captive shortnose sturgeon and their progeny, with a maximum take in the wild of 50 adult fish annually for population assessment and biological comparison with hatchery fish. Wild fish will be released following measurement, tagging, and the collection of tissue samples. On February 23, 1996, as authorized by the ESA, NMFS issued Permit 986 for this research.

Issuance of these permits, as required by the ESA, was based on a finding that such permits: (1) Were applied for in good faith, (2) will not operate to the disadvantage of the listed species that is the subject of the permits, and (3) are consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: February 27, 1996.

Russell J. Bellmer,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–5481 Filed 3–7–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 030196C]

Marine Mammals

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

ACTION: Issuance of scientific research permit no. 987 (P598).

SUMMARY: Notice is hereby given that Dr. Jim Darling, P.O. Box 384, Tofino, British Columbia, Canada VOR 2Z0,, has been issued a permit to take (harass) humpback whales (*Megaptera novaeangliae*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, NMFS, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (310/980–4016); and

Coordinator, Pacific Area Office, Southwest Region, NMFS, 2570 Dole Street, Room 106, Honolulu, HI 96822–2396 (808/955–8831).

SUPPLEMENTARY INFORMATION: On January 25, 1996, notice was published in the Federal Register (61 FR 2232) that the above-named applicant had submitted a request for a scientific research permit to take up to 200 humpback whales (*Megaptera novaeangliae*) over a 2-year period, by harassment in the course of behavioral and photo-identification studies and biopsy sampling in waters of the Hawaiian Islands. 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 (ESA) of 1973, 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).

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 endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: March 1, 1996.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–5570 Filed 3–7–96; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: April 8, 1996.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Sweatsuit, USAF
8415–01–407–2708 (pants)
8415–01–407–2709
8415–01–407–2745
8415–01–407–2784
8415–01–407–2788
8415–01–407–2176 (shirts)
8415–01–407–2181
8415–01–407–2192
8415–01–407–2240
8415–01–407–2241
NPA: Mississippi Industries for the Blind
Jackson, Mississippi

Services

Laundry Service, Fort Lewis & Madigan Army Medical Center, Fort Lewis, Washington
NPA: Northwest Center for the Retarded
Seattle, Washington

Mailroom Operation for the following locations:
Forrestal Building, 1000 Independence Avenue, SW., Washington, DC
Germantown Building, 19901 Germantown Road, Germantown, MD
NPA: Sheltered Occupational Center of Northern Virginia
Arlington, Virginia

Beverly L. Milkman,

Executive Director.

[FR Doc. 96–5582 Filed 3–7–96; 8:45 am]

BILLING CODE 6353–01–P

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: April 8, 1996.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On December 19, 1995 and January 19, 1996, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (60 F.R. 67351 and 61 F.R. 1362) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will not have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Document Image Conversion, Naval Air Warfare Center, Aircraft Division, Patuxent River, Maryland

Janitorial/Custodial, Social Security Administration, Metro West Complex, 300 North Greene Street, Baltimore, Maryland

Laundry Service, Fort Richardson, Alaska

(which includes all the military activities within the State of Alaska as follows: Fort Wainwright, Elmendorf Air Force Base, Fort Greely, Eielson Air Force Base; and the Native Health Service Installations in Anchorage)

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 96–5691 Filed 3–7–96; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs.

ACTION: Notice.

In accordance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Health Affairs announces the proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) whether the proposed extension of collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Considerations will be given to all comments received May 7, 1996.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Fitzsimons Army Medical Center, Program Development Branch, ATTN: Mr. Graham Kolb, Aurora, CO 80045–6900.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection, please write to the above address or call, OCHAMPUS, Program Requirements Branch at (303) 361–1180.

TITLE, ASSOCIATED FORM, AND OMB NUMBER: CHAMPUS Claim—Patient's Request for Medical Payment; DD Form 2642; OMB Number: 0720–0006.

NEEDS AND USES: This form is used by beneficiaries claiming reimbursement for medical expenses under the Civilian Health and Medical Program of the Uniformed Services (TRICARE/CHAMPUS). The information collected will be used by TRICARE/CHAMPUS to determine beneficiary eligibility, other health insurance liability and certification that the beneficiary received the care.

Affected Public: Individuals or households

Annual Burden Hours: 812,500
Number of Respondents: 3,250,000
Responses Per Respondent: 1
Average Burden Per Response: 15 minutes
Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

This collection instrument is for use by beneficiaries under the Civilian Health and Medical Program of the Uniformed Services (TRICARE/CHAMPUS). TRICARE/CHAMPUS is a health benefits entitlement program for the dependents of active duty Uniformed Services members and deceased sponsors, retirees and their dependents, dependents of Department of Transportation (Coast Guard) sponsors, and certain North Atlantic Treaty Organization, National Oceanic and Atmospheric Administration, and Public Health Service eligible beneficiaries. DD Form 2642 is used by TRICARE/CHAMPUS beneficiaries to file for reimbursement of costs paid to providers and suppliers for authorized health care service supplies.

Dated: March 5, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–5553 Filed 3–7–96; 8:45 am]

BILLING CODE 5000–04–M

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs.

ACTION: Notice.

In accordance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Health Affairs announces the proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) whether the proposed extension of collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received May 7, 1996.

ADDRESSES: Written comments and recommendations on the information collection should be sent to Office of the Civilian Health and Medical Program of the Uniform Services OCHAMPUS, Fitzsimons Army Medical Center, Program Development Branch, ATTN: Mr. Graham Kolb, Aurora, CO 80045–6900.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection, please write to the above address or call OCHAMPUS, Program Requirements Branch at (303) 361–1180.

TITLE ASSOCIATED FORM AND OMB NUMBER: Health Insurance Claim Form; HCFA–1500; OMB Number: 0720–0001.

NEEDS AND USES: This information collection requirement is used by TRICARE/CHAMPUS to determine reimbursement for health care services or supplies rendered by individual professional providers to TRICARE/CHAMPUS beneficiaries. The requested information is used to determine beneficiary eligibility, appropriateness and costs of care, other health insurance liability and whether services received are benefits. Use of this form continues TRICARE/CHAMPUS commitments to use the national standard claim form for reimbursement of services/supplies provided by individual professional providers.

AFFECTED PUBLIC: State and local governments, businesses or other for profit organizations, Federal agencies and employees, non-profit institutions, and small businesses or organizations.

Annual Burden Hours: 3,275,000
Number of Respondents: 13,100,000
Responses Per Respondent: 1
Average Burden Per Response: 15 minutes
Frequency: On occasion

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

This collection instrument is for use by health care providers under the Civilian Health and Medical Program of the Uniformed Services (TRICARE/CHAMPUS). TRICARE/CHAMPUS is a health benefits entitlement program for the dependents of active duty Uniformed Services members and deceased sponsors, retirees and their dependents, dependents of Department of Transportation (Coast Guard) sponsors, and certain North Atlantic Treaty Organization, National Oceanic and Atmospheric Administration, and Public Health Service eligible beneficiaries. The Form 1500 is used by individual professional health care or health care related providers to file for reimbursement of civilian health care services or supplies provided to TRICARE/CHAMPUS beneficiaries. This is the national standard claim form accepted by all major commercial and government payers.

Dated: March 5, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–5554 Filed 3–7–96; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

Indian Education National Advisory Council; Meeting

AGENCY: National Advisory Council on Indian Education.

ACTION: Notice of emergency open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming emergency meeting of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE AND TIME: March 11 and 12, 1996, from 9:00 a.m. to 5:00 p.m. daily or until the conclusion of business.

ADDRESS: 1250 Maryland Avenue, SW., The Portals-Suite 6211, Washington, DC 20202–7556. Telephone: (202) 205–8353.

FOR FURTHER INFORMATION CONTACT: John W. Cheek, Acting Director, National Advisory Council on Indian Education, 600 Independence Avenue SW., The Portals-Suite 6211, Washington, DC 20202–7556. Telephone: (202) 205–8353.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education (NACIE) is established under section 9151 of Title IX, of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 7871). The Council is established to, among other things, assist the Secretary of Education in carrying out responsibilities under this Title and to advise Congress and the Secretary of Education with regard to federal education programs in which Indian children or adults participate or from which they can benefit.

The Chair of the National Advisory Council on Indian Education has called for an emergency meeting for Monday, March 11, and Tuesday, March 12, 1996 in Washington, D.C. The agenda includes a briefing on the status of Indian Education for the 1996 fiscal year

and beyond. Specifically, NACIE will address several urgent Indian education issues including: the Federal Comprehensive Indian Education Policy Statement; the future role of the National Advisory Council on Indian Education; status report on the Director vacancy in the Office of Indian Education, U.S. Department of Education; discussion on how the Department of Education intends to provide consultation on Indian education issues pursuant to President Clinton's Executive Order of April 28, 1994 authorizing each federal agency to consult with Tribal Nations; status report on the restructuring initiative within the Office of Indian Education; briefing on Tribally Controlled Community Colleges Executive Order; and discussion with the Assistant Secretary of Elementary and Secondary Education on the status of the FY 96 Indian Education Act. These proposals will have a direct and immediate effect on the quantity and quality of educational services to American Indian and Alaska Native communities nationwide and on the role that the National Advisory Council on Indian Education is authorized by law to uphold. This meeting may include a teleconference call on either day depending on the availability of a quorum of the NACIE membership.

The public is being given less than 15 days notice due to problems in scheduling this meeting.

Records shall be kept of all Council proceedings and are available for public inspection at the office of the National Advisory Council on Indian Education located at 1250 Maryland Avenue SW., Washington, DC 20202–7556 from the hours of 9:00 a.m. to 4:30 p.m. Monday through Friday, except holidays.

Dated: March 4, 1996.

John W. Cheek,

Acting Executive Director, National Advisory Council on Indian Education.

[FR Doc. 96–5485 Filed 3–6–96; 9:24 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs

AGENCY: Department of Energy.

ACTION: Amendment to Record of Decision.

SUMMARY: The Department of Energy (DOE) has issued an amendment to the May 30, 1995 Record of Decision on the Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs Final Environmental Impact Statement (60 FR 28680, June 1, 1995). The May 30, 1995 Record of Decision includes a decision to regionalize the management of DOE owned spent nuclear fuel, by fuel type, and also includes decisions concerning environmental restoration and waste management programs at the Idaho National Engineering Laboratory. This amended Record of Decision reflects the October 16, 1995 Settlement Agreement among DOE, the State of Idaho and the Department of the Navy pertaining to spent nuclear fuel shipments into and out of the State of Idaho. The Settlement Agreement was entered as a Consent Order by the U.S. District Court for the District of Idaho on October 17, 1995, which resolved litigation between the State of Idaho and DOE. See, Public Service Co. of Colorado v. Batt, No. CV 91–0035–S–EJL (D. Idaho) and United States v. Batt, No. CV–91–0065–S–EJL (D. Idaho). This amended Record of Decision does not modify or rescind any of the provisions of the May 30, 1995 Record of Decision, except as discussed below.

ADDRESSES: Copies of the Department of Energy Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs Final Environmental Impact Statement (DOE/EIS–0203–F), and the May 30, 1995 Record of Decision are available in the public reading rooms and libraries identified in the Federal Register Notice that announced the availability of the Final Environmental Impact Statement (60 FR 20979, April 28, 1995).

For further information on DOE's spent nuclear fuel management program and environmental restoration and waste management programs at the Idaho National Engineering Laboratory or to receive a copy of the Final Environmental Impact Statement, or Settlement Agreement with the State of Idaho, please contact: U.S. Department of Energy, Idaho Operations Office, Bradley P. Bugger, Office of Communications, 850 Energy Drive, MS 1214, Idaho Falls, ID 83403–3189, 208–526–0833.

For general information on the Department's National Environmental Policy Act (NEPA) process, please contact: Ms. Carol Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585, 202–586–4600, or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

Department of Energy Programmatic Spent Nuclear Fuel Management

This amended Record of Decision reduces the number of shipments of spent nuclear fuel into the State of Idaho. As a result, there are differences in the number of spent nuclear fuel shipments and inventories from those listed in Tables 3.1 and 3.2 of the May 30, 1995 Record of Decision. Tables 1.1 and 1.2 of this amendment hereby revise Tables 3.1 and 3.2, respectively, of the May 30, 1995 Record of Decision to show those differences. Table 1.1 shows the origin and interim management destination of specific fuels and the potential number of shipments. One shipment, whether by truck or rail, consists of a single shipping container of spent nuclear fuel. Table 1.2 shows the existing and resulting inventory at DOE's main spent nuclear fuel management locations. The differences include the Fort St. Vrain fuel and 512 shipments of the Hanford Site fuel. The change regarding Fort St. Vrain spent nuclear fuel shipments implements an explicit provision of the October 17, 1995 Consent Order settling the litigation among the State of Idaho, the Department of Energy, and the Department of the Navy. The change regarding spent nuclear fuel at the Hanford site reflects the Consent Order's general limitation of spent nuclear fuel shipments to the Idaho National Engineering Laboratory. Both the Fort St. Vrain and Hanford spent fuels may be safely maintained at their present locations. (See Volume 1, Appendix A, Section 5.1; Volume 1, Section 3.1.1.7; and Volume 1, Appendix E, Section 4.1.3.2.) There are also refinements in the number of spent nuclear fuel shipments to the Idaho National Engineering Laboratory from Argonne National Laboratory-East, Sandia National Laboratory, the Oak Ridge Reservation, Babcock & Wilcox, and Foreign Research Reactors. This Amendment to the Record of Decision is consistent with DOE's mission of managing its spent nuclear fuel safely and efficiently. The environmental impacts associated with the decisions contained in this Amendment were analyzed in the DOE Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs Final Environmental Impact Statement.

TABLE 1.1—STATE-BY-STATE PLANNED SHIPMENT DESTINATIONS AND NUMBER OF SHIPMENTS.[1]

Generator or current storage	Destination[2]	
	Idaho National Engineering Laboratory	Savannah River Site
Aerotest (California)	3	.....
General Atomics (California)	8	.....
General Electric (California)	.....	4
McClellan Air Force Base (California)	3	.....
U.S. Geological Survey (Colorado)	6	.....
Fort St Vrain (Colorado)[3]	0	.....
Idaho National Engineering Laboratory (Idaho)	.....	114
Argonne National Laboratory—East (Illinois)	6	.....
Armed Forces Research Institute (Maryland)	3	.....
National Institute of Science and Technology (Maryland)	.....	185
DOW Corp. (Michigan)	3	.....
Veterans Medical Center (Nebraska)	2	.....
Los Alamos National Laboratory (New Mexico)	.....	17
Sandia National Laboratory (New Mexico)[4]	11	15
Brookhaven National Laboratory (New York)	.....	71
West Valley Demonstration Project (New York)	[5]83	
Savannah River Site (South Carolina)	121	.....
Oak Ridge Reservation (Tennessee)[4]	14	68
Babcock & Wilcox, Lynchburg (Virginia)	5	.....
Hanford Site (Washington)	[6]12	.....
Foreign Research Reactors (various)[4,7]	162	838
Navy	575	.....
Universities (various)[4]	116	403
Total	1,133	1,715

[1] The number of shipments analyzed in the Final Environmental Impact Statement, including either truck or rail shipments.
[2] The Hanford Site would not receive any additional fuel.
[3] No shipments for storage, but shipments may be needed for treatment for disposal.
[4] The specific distribution would be based upon the fuel type (i.e., cladding material).
[5] For West Valley Demonstration Project spent fuel, 7 rail shipments would be equal to 83 truck shipments.
[6] This represents the sodium-bonded Fast Flux Test Facility fuel.
[7] A policy decision on acceptance of foreign research reactor spent nuclear fuel will be made after completion of a separate environmental impact statement.

TABLE 1.2—APPROXIMATE SPENT NUCLEAR FUEL INVENTORY IN METRIC TONS OF HEAVY METAL.[1]

Sites	Existing spent fuel inventory (as of 1995) (percent of total)	Existing redistributed and newly generated inventory (by year 2035) (percent of total)
Hanford Site	2133 (80.6%)	2132[3](77.8%) (non-sodium-bonded Fast Flux Test Facility fuel, miscellaneous and production reactor spent nuclear fuel).
Idaho National Engineering Laboratory	261 (9.9%)	381 (13.9%) (non-aluminum-clad spent nuclear fuel).
Savannah River Site	206 (7.8%)	213 (7.8%) (aluminum-clad spent nuclear fuel)
Other (Oak Ridge, other Department of Energy facilities, universities, special case commercial)[3].	46 (1.7%)	16[4] (.5%)
Total	2646 (100%)	2742 (100%).

[1] A ''metric ton of heavy metal'' is a common unit of measure for spent nuclear fuel, which is 1000 kilograms (2,200 pounds) of heavy metal (uranium, plutonium, thorium) contained in the spent fuel.
[2] Inventory shown assumes no final disposition (repository disposal or processing).
[3] The Hanford and Oak Ridge sites would ship some or all of their existing inventory to the Savannah River Site and Idaho National Engineering Laboratory, depending on fuel type.
[4] DOE spent fuel stored at the Fort St. Vrain reactor in Colorado.

Decision and Approval.

The Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.*) and the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*) establish the Department's responsibility for the management of its spent nuclear fuel. The decision process reflected in this document complies with requirements of the National Environmental Policy Act (42 U.S.C 4321 *et seq.*) and its implementing

regulations at 40 CFR Parts 1500–1508 and 10 CFR Part 1021. These decisions affect activities under the authority of the U.S. Department of the Navy, and the Navy was a cooperating agency in the preparation of the Environmental Impact Statement. Pursuant to 10 CFR § 1021.315, the Department of Energy may revise the Record of Decision at any time, so long as the revised decision is adequately supported by an existing environmental impact statement. Implementation of the Record of Decision as amended is subject to compliance with all applicable federal statutes, regulations and orders, including the Anti-Deficiency Act.

Issued in Washington, DC, this 28th day of February 1996.

Hazel R. O'Leary,

Secretary of Energy.

[FR Doc. 96–5561 Filed 3–7–96; 8:45 am]

BILLING CODE 6450–01–P

Storage and Disposition of Weapons-Usable Fissile Materials Draft Programmatic Environmental Impact Statement

AGENCY: Department of Energy.

ACTION: Notice of Availability.

SUMMARY: The Department of Energy (DOE) announces the availability of the Storage and Disposition of Weapons-Usable Fissile Materials Draft Programmatic Environmental Impact Statement (Storage and Disposition Draft PEIS) for public review and comment. The Department has prepared this Storage and Disposition Draft PEIS in accordance with the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), and the Department's NEPA Implementing Procedures (10 CFR Part 1021). The PEIS analyzes alternatives for two proposed actions: (1) to provide a long-term storage system for weapons-usable fissile materials that meets all applicable environmental, safety, and health standards while reducing storage and infrastructure cost; and (2) to provide for disposition of surplus plutonium (Pu) and Pu that may be declared surplus in the future, in order to achieve proliferation resistance by making the Pu as inaccessible and difficult to retrieve after disposition as the Pu in spent fuel from commercial reactors (referred to as the Spent Fuel Standard). Throughout this Notice, reference to Pu or to plutonium refers only to weapons-usable plutonium.

DATES: The public is invited to comment on the Storage and Disposition Draft PEIS during the public comment period that begins on March 8, 1996 and continues until May 7, 1996. Comments postmarked after that date will be considered to the extent practicable. The Department will hold eight public meetings to discuss and receive comments on the Storage and Disposition Draft PEIS. The times and locations of these meetings are provided in the Supplementary Information to this Notice of Availability.

ADDRESSES: Requests for copies of the Storage and Disposition Draft PEIS and related information should be directed to: Office of Fissile Materials Disposition (MD–4), Attention: Storage and Disposition PEIS, U.S. Department of Energy, 1000 Independence Ave., SW, Washington, DC 20585, or by calling 1–800–820–5134.

Written comments on the Storage and Disposition Draft PEIS should be mailed to the following address: DOE-Office of Fissile Materials Disposition, P.O. Box 23786, Washington, DC 20026–3786. Comments may also be submitted orally (to a recording machine) or by fax by calling 1–800–820–5156.

FOR FURTHER INFORMATION CONTACT: Information regarding the DOE National Environmental Policy Act process should be directed to: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Ave., SW, Washington, DC 20585, (202) 586–4600 or by calling 1–800–472–2756.

Availability of the Storage and Disposition Draft PEIS: Copies of the Storage and Disposition Draft PEIS are being distributed to Federal, State, Indian tribal, and local officials, as well as agencies, organizations and individuals who may be interested or affected. Copies of the draft PEIS are also available for public review along with supporting technical reports at the locations listed at the end of this Notice.

SUPPLEMENTARY INFORMATION:

Background

On June 21, 1994, the Department published a Notice of Intent (NOI) in the Federal Register (59 FR 31985) to prepare a programmatic EIS (PEIS) for weapons-usable fissile materials. The purpose of the NOI was to inform the public of the proposed scope of the Storage and Disposition of Weapons-Usable Fissile Materials PEIS, to solicit public input, and to announce that public scoping meetings would be conducted from August through October 1994. Twelve public meetings were held throughout the United States to obtain input regarding the scope, alternatives, and issues associated with weapons-usable fissile materials that should be addressed in the Storage and Disposition PEIS. On March 30, 1995, the Implementation Plan for the PEIS was issued, which provided guidance and the schedule for the preparation of the PEIS.

Alternatives Considered

The Storage and Disposition Draft PEIS assesses environmental impacts of the proposed actions, which include activities that would result in:

—The long-term storage of inventories of non-surplus weapons-usable Pu and highly enriched uranium (HEU);

—The storage of inventories of weapons-usable Pu and HEU that have been or may be declared surplus, pending disposition; and,

—The disposition of weapons-usable Pu that has or may be declared surplus (disposition of surplus HEU is being addressed in a separate Disposition of Surplus Highly Enriched Uranium Environmental Impact Statement).

The Storage and Disposition Draft PEIS analyzes the following reasonable long-term storage alternatives: (1) upgrade or replacement of current Pu and HEU storage facilities at multiple DOE sites, (2) consolidation of Pu at a single DOE site, and (3) collocation of Pu and HEU at a single DOE site. The six candidate storage sites are: Hanford Site, Washington; Idaho National Engineering Laboratory (INEL), Idaho; Nevada Test Site (NTS), Nevada; Oak Ridge Reservation (ORR), Tennessee; Pantex Plant, Texas; and Savannah River Site (SRS), South Carolina. For disposition, the Draft PEIS analyzes broader, programmatic strategies and technologies; DOE will prepare subsequent, tiered site specific NEPA documentation as necessary for disposition. The reasonable disposition alternatives fall into three categories: (1) the Deep Borehole Category consisting of two alternatives—Direct Disposition, and Immobilized Disposition; (2) the Immobilization Category consisting of three alternatives—Vitrification, Ceramic Immobilization, and Electrometallurgical Treatment; and (3) the Reactor Category consisting of four alternatives—Existing Light Water Reactors (LWRs), Evolutionary LWRs, Partially Completed LWRs, and the Canadian Deuterium Uranium (CANDU) Reactor. In addition, No Action Alternatives are analyzed, in which no change in storage and/or no disposition would occur.

Under the upgrade at multiple sites long-term storage alternative, DOE would either modify certain existing facilities or build new facilities

depending on the site's requirements to meet standards for nuclear material storage facilities, and would utilize existing site infrastructure to the extent possible. These modified or new facilities would be designed to operate for up to 50 years. Pu materials currently stored at Hanford, INEL, Pantex, and SRS would remain at those four sites, and HEU would remain at ORR. Pu materials at Rocky Flats would be moved to one or more of these four sites. Currently, NTS does not generally store weapons-usable fissile materials within the scope of this PEIS and, therefore, is not a candidate site for this alternative.

Under the consolidation of Pu long-term storage alternative, Pu materials at the above four existing sites, plus those at Rocky Flats, would be removed, and the entire DOE inventory of Pu would be consolidated at one site, while the HEU inventory would remain at ORR. Again, the four sites with existing Pu storage are candidate sites for Pu consolidation. In addition, NTS and ORR are also candidate sites for this alternative.

Under the collocation of Pu and HEU long-term storage alternative, the entire DOE inventory of Pu described above would be consolidated and collocated at the same site as the HEU inventory. The six candidate sites are the same as those for the consolidation of Pu alternative.

With respect to the disposition alternatives, the first step in Pu disposition would be to remove the surplus Pu from storage, then process this material in a pit disassembly and conversion facility or a Pu conversion facility (for non-pit metal and oxides) at a DOE site, so that the Pu material would be in a suitable form for disposition.

For the deep borehole category of disposition alternatives, surplus weapons-usable Pu would be disposed of in deep boreholes that would be drilled at least 4 km (2.5 mi) into ancient, geologically stable rock formations beneath the water table. The deep borehole would provide a geologic barrier against potential proliferation. A generic site for the borehole is analyzed in the draft PEIS. The borehole complex would consist of five major facilities: processing, drilling, emplacing/sealing, waste management, and support (security, maintenance, utilities). Under the deep borehole direct disposition alternative, the surplus Pu would be converted to a form suitable for emplacement, packaged, shipped, and placed in a deep borehole. The deep borehole would be sealed to isolate the Pu from the ambient environment. Under the deep borehole immobilized disposition alternative, the surplus Pu would first be immobilized in cylindrical ceramic pellets at a ceramic immobilization facility, and the ceramic pellets would then be emplaced in the borehole.

For the immobilization category of disposition alternatives, surplus Pu would be immobilized to create a chemically stable form for the domestic high-level waste (HLW) program, and possible future disposal in a HLW repository. For all alternatives in this category, the Pu material would be mixed with HLW or other radioactive isotopes and immobilized to create a radiation field that would serve as a proliferation deterrent, thereby achieving the Spent Fuel Standard. Under the vitrification immobilization alternative, surplus Pu would be mixed with glass frit and the highly radioactive isotope cesium-137 (Cs-137) to produce borosilicate glass logs. Under the ceramic immobilization alternative, surplus Pu would be mixed with nonradioactive ceramic materials and Cs-137 to produce ceramic disks. Under the electrometallurgical treatment immobilization alternative, surplus Pu would be mixed with zeolites (aluminum silicate materials), glass frit, and Cs-137. This mixture would be immobilized through an electrorefining processing to produce glass-bonded zeolite forms, shaped like large hockey pucks.

The reactor category of disposition alternatives considered in the Storage and Disposition PEIS would utilize surplus Pu in mixed oxide (MOX) fuel, for use in commercial nuclear reactors that generate electricity. Under the existing LWRs alternative, the MOX fuel containing surplus Pu would be fabricated and transported to two or more existing commercial LWRs in the U.S., either pressurized water reactors (PWRs) or boiling water reactors (BWRs), for use in place of conventional uranium dioxide (UO_2) fuel. Under the partially completed LWRs alternative, commercial LWRs on which construction has been halted would be completed. The completed reactors would use MOX fuel containing surplus Pu. The characteristics of these LWRs would be essentially the same as those of the existing LWRs discussed in the existing LWR alternative. Under the evolutionary LWRs alternative, improved versions of existing commercial LWRs would be used. Two design approaches for evolutionary LWRs are considered in the Storage and Disposition PEIS. The first is a large PWR or BWR similar to the size of the existing PWRs and BWRs. The second is a small PWR approximately one-half the size of a large PWR. Under the CANDU reactor alternative, the MOX fuel containing surplus Pu would be fabricated in a domestic or foreign facility, and then transported for use in a commercial heavy water reactor in Canada.

Preferred Alternative

A preferred alternative has not yet been identified. After considering comments on the draft PEIS and after completion of technical, schedule, cost, and policy assessments, DOE will identify a preferred alternative in the Storage and Disposition Final PEIS.

Invitation To Comment

The public is invited to submit written and oral comments on any or all portions of the Storage and Disposition Draft PEIS. DOE's responses to comments received during the public comment period will be presented in the Storage and Disposition Final PEIS.

The Department particularly invites public comment on the reasonableness of the deep borehole category of alternatives. DOE is considering whether to drop the deep borehole category of alternatives from the final PEIS. These alternatives were included in the draft PEIS in response to a report from the National Academy of Sciences.

Public Meetings

DOE will hold eight public meetings, each with a combination of morning, afternoon or evening sessions in each location (except for the Washington, D.C. meeting as noted below), as detailed in the following schedule. The meeting format will provide for collection of written and oral comments and will enable the public to discuss issues and concerns with DOE officials. Participants are asked to register for the meetings in advance by calling 1–800–820–5134. Morning sessions will be from 8:00 a.m. to 1:00 p.m. Afternoon sessions will be from Noon to 5:00 p.m. Evening sessions will be from 6:00 p.m. to 11:00 p.m. Meetings on the dates identified with an asterisk (*) are being coordinated with the public meetings for other EISs such as the Stockpile Stewardship and Management PEIS and the Pantex Site-Wide EIS. This will provide the public with a better opportunity to participate in the process for each of these documents which are occurring in the same time frame, may involve some of the same sites, and may have relationships between some of the activities.

March 26, 1996
Afternoon & Evening
Denver, CO,
Arvada Center,

6901 Wadsworth Boulevard,
Arvada, CO 80003,
(303) 431–3082

March 28 & 29, 1996*
3/28 Evening, 3/29 Morning
Las Vegas, NV,
Sands Convention Center,
201 East Sands Avenue,
Las Vegas, NV 89109,
(702) 733–5369

April 2, 1996*
Morning & Evening
Oak Ridge, TN,
Garden Plaza,
215 South Illinois Street,
Oak Ridge, TN 37830,
(423) 481–2468

April 11, 1996
Afternoon & Evening,
Richland, WA,
Red Lion/Hanford House,
802 George Washington Way,
Richland, WA 99352,
(509) 946–7611

April 15, 1996
Afternoon & Evening
Idaho Falls, ID,
Shilo Inn,
780 Lindsay Boulevard,
Idaho Falls, ID 83402,
(208) 523–0088

April 18, 1996*
Morning
Washington, D.C.,
U.S. Department of Energy,
Forrestal Building, Room 1E–245,
1000 Independence Avenue, SW.,
Washington, D.C. 20585,
(202) 586–4513

April 22 & 23, 1996*
4/22 Evening, 4/23 Morning & Afternoon
Amarillo, TX,
Radisson Inn,
Amarillo Airport,
7909 I–40,
East Amarillo, TX 79104,
(806) 373–3303

April 30, 1996*
Morning & Evening
North Augusta, SC,
North Augusta Community Center,
495 Brookside Avenue,
North Augusta, SC,
(803) 441–4290

DOE Public Reading Rooms

Copies of the draft Storage and Disposition PEIS, as well as technical data reports and other supporting documents, are available for public review at the following locations:

Albuquerque Operations Office,
National Atomic Museum, 20358 Wyoming Boulevard, SE, Kirtland AFB, NM 87117, 505–284–3243

Amarillo Area Office

1. U.S. Department of Energy,
Amarillo College, Lynn Library/
Learning Center, 2201 South
Washington, P.O. Box 447,
Amarillo, TX 79178,806–371–5400
2. U.S. DOE Reading Room, Carson
County Library, 401 Main Street,
P.O. Box 339, Panhandle, TX
79068,806–537–3742

Chicago Operations Office,
Office of Planning, Communications & EEO,
U.S. Department of Energy,
9800 South Cass Avenue,
Argonne, Il 60439,
708–252–2013

Headquarters, Department of Energy,
U.S. Department of Energy,
Room 1E–190, Forrestal Building,
1000 Independence Avenue, SW,
Washington, DC 20585,
202–586–3142

Idaho Operations Office,
Idaho Public Reading Room,
1776 Science Center Drive,
Idaho Falls, ID 83402,
208–526–0271

Los Alamos National Laboratory,
U.S. Department of Energy,
c/o Los Alamos Community Reading Room,
1350 Central, Suite 101,
Los Alamos, NM 87544,
505–665–2127

Nevada Operations Office,
Nevada Operations Office,
U.S. Department of Energy,
Public Reading Room,
2621 Losse Road,
North Las Vegas, NV 89030,
702–295–1128,

Oak Ridge Operations Office,
U.S. Department of Energy,
Public Reading Room,
55 South Jefferson Circle, Room 112,
P.O. Box 2001,
Oak Ridge, TN 37831–8501,
423–241–4780

Richland Operations Office,
Washington State University,
Tri-Cities Branch Campus,
100 Sprout Road, Room 130 West,
Richland, WA 99352,
509–376–8583

Rocky Flats Office,
Front Range Community College Library,
3645 West 112th Avenue,
Westminister, CO 80030,
303–469–4435,

Sandia National Laboratory,
Livermore Public Library,
1000 S. Livermore Avenue,
Livermore, CA 94550,
510–373–5500

Savannah River Operations Office,
Gregg-Graniteville Library,
University of South Carolina-Aiken,
171 University Parkway,
Aiken, SC 29801,
803–641–3320

Issued in Washington, DC, March 5, 1996.

Gregory P. Rudy,
Acting Director, Office of Fissile Materials Disposition.

[FR Doc. 96–5562 Filed 3–7–96; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site-Specific Advisory Board, Savannah River Site

AGENCY: Department of Energy.
ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site.

Dates and Times: Monday, March 25, 1996: 6:00 p.m.–7:00 p.m. (public comment session); Tuesday, March 26, 1996: 8:30 a.m.–4:00 p.m.

Addresses: The public comment session will be held at: Sheraton Augusta Hotel, 2651 Perimeter Parkway, (Off Bobby Jones Expressway 520), Augusta, Georgia.

The Board meeting will be held at: Savannah River Site Main Administration, Building 703–41 A, Aiken, South Carolina.

For Further Information Contact: Tom Heenan, Manager, Environmental Restoration and Solid Waste, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, S.C. 29802 (803) 725–8074.

Supplementary Information:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management and related activities.

Tentative Agenda: Monday, March 25, 1996.

6:00 p.m. Public Comment Session (5-minute rule).
7:00 p.m. Adjourn.

Tuesday, March 26, 1996.

8:30 a.m.
Approval of Minutes, Agency Updates (~ 15 minutes)
Public Comment Session (5-minute rule) (~ 30 minutes)
Recommendation Update (~ 1 hour)
Environmental Restoration & Waste Management Subcommittee (~ 1.5 hours)
Fiscal Year 1998 Budget Prioritization Recommendation (~ 30 minutes)
12:00 p.m. Lunch
1:00 p.m.
Nuclear Materials Management Subcommittee (~ 1 hour)
Plutonium Forum Discussion (~ 30 minutes)
Budget Subcommittee Report (~ 10 minutes)
Membership Replacement Election (~ 30 minutes)
4:00 p.m. Adjourn

If needed, time will be allotted after public comments for items added to the agenda, and administrative details. A final agenda will be available at the meeting Monday, March 25, 1996.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Tom Heenan's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday except Federal holidays. Minutes will also be available by writing to Tom Heenan, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, S.C. 29802, or by calling him at (803)-725–8074.

Issued at Washington, DC on March 4, 1996.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96–5564 Filed 3–7–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. TM96–2–21–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 4, 1996.

Take notice that on February 28, 1996, Columbia Gas Transmission Corporation (Columbia), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the revised tariff sheets listed below:

3rd Sub Eleventh Revised Sheet No. 25
2nd Sub Eleventh Revised Sheet No. 26
2nd Sub Eleventh Revised Sheet No. 27
2nd Sub Twelfth Revised Sheet No. 28
2nd Sub Seventh Revised Sheet No. 30
2nd Sub Fourth Revised Sheet No. 31

The proposed Effective Date of these revised tariff sheets is April 1, 1996.

Columbia states that the derivation of the proposed rates for the three EPCA Rates is shown on Appendix A, attached to the filing, and is to recover approximately $5.35 million in annual costs for electric power.

Columbia states that these revised tariff sheets are filed pursuant to Section 45, Electric Power Costs Adjustment (EPCA), of the General Terms and Conditions (GTC) of Columbia's FERC Gas Tariff, Second Revised Volume No. 1. Columbia states that Section 45.2 provides that Columbia may file, to be effective each April 1, to adjust its electric power costs, thereby allowing for the recovery of current costs.

Columbia states that these revised tariff sheets are being filed to reflect adjustments to Columbia's current costs for electric power for the twelve month period beginning April 1, 1996.

Columbia states that copies of this filing have been served upon all of its firm customers, and interested State Commissions. Moreover, all interruptible customers having submitted a standing request for such filings were also served.

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, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–5465 Filed 3–7–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF96–39–000]

Hilo Coast Processing Company; Notice of Application for Commission Certification of Qualifying Status of a Cogeneration Facility

March 4, 1996.

On February 26, 1996, Hilo Coast Processing Company (Applicant), of P.O. Box 4190, Hilo, Hawaii 96720, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the topping-cycle cogeneration facility will be located in the City of Hilo, Hawaii, and will consist of a stoke-fired steam generator and an extraction/condensing turbogenerator. Steam recovered from the facility will be sold to a non-affiliated thermal host for heating water for fish farming operation. The power output of the facility will be sold to Hawaii Electric Power Company. The primary energy source will be coal. The maximum net electric power production capacity of the facility will be approximately 32 MW. Installation of the facility is scheduled to be completed by January 1, 1998.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed within 30 days after the date of publication of this notice in the Federal Register and must be served on the applicant. 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 petition 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. 96–5463 Filed 3–7–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–166–013]

Panhandle Eastern Pipe Line Company; Notice of Technical Conference

March 4, 1996.

Take notice that a technical conference will be convened in this proceeding on March 26 and 27, 1996, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC, for the purpose of reviewing the additional information submitted by Panhandle pursuant to the Commission's remand order in the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information please contact Carmen Gastilo (202) 208–2182 or Kathleen M. Dias (202) 208–0524.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–5468 Filed 3–7–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–159–000]

Shell Gas Pipeline Company; Notice of Technical Conference

March 4, 1996.

Take notice that a technical conference will be convened in the above-docketed proceeding on Tuesday, March 19, 1996, at 10 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. This technical conference is being convened to discuss all rate and tariff issues raised by Shell Gas Pipeline Company's application. Any party, as defined in 18 CFR 385.102(c), and any participant, as defined in 18 CFR 385.102(b) is invited to participate.

For additional information, please contact Robert A. Wolfe, (202) 208–2098, or Thomas F. Koester, III, (202) 208–2258 at the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–5469 Filed 3–7–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–396–007]

Tennessee Gas Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

March 4, 1996.

Take notice that on February 28, 1996, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, to become effective on April 1, 1996:

First Revised Sheet No. 202
Third Revised Sheet No. 203
Third Revised Sheet No. 204
Fifth Revised Sheet No. 205
Fourth Revised Sheet No. 205A
First Revised Sheet No. 205B
Second Revised Sheet No. 206
Second Revised Sheet No. 207
First Revised Sheet No. 207A
First Revised Sheet No. 207B
Second Revised Sheet No. 208
Fourth Revised Sheet No. 209
Second Revised Sheet No. 209A
Original Sheet No. 209B
Original Sheet No. 209C
Original Sheet No. 209D
Third Revised Sheet No. 213
Second Revised Sheet No. 214
Second Revised Sheet No. 215
First Revised Sheet No. 215A
First Revised Sheet No. 215B
Third Revised Sheet No. 216
Second Revised Sheet No. 217
Second Revised Sheet No. 393
Fourth Revised Sheet No. 397A

Tennessee states that the proposed changes implement a new Storage Swing Option (SSO) service as well as various reforms to its cash out mechanism, and report on certain matters, namely, the feasibility of grouping FS contracts by OBA operators, market area pooling and the criteria for permitting parties to use third party storage under SSO service.

Tennessee states that the proposed changes are being implemented pursuant to Phase II of the Operational Stipulation and Agreement (''S&A'') filed in this docket on July 25, 1995 and approved by the Commission on November 1, 1995. *Tennessee Gas Pipeline Co.*, 73 FERC ¶ 61,158 (1995).

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–5467 Filed 3–7–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–4–18–000]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

Take notice that on February 28, 1996, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the revised tariff sheets contained in the Appendix attached to this notice.

Texas Gas states that the proposed tariff sheets reflect changes to its Base Tariff Rates pursuant to the Transportation Cost Adjustment provisions included as a part of the Stipulation and Agreement in Docket No. RP94–423, and contained in Section 39 of the General Terms and Conditions of its FERC Gas Tariff, First Revised Volume No. 1, as filed on February 23, 1996. Texas Gas requests that the revised tariff sheets reflecting a net reduction in its rates become effective March 1, 1996.

Texas Gas states that copies of the filing have been served upon Texas Gas jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

Appendix

Texas Gas Transmission Corporation, Docket No. TM96–4–18–000

FERC Gas Tariff, First Revised Volume No. 1

Fifteenth Revised Sheet No. 10
Thirteenth Revised Sheet No. 11
Eighth Revised Sheet No. 11A
Seventeenth Revised Sheet No. 12
Fourth Revised Sheet No. 15
Fifth Revised Sheet No. 16
Fourth Revised Sheet No. 17

FPC Gas Tariff, Original Volume No. 2

Twentieth Revised Sheet No. 82
Twenty-first Revised Sheet No. 547
Twenty-third Revised Sheet No. 982
Twenty-first Revised Sheet No. 1005
Fifteenth Revised Sheet No. 1085

[FR Doc. 96–5464 Filed 3–7–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–129–000]

Trunkline Gas Company; Notice of Technical Conference

March 4, 1996.

In the Commission's order issued on February 29, 1996, in the above-captioned proceeding, 74 FERC ¶ 61,227 (1996), the Commission ordered that a technical conference he convened to resolve issues raised by the filing. The conference to address the issues has been scheduled for April 25, 1996, at 10:00 a.m. in a room to be designated at the offices of the Federal Energy

Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–5466 Filed 3–7–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EL96–37–000, et al.]

Pacific Gas & Electric Company, et al.; Electric Rate and Corporate Regulation Filings

March 4, 1996.

Take notice that the following filings have been made with the Commission:

1. Pacific Gas & Electric Company

[Docket No. EL96–37–000]

Take notice that on February 28, 1996, Pacific Gas & Electric Company (PG&E) tendered for filing a Petition for Declaratory Order. In its Petition, PG&E requests the Commission to issue an order declaring that PG&E is not obligated to interconnect and provide transmission service in connection with a transaction proposed by Modesto Irrigation District and Destec Power Services, Inc. and that the proposed transaction is contrary to the Federal Power Act and not in the public interest.

Comment date: March 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. New Charleston Power, L.L.P.

[Docket No. ER94–734–000]

Take notice that on February 14, 1996, New Charleston Power, tendered for filing a Petition for Approval of Initial Rate Schedule Request for Waivers. New Charleston requests that its contract rate be approved, effective January 1, 1993, for sales of electric energy and capacity purchased during calendar year 1993 from the Mesquite Lake Facility by Southern California Edison Company (Edison).

New Charleston states that it filed its contract rate on December 30, 1993 in Docket No. ER94–734–000 pursuant to the Commission's Prior Notice and Filing Requirements Under Part II of the Federal Power Act, 64 FERC ¶ 61,139, order on reh'g, 65 FERC ¶ 61,081 (1993). It contends that the rate became effective when the Commission failed to reject, suspend or otherwise take action on this filing within the statutory period.

To support its contract rate on a cost of service basis, New Charleston has filed schedules demonstrating that the contract rate is lower than the cost of service of the Mesquite Lake Facility in 1993, using both actual and hypothetical capital structures and the embedded costs of the Facility during the calendar year. New Charleston maintains that this cost support confirms that the contract rate should be approved as the just and reasonable rate for 1993.

A copy of the Petition was served on all parties of record in Docket No. ER94–734–000.

Comment date: March 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Niagara Mohawk Power Corporation

[Docket No. ER96–224–000]

Take notice that on February 27, 1996, Niagara Mohawk Power Corporation tendered for filing an amendment in the above-referenced docket.

Comment date: March 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Montana Power Company

[Docket Nos. ER96–471–000, ER96–472–000, and ER96–809–000]

Take notice that on February 9, 1996, Montana Power Company (Montana) tendered for filing an amendment to its filing in the above-referenced dockets.

Comment date: March 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Northern States Power Company (Wisconsin)

[Docket No. ER96–698–000]

Take notice that on February 15, 1996, Northern States Power Company (Wisconsin) tendered for filing supplemental information to its December 27, 1995, filing in the above-referenced docket.

Comment date: March 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Universal Power Services, L.L.C.

[Docket No. ER96–827–000]

Take notice that on February 9, 1996, Universal Power Services tendered for filing an amendment in the above-referenced docket.

Comment date: March 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Direct Access Management, LP

[Docket No. ER96–924–000]

Take notice that on February 20, 1996, and February 26, 1996, Direct Access Management, LP filed amendments to their filing in Docket No. ER96–924–000.

Comment date: March 22, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Illinois Power Company

[Docket No. ER96–1074–000]

Take notice that on February 14, 1996, Illinois Power Company tendered for filing a letter requesting any and all waivers that may be necessary or appropriate to implement the transmission tariffs filed in ER95–1543–000 on August 10, 1995.

Comment date: March 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Louisville Gas and Electric Company

[Docket No. ER96–1089–000]

Take notice that on February 20, 1996, Louisville Gas and Electric Company tendered for filing copies of service agreements between Louisville Gas and Electric Company and Enron Power Marketing, Inc. under Rate GSS.

Comment date: March 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Alternate Power Source, Inc.

[Docket No. ER96–1145–000]

Take notice that on February 23, 1996, Alternate Power Source, Inc. tendered for filing a Petition for Acceptance of Initial Rate Schedule, Waivers and Blanket Authority.

Comment date: March 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. South Carolina Electric & Company

[Docket No. ER96–1146–000]

Take notice that on February 23, 1996, South Carolina Electric & Gas Company tendered for filing proposed Contract for Purchases and Sales of Power and Energy between South Carolina Electric & Gas Company and Catex Vitol Electric L.L.C.

Under the proposed contract, the parties will purchase and sell electric energy and power between themselves. South Carolina Electric and Gas Company also requested waiver of notice in order that the contract be effective on March 1, 1996.

Copies of this filing were served upon Catex Vitol Electric, L.L.C.

Comment date: March 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. North American Power Brokers, Inc.

[Docket No. ER96–1156–000]

Take notice that on February 23, 1996, North American Power Brokers, Inc. tendered for filing a Petition for Waivers, Blanket Approvals, Disclaimers of Jurisdiction, and Order Approving Rate Schedule.

Comment date: March 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Benjamin F. Montoya

[Docket No. ID–2945–000]

Take notice that on February 23, 1996, Benjamin F. Montoya (Applicant) tendered for filing an application under Section 305(b) of the Federal Power Act to hold the following positions:

President, Chief Executive Officer and Director, Public Service Company of New Mexico, a New Mexico corporation
Director, Northwest Corporation

Comment date: March 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Montana Power Company

[Docket No. TX96–6–000]

Take notice that on February 26, 1996, Montana Power Company (MPC) tendered for filing an application requesting that the Commission order Basin Electric Power Cooperative (Basin) to provide transmission services pursuant to § 211 of the Federal Power Act. The affected parties in this proceeding are: MPC, Basin, Montana Public Service Commission, Bonneville Power Administration and the Western Area Power Administration.

In August 1994, Basin and MPC entered into an agreement under which MPC agreed to buy surplus energy from Basin during the period July 1995 through October 1996 (Surplus Energy Agreement). This agreement identifies MPC's interconnections with the Western Area Power Administration (WAPA) as the points of delivery for this surplus energy. MPC is requesting that this surplus energy be delivered to alternate delivery points on the Basin/WAPA Joint Transmission System (JTS) to the extent transmission capacity is available at these alternate delivery points. Due to the nature of the JTS, the transmission service requested by MPC is expected to result in some utilization of WAPA transmission facilities. MPC requests this transmission service effective immediately and continuing through the expiration of the Surplus Energy Agreement on October 31, 1996. MPC is requesting that alternate delivery points be made available for all energy (up to 100 mwh/hr) that MPC may purchase under the Surplus Energy Agreement.

MPC is requesting rates and associated terms and conditions for both firm and non-firm transmission service alternate delivery points o the JTS. With respect to firm service, MPC is requesting that Basin identify any delivery points on the JTS at which capacity for firm service is not available and an explanation as to why firm service cannot be provided at these delivery points.

Comment date: April 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. New York State Electric & Gas Corporation

[Docket No. ER94–892–000]

Take notice that on February 29, 1996, New York State Electric & Gas Corporation tendered for filing an amendment in the abvoe-referenced docket.

Comment date: March 18, 1996, 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, 888 First 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. 96–5462 Filed 3–7–96; 8:45 am]

BILLING CODE 6717–01–P

Western Area Power Administration

Time Extension for Submission of Written Comments and Applicant Profile Data for the Proposed Allocation Procedures and Call for Applications—Pick-Sloan Missouri Basin Program, Eastern Division

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Time Extension.

SUMMARY: Western Area Power Administration (Western), a Federal power marketing agency of the Department of Energy, published on January 29, 1996, in the Federal Register (61 FR 2817), a notice of proposed procedures to implement Subpart C- Power Marketing Initiative of the Energy Planning and Management Program Final Rule, 10 CFR 905 (60 FR 54151). The Energy Planning and Management Program (Program), which was developed in part to implement section 114 of the Energy Policy Act of 1992, became effective on November 20, 1995. Subpart C of the Program provides for the establishment of project-specific resource pools and the allocation of power from these pools to new preference customers. These proposed procedures, in conjunction with the Eastern Division, Pick-Sloan Missouri Basin Program Final Post-1985 Marketing Plan (Post-1985 Marketing Plan) (45 FR 71860) will establish the framework for allocating power from the resource pool to be established for the PSMBP—ED. The comment period on the proposed procedures and call for applications ended March 4, 1996. This notice extends the time that written comments and applicant profile data can be submitted until April 8, 1996.

DATES: Written comments and applicant profile data must be submitted to the Upper Great Plains Regional Manager by April 8, 1996, at the address shown below.

ADDRESSES: All written comments and applicant profile data should be directed to the following address: Mr. Joel K. Bladow, Acting Regional Manager, Upper Great Plains Customer Service Region, Western Area Power Administration, P.O. Box 35800, Billings, MT 59107–5800.

All documentation developed or retained by Western for the purpose of developing these procedures will be available for inspection and copying at the Upper Great Plains Customer Service Region located at the above address.

FOR FURTHER INFORMATION CONTACT: Robert J. Harris, Power Marketing Manager, Upper Great Plains Customer Service Region, Western Area Power Administration, P.O. Box 35800, Billings, MT 59107–5800, (406) 247–7394.

After all public comments have been thoroughly considered, Western will prepare and publish the Final Post-2000 Resource Pool Allocation Procedures in the Federal Register.

Issued at Golden, Colorado, February 29, 1996.

J. M. Shafer,

Administrator.

[FR Doc. 96–5563 Filed 3–7–96; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5414–1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed February 26, 1996 Through March 1, 1996 Pursuant to 40 CFR 1506.9.

EIS No. 960094, FINAL EIS, BOP, HI, Honolulu, Hawaii Detention Facility, Construction and Operation, Site Selection, Fort Armstrong, Ualena Street, Lagoon Drive, Elliott Street, HI, Due: April 8, 1996, Contact: David J. Dorworth (202) 514–6470.

EIS No. 960095, FINAL EIS, FAA, NJ, Newark International Airport Ground Access Monorail-Northeast Corridor Connection Project, Funding, Construction, Operation, Airport Layout Plant and Approval, Essex and Union Counties, NJ, Due: April 8, 1996, Contact: Larry Schafer (718) 553–3340.

EIS No. 960096, DRAFT EIS, FHW, IA, NB, US 34 Roadway and Bridge Improvements, I–29 in Mills County, IA to US 75 in Cass or Sarpy Counties, NB, COE Section 404 and US Coast Guard Permits, Mills County, Iowa and Cass & Sarpy Counties, Nebraska, Due: April 22, 1996, Contact: Phil Barnes (402) 437–5521.

EIS No. 960097, DRAFT EIS, BIA, NM, Jemez Mountains Electric Cooperative, Construction, Operation and Maintence, El Rancho Substation, Sante Fe County, NM, Due: April 22, 1996, Contact: Charles Tippeconnic (505) 766–3374.

EIS No. 960098, DRAFT EIS, FRC, VT, MA, Deefield River Hydroelectric Project (FERC. 2323), Issuing New License (Relicense), Bear Swamp Pumped Storage Project (FERC. No. 2669) and Gardners Falls Project (FERC. No. 2334), VT and MA, Due: April 22, 1996, Contact: CarLisa M. Linton (202) 219–2802.

EIS No. 960099, DRAFT EIS, AFS, OR, Red Mountain Project, Implementation, Three Timber Sales: Twin, Muddy Creek and Gee, Wallowa-Whitman National Forest, Baker Ranger District, Baker County, OR, Due: April 22, 1996, Contact: Barry Hansen (503) 523–6391.

EIS No. 960100, FINAL EIS, SFW, CO, Rocky Mountain Arsenal National Wildlife Refuge Establishment and Operation, Implementation, Adam County, CO, Due: April 8, 1996, Contact: Dave Shaffer (303) 289–0232.

EIS No. 960101, DRAFT EIS, DOE, TN, GA, TX, SC, MO, Programmatic EIS—Stockpile Stewardship and Management Project, Reduced Nuclear Weapons Stockpile in the Absence of Undergound Testing, Eight Sites: Oak Ridge Reservation (ORR), Savannah River Site (SRS), Kansas City Plant (KCP) Pantex Plant, Los Alamos National Laboratory, Lawrence Livermore National Laboratory, Sandia National and Nevada Test Site, Due: May 7, 1996, Contact: Jay Rose (202) 586–5484.

EIS No. 960102, DRAFT EIS, FRC, ME, Eel Weir Hydroelectric Project (FERC. No. 2984) Implementation, Water Level Management Plan, Sebago Lake, Cumberland County, ME, Due: April 22, 1996, Contact: Thomas J. LoVallo (202) 219–1168.

EIS No. 960103, FINAL SUPPLEMENT, COE, CA, American River Watershed Flood Plain Protection Project, Construction, Operation and Maintence, Updated and Additional Information, Sacramento, Placer and Sutter Counties, CA, Due: April 8, 1996, Contact: Mike Welsh (916) 557–6718. EIS No. 960104, DRAFT EIS, AFS, ID, Targhee National Forest, Implementation, Forest Plan Revisions, Bonneville, Butte, Clark, Fremont, Jefferson, Lemhi, Madison and Teton Counties, ID, Due: June 7, 1996, Contact: Jerry Reese (208) 624–3151.

EIS No. 960105, FINAL EIS, AFS, MT, Helena National Forest and Elkhorn Mountain portion of the Deerlodge National Forest Land and Resources Management Plan, Oil and Gas Leasing, Implementation, several counties, MT, Due: April 8, 1996, Contact: Thomas Andersen (406) 449–5201.

EIS No. 960106, DRAFT EIS, DOE, Programmatic EIS—Storage and Disposition of Weapon-Usable Fissile Materials, Implementation, Storage of all Plutonium and Highly Enriched Uranium and the Disposition of Surplus Plutonium, Sites Considered: Hanford Site, Idaho National Engineering Laboratory, Nevada Test Site, Oak Ridge Reservation, Pantex Plant and Savannah River Site, Due: May 7, 1996, Contact: J. David Nulton (202) 586–4513.

Dated: March 5, 1996.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 96–5575 Filed 3–7–96; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–5414–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared February 19, 1996 Through February 23, 1996 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 14, 1995 (60 FR 19047).

Draft EISs

ERP No. D–DOE–L09806–WA Rating EC2, Northwest Regional Power Facility (NRPF), Construction and Operation if a 838 Megawatt (MW) Gas-fired Combustion Turbine Facility, Approval of Permits, Located near the Town of Creston, WA.

Summary: EPA's environmental concerns are based on potential impacts to water quality, wetlands and air quality.

ERP No. D–DOE–L09808–WA Rating EC2, Plutonium Finishing Plant (PFP) Stabilization, To Safely Reduced Radiation Exposure to Workers and Environment, Hanford Site, Richland, Benton County, WA.

Summary: EPA's environmental concerns are based on the need to clarify the alternative analysis and better reference the proposed activity and the Tri-Party Agreement for the Hanford Facility.

ERP No. D–NOA–K90028–HI Rating EC2, Hawaiian Islands Humpback Whales and Their Habitat National Marine Sanctuary Management Plan, Implementation, Honolulu, Kauai and Maui Counties, HI.

Summary: EPA had environmental concerns regarding the potential impacts to the management and regulatory flexibility of existing regulatory programs. EPA's concerns included potential impacts to existing and future designations of dredge disposal sites, modifications to the seabed, the National Pollution Discharge Elimination System (NPDES) permitting system, and water quality programs. EPA supports the development of MOUs with other agencies and stresses the need for close coordination with EPA, U.S. Corps of Engineers, and Hawaii's Department of Health regarding the above regulatory programs and any enforcement actions. Additional

detailed data was requested to support evaluations regarding potential benefits or adverse impacts.

ERP No. D–SFW–L99005–WA Rating EC2, Plum Creek Timber Sale, Issuance of a Permit to Allow Incidental Take and Habitat Conservation Plan (HCP) for Threatened and Endangered Species, Implementation, Eastern and Western Cascade Provinces in the Cascade Mountains, King and Kittitas Counties, WA.

Summary: EPA had environmental concerns with the project based on the potential impacts of land management activities on water quality, particularly to existing water quality limited/303(d)—listed streams in the HCP area, and on the effective implementation of an adaptive management strategy. EPA requests that the HCP incorporate more in-depth monitoring activities for changed in water quality related to sediment loading and temperature, and a stronger commitment toward possible adjustments of land management activities in response to monitoring results.

Final EISs

ERP No. F–DOE–E06015–SC, Savannah River Site Interim Management of Nuclear Materials, Implementation, Aiken and Barnwell Counties, SC.

Summary: EPA's draft EIS comments were adequately addressed in the final EIS. Additional comments were provided in support of DOE's preferred alternative.

ERP No. F–FAA–K51032–CA, Burbank-Glendale-Pasadena Airport, Replacement Passenger Terminal Construction, Approval, Los Angeles County, CA.

Summary: EPA expressed environmental concerns regarding air conformity, asbestos and polychlorinated biphenyls requirement. EPA recommended that these issues be addressed in the Record of Decision.

Dated: March 5, 1996.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 96–5576 Filed 3–7–96; 8:45 am]

BILLING CODE 6560–50–U

[FRL–5438–1]

Investigator-Initiated Grants: Request for Applications

AGENCY: Environmental Protection Agency.

ACTION: Notice of request for applications.

SUMMARY: This notice provides information on the availability of supplemental announcements for the fiscal year 1996 investigator-initiated grants program, in which the areas of research interest, eligibility and submission requirements, evaluation criteria, and implementation schedule are set forth. Grants will be competitively awarded following peer review.

DATES: Proposals must be received at the contact point by May 1, 1996.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, National Center for Environmental Research and Quality Assurance (8703), 401 M Street SW., Washington DC 20460, telephone (202) 260–3837, telefax (202) 260–2039. The complete announcements can be accessed on the Internet from the EPA home page menus: <http://www.epa.gov/OER>.

SUPPLEMENTARY INFORMATION: In its Request for Applications (RFA) the U.S. Environmental Protection Agency (EPA) invites research grant applications in the following areas of special interest to its mission: (1) Endocrine Disruptors, (2) Role of Interindividual Variation in Human Susceptibility to Cancer, (3) Risk-based Decisions for Contaminated Sediments, in one document, and (4) Bioremediation, jointly with the Department of Energy, National Science Foundation, and the Office of Naval Research, in a second document.

The RFAs provide relevant background information, summarize EPA's interest in the topic areas, and describe the application and review process.

Contacts for Research Topics of Interest

Endocrine Disruptors

- Robert Menzer, 202–260–5779

menzer.robert@epamail.epa.gov

Role of Interindividual Variation in Human Susceptibility to Cancer

- David Reese, 202–260–7342

reese.david@epamail.epa.gov

Risk-Based Decisions for Contaminated Sediments

- David Reese, 202–260–7342

reese.david@epamail.epa.gov

Bioremediation

- Robert Menzer, 202–260–5779

menzer.robert@epamail.epa.gov

Dated: March 1, 1996.

Robert J. Huggett,

Assistant Administrator for Research and Development.

[FR Doc. 96–5534 Filed 3–7–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5437–9]

West Virginia Division of Environmental Protection: Partial Program Adequacy Determination of State Municipal Solid Waste Landfill Permit Program

AGENCY: Environmental Protection Agency Region III.

ACTION: Notice of Tentative Determination on the West Virginia Division of Environmental Protection Application for a Partial Program Adequacy Determination, Public Hearing and Public Comment Period.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR Part 258). RCRA Section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate ''permit'' programs for MSWLFs, but does not mandate issuance of a rule for such determinations. On January 26, 1996, EPA published in the Federal Register a proposed State/Tribal Implementation Rule (STIR) that provides procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The EPA intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to the final promulgation of STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the proposed STIR as an aid in interpreting these requirements. The EPA believes that early approvals have an important benefit. Approved State/Tribal permit programs provide interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in States/Tribes with approved permit programs can use the site-specific flexibility provided by Part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the federal landfill criteria will apply to all permitted and unpermitted MSWLF facilities.

The West Virginia Division of Environmental Protection (WVDEP) applied for a partial determination of adequacy under section 4005 of RCRA. EPA reviewed WVDEP's application and made a tentative determination of adequacy for those portions of the WVDEP's MSWLF permit program that are adequate to assure compliance with the revised MSWLF Criteria. These portions are described later in this notice. The WVDEP plans to revise the remainder of its permit program to assure complete compliance with the revised MSWLF Criteria and gain full program approval. WVDEP's application for partial program adequacy determination is available for public review and comment.

All municipal solid waste landfilled in West Virginia must be disposed in a landfill which meets these criteria. This includes all ash from municipal solid waste incinerators which is determined to be non-hazardous.

Although RCRA does not require EPA to hold a public hearing on a determination to approve any State/Tribe's MSWLF program, EPA Region III is offering the opportunity for a public hearing on this determination on the date given below in the **DATES** section.

DATES: All comments on WVDEP's application for a partial determination of adequacy must be received by EPA Region III by the close of business on April 30, 1996. If, and only if, sufficient interest in having a public hearing is requested by April 10, 1996, a public hearing to receive oral and written testimony on EPA's tentative determination will be held on Tuesday, April 30, 1996 from 7:00 pm until 10:00 pm. The hearing, if held, will be at the Capital High School Auditorium, 1500 Greenbrier Street, Charleston, WV. WVDEP will attend the public hearing.

Written or verbal requests for a public hearing must be received by the EPA contact listed below by April 10, 1996. EPA will determine by April 12, 1996 if a public hearing is warranted. After that date, any interested party may contact the EPA persons listed below to find out whether or not a public hearing will be held.

ADDRESSES: Copies of WVDEP's application for partial adequacy determination are available from 9 a.m. to 4 p.m. at the following addresses for inspection and copying: West Virginia Division of Environmental Protection, 1356 Hansford Street, Charleston, WV 25301, Attn: Mr. William Rheinlander, telephone 304–558–5929; and U.S. EPA Region III, 841 Chestnut Street Building, Philadelphia, Pennsylvania 19107, Attn: Mr. Andrew R. Uricheck, mailcode (3HW60), telephone 215–597–7936. All written comments on this tentative determination must be sent to U.S. EPA Region III, 841 Chestnut Street Building, Philadelphia, Pennsylvania 19107, Attn: Mr. John Humphries, mailcode (3HW60).

FOR FURTHER INFORMATION AND TO REQUEST A PUBLIC HEARING, CONTACT: U.S. EPA Region III, 841 Chestnut Street Building, Philadelphia, Pennsylvania 19107, Attn: Mr. Andrew R. Uricheck, mailcode (3HW60) or telephone 215–597–7936.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR Part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under Part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the EPA has proposed in the Federal Register the State/Tribal Implementation Rule (STIR). The Rule specifies the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA proposed in the STIR to allow partial approvals if: 1) the Regional Administrator determines that the State/Tribal permit program largely meets the requirements for ensuring compliance with Part 258; 2) changes to a limited part(s) of the State/Tribal permit program are needed to meet these requirements; and, 3) provisions not included in the partially approved portions of the State/Tribal permit program are a clearly identifiable and separable subset of Part 258. These requirements will address the potential problems posed by the dual State/Tribal and Federal regulatory controls following the October 9, 1993 effective date of the Federal regulations. On that date, Federal rules covering any portion of a State/Tribe's program that had not received EPA approval became enforceable through the citizen suit provisions of RCRA 7002. Owners and operators of MSWLFs subject to such dual programs must understand the applicable requirements and comply with them. In addition, those portions of the Federal program that are in effect must mesh well enough with the approved portions of the State/Tribal program to leave no significant gaps in regulatory control of MSWLF's. Partial approval would allow the EPA to approve those provisions of the State/Tribal permit program that meet the requirements and provide the State/Tribe time to make necessary changes to the remaining portions of its program. As a result, owners/operators will be able to work with the State/Tribal permitting agency to take advantage of the Criteria's flexibility for those portions of the program which have been approved.

As provided in the October 9, 1991 municipal landfill rule, EPA's national Subtitle D standards took effect in October 1993 in any State/Tribe that lacks an approved program. Consequently, any remaining portions of the Federal Criteria which are not included in an approved State/Tribal program by October 1993 would apply directly to the owner/operator. On April 7, 1995, EPA issued a Federal Register Notice extending the effective date of the 40 CFR Part 258, subpart G requirements relating to Financial Assurance until April 9, 1997.

EPA intends to approve portions of State/Tribal MSWLF permit programs prior to the promulgation of the final STIR. EPA interprets the requirements for States or Tribes to develop ''adequate'' programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an ''adequate'' program based on the interpretation outlined above. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

EPA also is requesting States/Tribes seeking partial program approval to provide a schedule for the submittal of all remaining portions of their MSWLF permit programs. EPA notes that the proposed STIR makes submission of a schedule mandatory.

B. State of West Virginia

In a letter dated June 17, 1994, WVDEP submitted a complete application to EPA Region III for a partial program adequacy determination. In response to EPA review comments on their application, WVDEP submitted additional information in letters dated April 10, 1995 and October 12, 1995. EPA reviewed WVDEP's application and this additional information and has tentatively determined that the following portions of the State's municipal solid waste landfill permitting program will ensure compliance with the revised Federal Criteria. EPA has also assessed the impact of the ruling in Federal District Court of West Virginia on September 28, 1995, in *Valero Terrestrial Corporation, et al.* v. *Callaghan,* Civil Action No. 5:93CV189 (N.D.W.V.), and the Court's subsequent clarification issued December 12, 1995, and has determined, in conjunction with the State, that the portions of the State's program proposed herein for approval by EPA have not been adversely impacted. Public comment is invited on this issue.

As noted in the detailed discussions which follow, portions of the West Virginia program currently fulfill the Federal requirements, and other portions will fulfill the Federal requirements after the State's revision of its guidelines and/or permit application forms, which they are required to complete prior to receiving final EPA partial approval. Lastly, portions of the West Virginia program which do not currently meet the Federal requirements and can only be revised through their regulation revision process, which includes State Legislature action, are not being proposed for EPA approval at this time. The State has committed to submitting an application for full program approval to EPA by September 1, 1996, after these regulatory changes have been made.

Portions of the West Virginia Program tentatively proposed for approval at this time:

Subpart A—General

The existing WVDEP requirements fully comply with 40 CFR Sections 258.1, Purpose, Scope, and Applicability and 258.3, Consideration of other Federal laws.

Subpart B—Location Restrictions

1. The existing WVDEP requirements fully comply with § 258.11, Floodplains; § 258.12, Wetlands; § 258.13, Fault Areas; and § 258.16, Closure of Existing MSWLF Units.

2. WVDEP permit application checklists and internal guidance will be revised to incorporate the requirements of § 258.10, Airport Safety; § 258.14, Seismic Impact Zones; and § 258.15, Unstable Areas.

Subpart C—Operating Criteria

1. The existing WVDEP requirements fully comply with: § 258.20, Hazardous Waste Exclusion; § 258.21, Daily Cover; § 258.22, Disease Vectors Control; § 258.23, Explosive Gas Control; § 258.24, Air Criteria; § 258.25, Access requirements; § 258.26, Run-On/Run-Off Control Systems; § 258.27, Surface Water Requirements; and § 258.29, Recordkeeping Requirements.

2. WVDEP permit application checklists and internal guidance will be revised to incorporate the leachate recirculation restrictions of § 258.28, Liquids Restrictions.

Subpart D—Landfill Design

1. WVDEP regulations now require, as a minimum, at all new MSW landfills and expansions to existing landfills, the bottom liner system described in 40 CFR 258.40 (b). This consists of a composite liner composed of an upper synthetic (plastic) component in direct contact with a lower component at least two feet thick made of compacted soil (clay). WVDEP also allows an alternate liner design. WVDEP permit application checklists and internal guidance will be revised to require applications requesting approval of any alternate liner design to demonstrate that they comply with the performance standards established in § 258.40 (a) and (c). WVDEP will require that conformance be demonstrated through the use of mathematical modeling, such as the Hydrologic Evaluation of Landfill Performance Model (HELP) and Multimedia Exposure Assessment Model (MULTIMED).

Subpart E—Groundwater Monitoring and Corrective Action

1. The existing West Virginia requirements for groundwater sampling program are in need of substantial upgrading to meet the 40 CFR part 258 requirements. The primary deficiency is the need to require the extensive pollutant parameter coverage of Appendices I and II in 40 CFR part 258 in groundwater sampling programs. Existing WVDEP requirements meet the requirements of 40 CFR 258.50, Applicability, and § 258.56, Assessment of Corrective Measures.

2. WVDEP permit applications and/or guidelines will be revised to incorporate the requirements of 40 CFR 258.53, Groundwater Sampling and Analysis; § 258.57, Selection of Remedy; and § 258.58, Implementation of the Corrective Action Program.

Subpart F—Closure and Post-Closure Care

1. Post-Closure Care Requirements (§ 258.61)—Existing West Virginia statute requires the Federal standard of a 30-year post-closure care period.

Not all existing States/Tribes permit programs ensure compliance with all provisions of the revised Federal Criteria. Were EPA to restrict a State/Tribe from submitting its application until it could ensure compliance with the entirety of 40 CFR Part 258, many States/Tribes would need to postpone obtaining approval of their permit programs for a significant period of time. This delay in determining the adequacy of the State/Tribal permit program, while the State/Tribe revises its statutes or regulations, could impose a substantial burden on owners and operators of landfills because the State/Tribe would be unable to exercise the flexibility available to States/Tribes with approved permit programs.

As State/Tribal regulations and statutes are amended to comply with the Federal MSWLF landfill regulations, unapproved portions of a partially approved MSWLF permit program may be approved by the EPA. The State/Tribe may submit an amended application to EPA for review, and an adequacy determination will be made using the same criteria used for the initial application. This adequacy determination will be published in the Federal Register which will summarize the Agency's decision and the portion(s) of the State/Tribal MSWLF permit program affected. It will also provide for a minimum 30 day public comment period. This future adequacy determination will become effective 60 days following publication if no adverse comments are received. If EPA receives adverse comments on its adequacy determination, another Federal Register notice will be published either affirming or reversing the initial decision while responding to the public comments.

To ensure compliance with all of the revised Federal Criteria and to obtain *full* EPA approval of its municipal solid waste landfill permitting program, the West Virginia Division of Environmental Protection must revise the following additional portions of its program:

1. Subpart A—General—Include the definitions listed in § 258.2, Definitions.

2. Subpart E—Groundwater Monitoring—Adopt the requirements of 40 CFR 258.51, Groundwater Monitoring Systems; § 258.54, Detection

Monitoring Program; and § 258.55, Assessment Monitoring Program.

3. Subpart F—Final Closure—Adopt the criteria in 40 CFR § 258.60, Closure Criteria, pertaining to the time allowed to apply the final cover.

4. Subpart G—Financial Assurance Criteria—The major revision needed in WVDEP's permitting requirements is its adoption of the 40 CFR Part 258 Financial Assurance requirements. This includes § 258.70, Applicability; § 258.71, Financial Assurance for Closure; § 258.72, Financial Assurance for Post-Closure Care; § 258.73, Financial Assurance for Corrective Action, and § 258.74, Allowable Mechanisms. Current WVDEP regulations contain neither the applicability nor scope of the Federal requirements. A statutory change in West Virginia law is needed to implement portions of this Federal criteria.

WVDEP has submitted a schedule indicating that it will commit to complete these above regulatory revisions by September 1, 1996. To allow West Virginia to begin exercising some of the flexibility allowed in States with adequate permit programs, EPA is proposing to approve now those portions of the WVDEP's program not required to need regulatory revision, and which therefore can be implemented prior to September 1996.

EPA reviewed the State's schedule and believes it is reasonable, considering the complexity of the rule changes, number of steps in the State rulemaking process, and the need for legislative action.

Comments are solicited on this tentative determination until April 30, 1996. Copies of WVDEP's application are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

EPA Region III will hold a public hearing if, and only if, requested (see **DATES** section of this notice) on this tentative decision, on April 30, 1996 from 7:00 p.m. to 10:00 pm at the Capital High School in Charleston, West Virginia. Comments can be submitted at the hearing, if held, as transcribed from oral comments presented, or in writing at the time of the hearing.

EPA will consider all written public comments on its tentative determination received during the public comment period, as well as those presented at the public hearing. Issues raised by those comments may be the basis for EPA's reconsideration of this tentative determination of adequacy for WVDEP's program. EPA will make a final decision on whether or not to approve WVDEP's program and will provide notice in the Federal Register. The notice will include a summary of the reasons for the final determination and a response to all major comments.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of Section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR Part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Compliance With Executive Order 12866

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that according to EPA Headquarters this tentative approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This proposed notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of Sections 2002, 4005 and 4010(c) of the Solid Waste Disposal Act, as amended; 42 U.S.C. 6912, 6945 and 6949(a)(c).

Dated: February 28, 1996.

Stanley L. Laskowski,

Deputy Regional Administrator.

[FR Doc. 96–5533 Filed 3–7–96; 8:45 am]

BILLING CODE 6560–50–P

[OPP–66222; FRL 5352–3]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by June 6, 1996, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the Federal Register before acting on the request.

II. Intent to Cancel

This notice announces receipt by the Agency of requests to cancel some 26 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000100 FL–80–0052	Aatrex 4l Brand Atrazine/season-Long Weed Cont. In Corn	2-Chloro-4-(ethylamino)-6-(isopropylamino)-*s*-triazine
000769–00958	Malathion 4 Pyrethrum 0.2 Dust	*O,O*-Dimethyl phosphorodithioate of diethylmercaptosuccinate Pyrethrins
000777–00055	Lysol Brand Pump Spray Disinfectant	Ethanol

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
		o-Phenylphenol
000869–00015	Green Light Tomato & Vegetable Garden Dust	1-Naphthyl-*N*-methylcarbamate
		Rotenone
003125–00257	Mesurol 75% Concentrate	4-(Methylthio)-3,5-xylyl methylcarbamate
003125–00258	Mesurol Technical Insecticide	4-(Methylthio)-3,5-xylyl methylcarbamate
003125 WA–79–0067	Di-Syston 15% Granular Systemic Insecticide	*O,O*-Diethyl *S*-(2-(ethylthio)ethyl) phosphorodithioate
004816–00445	Patio & Outdoor Special Concentrate Code 845.01	Butoxypolypropylene glycol
		Methoxychlor (2,2-bis(*p*-methoxyphenyl)-1,1,1-trichloroethane)
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		(1-Cyclohexene-1,2-dicarboximido)methyl 2,2-dimethyl-3-(2-methylpropenyl)cycloprop
004816–00454	Patio and Outdoor Spray with Repellent	Butoxypolypropylene glycol
		Methoxychlor (2,2-bis(*p*-methoxyphenyl)-1,1,1-trichloroethane)
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		(1-Cyclohexene-1,2-dicarboximido)methyl 2,2-dimethyl-3-(2-methylpropenyl)cycloprop
005080–00004	Aquaquat	6,7-Dihydrodipyrido(1,2-a:2',1'-c)pyrazinediiumdibromide
005905–00492	Setre Ziram 4 Lb. Flowable Fungicide	Zinc dimethyldithiocarbamate
007401–00071	Ferti-Lome Clover, Weed & Winter Grass Killer	7-Oxabicyclo(2.2.1)heptane-2,3-dicarboxylic acid,disodium salt
007401–00112	Ferti-Lome Clover, Weed & Wild Grass Killer	7-Oxabicyclo(2.2.1)heptane-2,3-dicarboxylic acid,disodium salt
007401–00128	Ferti-Lome Liquid Poison Ivy Killer	Ammonium sulfamate
007401–00335	Ferti-Lome Brush Killer Stump Killer	Ammonium sulfamate
009198–00089	Tee Time 5–10–30 with Balan and Surflan	*N*-Butyl-*N*-ethyl-α,α,α,-trifluoro-2,6-dinitro-*p*-toluidine (Note: a = alpha)
		3,5-Dinitro-*N*4,*N*4-dipropylsulfanilamide
009198–00090	Tee Time 5–10–30 with Balan and Surflan Formula I	*N*-Butyl-*N*-ethyl-α,α,α,-trifluoro-2,6-dinitro-p-toluidine (Note: a = alpha)
		3,5-Dinitro-*N*4,*N*4-dipropylsulfanilamide
010182–00375	Valent Diquat Water Weed Killer	6,7-Dihydrodipyrido(1,2-a:2',1'-c)pyrazinediium dibromide
010182–00376	Valent Weed Killer Concentrate ''D''	6,7-Dihydrodipyrido(1,2-a:2',1'-c)pyrazinediium dibromide
010182–00377	Valent Weed Killer ''D''	6,7-Dihydrodipyrido(1,2-a:2',1'-c)pyrazinediium dibromide
010182–00378	Valent Diquat Concentrate	6,7-Dihydrodipyrido(1,2-a:2',1'-c)pyrazinediium dibromide
010182 FL–93–0002	Reward Herbicide	6,7-Dihydrodipyrido(1,2-a:2',1'-c)pyrazinediium dibromide
010182 FL–93–0003	Reward Herbicide	6,7-Dihydrodipyrido(1,2-a:2',1'-c)pyrazinediium dibromide
010370–00118	Metox ''50''	Methoxychlor (2,2-bis(*p*-methoxyphenyl)-1,1,1-trichloroethane)
011525–00031	Disinfectant Spray ''H''	Ethanol
		Alkyl* dimethyl benzyl ammonium chloride *(60%C_{14}, 30%C_{16}, 5%C_{18}, 5%C_{12})
		Alkyl* dimethyl ethylbenzyl ammonium chloride *(68%C_{12}, 32%C_{14})
011540–00008	ULD V-500 5% Vapona Insecticide	2,2-Dichlorovinyl dimethyl phosphate

Unless a request is withdrawn by the registrant within 90 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 90-day period. The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000100	Ciba-Geigy Corp., Box 18300, Greensboro, NC 27419.
000769	Sureco Inc., 10012 N. Dale Mabry, Suite 221, Tampa, FL 33618.
000777	Reckitt & Colman Inc., Household Products Division, Attn: EPA Regulatory Dept, 225 Summitt Ave, Montvale, NJ 07645.
000869	Green Light Co., Box 17985, San Antonio, TX 78217.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company No.	Company Name and Address
003125	Bayer Corp., Agriculture Division, 8400 Hawthorn Rd., Box 4913, Kansas City, MO 64120.
004816	Agrevo Environmental Health, 95 Chestnut Ridge Rd., Montvale, NJ 07645.
005080	Aquacide Co, 1627 – 9th Street Box 10748, White Bear Lake, MN 55110.
005905	Helena Chemical Co., 6075 Poplar Ave., Suite 500, Memphis, TN 38119.
007401	Voluntary Purchasing Group Inc., Box 460, Bonham, TX 75418.
009198	The Andersons Lawn Fertilizer Division, DBA/ Free Flow Fertilizer, Box 119, Maumee, OH 43537.
010182	Zeneca Ag Products, Box 15458, Wilmington, DE 19850.
010370	Agrevo Environmental Health, 95 Chestnut Ridge Rd., Montvale, NJ 07645.
011525	CCL Custom Mfg. Inc., Hegeler Lane, Danville, IL 61832.
011540	Micro-Gen Equipment Corp., 10700 Sentinel Dr., San Antonio, TX 78217.

III. Loss of Active Ingredients

Unless the requests for cancellation are withdrawn, one pesticide active ingredients will no longer appear in any registered products. Those who are concerned about the potential loss of this active ingredient for pesticidal use are encouraged to work directly with the registrant to explore the possibility of their withdrawing the request for cancellation. The active ingredient is listed in the following Table 3, with the EPA Company and CAS Number.

TABLE 3. — ACTIVE INGREDIENTS WHICH WOULD DISAPPEAR AS A RESULT OF REGISTRANTS' REQUESTS TO CANCEL

CAS No.	Chemical Name	EPA Company No.
129–67–9	Endothall, disodium salt	007401

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before June 6, 1996. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in Federal Register No. 123, Vol. 56, dated June 26, 1991. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: February 21, 1996.

Frank Sanders,

Director, Program Management and Support Division, Office of Pesticide Programs.

[FR Doc. 96–5527 Filed 3–7–96; 8:45 am]

BILLING CODE 6560–50–F

[OPP–34090; FRL 5352–4]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticides Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on June 6, 1996.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further

provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the Federal Register. Thereafter, the Administrator may approve such a request.

II. Intent to Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in the three pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names, active ingredients and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before June 6, 1996 to discuss withdrawal of the applications for amendment. This 90-day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion.

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
003772–00032	Garden Rotenone Dust	Rotenone	Terrestrial food uses
006718–00020	Quick-Killing Bug Spray	*d*-trans-Allethrin	Ornamental & house plant use
019713–20206	Ida's Roach Spray	Boric Acid	Carpet & upholstery treatment use

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2. — REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Company No.	Company Name and Address
003772	Earl May Seed & Nursery Co., 208 N. Elm St., Shenandoah, IA 51603.
006718	Amway Corporation, 7575 Fulton St., East, Ada, MI 49335.
019713	Drexel Chemical Company, P.O. Box 13327, Memphis, TN 38113.

III. Existing Stocks Provisions

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: February 21, 1996.

Frank Sanders,

Director, Program Management and Support Division, Office of Pesticide Programs.

[FR Doc. 96–5528 Filed 3–7–96; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5438–2]

Palmerton Zinc Superfund Site De Minimis Settlement; Proposed Administrative Settlement Under the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Request for Public Comment.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to enter into *de minimis* settlements pursuant to Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (CERCLA) 42 U.S.C. 9622(g)(4). The proposed settlements are intended to resolve the potential liability under CERCLA of twelve (12) *de minimis* parties for response costs incurred by the United States Environmental Protection Agency at the Palmerton Zinc Superfund Site, Carbon County, Pennsylvania.

DATES: Comments must be provided on or before April 8, 1996.

ADDRESSES: Comments should be addressed to the Docket Clerk, United States Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, and should refer to: In Re: Palmerton Zinc Superfund Site, Carbon County, Pennsylvania, U.S. EPA Docket Nos. III–95–11–DC, III–95–12–DC, III–95–13–DC, III–95–17–DC, III–95–18–DC, III–95–20–DC, III–95-21–DC, III–95–24–DC, III–95–26–DC, III–95–31–DC, III–95–32–DC, and III–95–34–DC.

FOR FURTHER INFORMATION CONTACT: Cynthia Nadolski, (3RC32) Office of Regional Counsel, United States Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, (215)597–9912.

SUPPLEMENTARY INFORMATION:

Notice of De Minimis Settlement

In accordance with Section 122(i)(1) of CERCLA, 42 U.S.C. 9622(i)(1), notice is hereby given of proposed administrative settlements concerning the Palmerton Zinc Site in Carbon County, Pennsylvania. The administrative settlements were signed by the Regional Administrator of the United States Environmental Protection Agency, Region III, on 5/16/95 and are subject to review by the public pursuant to this Notice. The agreements were also subject to the approval of the Attorney General, United States Department of Justice or her designee.

The 12 parties agree to allow complete access to their properties by EPA and its representatives and to cooperate and not to interfere with the activities of EPA or its representatives during an ongoing response action to remove lead, cadmium and zinc contamination from their properties in Palmerton, Pennsylvania in exchange for receiving a covenant not to sue pursuant to Section 122(g) of CERCLA, 42 U.S.C. 122(g), and contribution protection pursuant to Section 113(f) of CERCLA, 42 U.S.C. 113(f). The agreements are subject to the contingency that the Environmental Protection Agency may elect not to complete the settlements based on matters brought to its attention during

the public comment period established by this Notice.

EPA is entering into these agreements under the authority of Sections 122(g) and 107 of CERCLA, 42 U.S.C. 9622(g) and 9607. Section 122(g) of CERCLA, 42 U.S.C. 9622(g), authorizes early settlements with *de minimis* parties to allow them to resolve their potential liability under CERCLA. Under this authority, EPA proposes to settle with homeowners at the Palmerton Zinc Site who meet the standards for a *de minimis* landowner settlement under CERCLA Section 122(g)(1)(B), 42 U.S.C. 122(g)(1)(B).

The Environmental Protection Agency will receive written comments to these proposed administrative settlements for thirty (30) days from the date of publication of this Notice. A copy of the proposed Administrative Orders on Consent can be obtained from the Environmental Protection Agency, Region III, Office of Regional Counsel, (3RC32), 841 Chestnut Building, Philadelphia, Pennsylvania 19107, by contacting Cynthia Nadolski, Senior Assistant Regional Counsel, at (215)597–9912.

Stanley L. Laskowski,

Acting Regional Administrator, U.S. EPA Region III.

[FR Doc. 96–5532 Filed 3–7–96; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Sunshine Act Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on March 12, 1996, from 10:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

B. Reports

Farm Credit System Building Association's Quarterly Report

C. New Business

Regulations

a. Loan Policies and Operations—Disclosure of Loan Information [12 CFR Part 614] (Final).

b. Loan Policies and Operations; Definitions—Loan Underwriting Standards [12 CFR Parts 614 and 619] (Proposed).

Dated: March 6, 1996.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 96–5732 Filed 3–6–96; 2:26 pm]

BILLING CODE 6705–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Submitted to OMB for Review and Approval

March 1, 1996.

SUMMARY: The Federal Communications, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 8, 1996. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESS: Direct all comments to Dorothy Conway, Federal Communications, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov and Timothy Fain, OMB Desk Officer, 10236 NEOB 725 17th Street, NW., Washington, DC 20503 or fain_t@a1.eop.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 3060–0572.

Title: Filing Manual for Annual International Circuit Status Report.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit.

Number of Respondents: 50.

Estimated Time Per Response: 17 hours.

Total Annual Burden: 850 hours.

Total Annualized Cost per respondent: There are no start-up or operational maintainence costs, in addition to providing the information, associated with this collection.

Needs and Uses: The information compiled in this reports will be useful to current industry members, potential new entrants into the industry and the Commission. The information will be aggregated and published by the Commission for use of benefit of all industry members. The information will be critically important for U.S. carriers in the prepartion of their international business plans and for determining the availability of capacity, or lack thereof, for market entry and expansion decisions. The information will aid the industry in determining competitive opportunities overseas and thereby supports the Commission's efforts to achieve a more competitive international telecommunications marketplace. In addition, the information will allow the Commission to comply with the statutory requirements of the Omnibus Budget Reconciliation Act of 1993.

OMB Approval No.: 3060–0290.

Title: Section 90.517.

Form No.: N/A.

Type of Review: Reinstatement of a previously approved collection.

Respondents: Business or other for profit; State, Local or Tribal Government.

Number of Respondents: 100 respondents.

Estimated Time Per Response: 2 hours.

Total Annual Burden: 200 hours.

Total Annualized Cost per respondent: There are no start-up or operational and maintenance costs, in addition to providing the information, associated with this collection.

Needs and Uses: Section 90.517 provides developmental authoriztions that are usually employed by licensees who wish to test and develop new use of radiocommunications facilities. Each such developmental licensee must report upon termination of development, or application for license renewal, specific information evaluating the usefulness of previous or desired continued operation of such a system. Commission personnel use the data to evaluate the neeed for renewal of the applicant's authorization and to decide the desirability of instituting rulemaking proceedings involving new technologies or new use of the radio spectrum.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–5428 Filed 3–7–96; 8:45 am]

BILLING CODE 6712–01–F

Public Information Collection Approved by Office of Management and Budget

March 4, 1996.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection pursuant to the Paperwork Reduction Act of 1995, Pub. L. 96–511. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0540.

Expiration Date: 02/28/99.

Title: Tariff Filing Requirements for Nondominant Common Carriers.

Estimated Annual Burden: 21,000 total annual hours; 10.5 hours per respondent; 2000 respondents.

Estimated Annual Reporting and Recordkeeping Cost Burden: $1,130,000.

Description: 47 CFR Part 61, Sections 61.20–61.23, contain tariff filing requirements for nondominant common carriers. The purpose of the filing requirement is so that the Commission, customers, and interested parties can ensure that the service offerings of communications common carriers comply with the requirements of the Communications Act. The Commission recently modified the tariff filing rules for domestic, nondominant common carriers to remove the provision permitting such carriers to file rates in a manner of the carrier's choosing, including as a reasonable range of rates. Domestic, nondominant common carriers must file tariffs containing specific rates.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–5494 Filed 3–7–96; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting; Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 8:30 a.m. on Tuesday, March 5, 1996, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider (1) matters relating to the probable failure of a certain insured depository institution, and (2) matters relating to the Corporation's corporate and supervisory activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Joseph H. Neely (Appointive), concurred in by Mr. Stephen R. Steinbrink, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), and Chairman Ricki Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, N.W., Washington, D.C.

Dated: March 5, 1996.

Federal Deposit Insurance Corporation

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 96–5676 Filed 3–6–96; 11:07 am]

BILLING CODE 6714–O–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. § 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are 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 standards enumerated in the BHC Act (12 U.S.C. § 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company 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'' (12 U.S.C. § 1843). Any request for a hearing 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, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 1, 1996.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. First Commerce Banks of Florida, Inc., Winter Haven, Florida; to acquire

100 percent of the voting shares of Prime Bank of Central Florida, Titusville, Florida.

Board of Governors of the Federal Reserve System, March 4, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–5454 Filed 3–7–96; 8:45 am]

BILLING CODE 6210–01–F

Notice of Proposal to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The company listed in this notice has given notice under section 4 of the Bank Holding Company Act (12 U.S.C. § 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to commence or to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

The notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including 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'' (12 U.S.C. § 1843). 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 the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 18, 1996.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. United Valley Bancorp, Inc., Philadelphia, Pennsylvania; to acquire at least 50 percent of the voting shares of Eagle Valley Financial Services, Inc., Philadelphia, Pennsylvania, and thereby to engage in mortgage banking activities, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 5, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–5578 Filed 3–7–96; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Technical Advisory Committee for Diabetes Translation and Community Control Programs; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Technical Advisory Committee for Diabetes Translation and Community Control Programs (TACDTCCP).

Times and Dates: 1 p.m.–4 p.m., April 3, 1996. 8 a.m.–12:30 p.m., April 4, 1996.

Place: Stouffer Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036, telephone 202/347–3000.

Status: Open to the public, limited only by the space available.

Purpose: This committee is charged with advising the Director, CDC, regarding priorities and feasible goals for translation activities and community control programs designed to reduce risk factors, morbidity, and mortality from diabetes and its complications. The Committee advises regarding policies, strategies, goals and objectives, and priorities; identifies research advances and technologies ready for translation into widespread community practice; recommends public health strategies to be implemented through community interventions; advises on operational research and outcome evaluation methodologies; identifies research issues for further clinical investigation; and advises regarding the coordination of programs with Federal, voluntary, and private resources involved in the provisions of services to people with diabetes.

Matters To Be Discussed: Committee members will discuss opportunities and directions for the TACDTCCP, the status and direction of the National Diabetes Education Program, and goals and future areas of emphasis for the Division of Diabetes Translation.

Agenda items are subject to change as priorities dictate.

For More Information Contact: Cheryl Shaw, Program Specialist, Division of Diabetes Translation, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, NE, M/S K–10, Atlanta, Georgia 30341–3724; telephone: 488–5004.

Dated: March 1, 1996.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–5589 Filed 3–2–96; 8:45 am]

BILLING CODE 4163–18–M

National Vaccine Advisory Committee (NVAC) Subcommittee on Immunization Coverage; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Federal advisory subcommittee meeting.

Name: NVAC Subcommittee on Immunization Coverage.

Times and Dates: 1:30 p.m.–5 p.m., March 18, 1996. 8:30 a.m.–5 p.m., March 19, 1996.

Place: Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20008, telephone (202) 234–0700.

Status: Open to the public, limited only by the space available.

Purpose: The Subcommittee on Immunization Coverage will identify strategies and policy options by which to further improve the levels of immunization coverage.

Matters to be Discussed. Agenda items include a discussion of previous NVAC financing of vaccine delivery issues and lessons from the past; vaccine cost issues: cost-benefit of first-dollar coverage, an actuary study, and administrative costs and insurance premiums; discussion of data needed in future studies and what we want to learn for tomorrow; and issues from the payor's and public perspective.

Agenda items are subject to change as priorities dictate.

For More Information Contact: Alison B. Johnson, Program Analyst, National Immunization Program, CDC (Corporate Square), 1600 Clifton Road, NE., M/S E52, Atlanta, Georgia 30333; telephone: (404) 639–8222.

This notice is being published less than 15 days prior to the meeting due to problems associated with obtaining a meeting location.

Dated: March 1, 1996.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–5590 Filed 3–7–96; 8:45 am]

BILLING CODE 4163–18–M

National Committee on Vital and Health Statistics (NCVHS) Subcommittee on State and Community Health Statistics; Cancellation of Meeting

This notice announces the cancellation of a previously announced meeting.

FEDERAL NOTICE CITATION OF PREVIOUS ANNOUNCEMENT: 61 FR 5562, February 13, 1996.

PREVIOUSLY ANNOUNCED TIME AND DATE: 9 a.m.–5 p.m., March 14, 1996.

CHANGE IN THE MEETING: This meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 436–7050.

Dated: March 1, 1996.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–5591 Filed 3–2–96; 8:45 am]

BILLING CODE 4163–18–M

Administration for Children and Families

Proposed Collection; Comment Request

Proposed Project(s)

Title: Head Start Program Information Report (PIR).

OMB No.: 0980–0017.

The Head Start Act requires that the Program Information Report (PIR) information is collected from Head Start grantees and delegate agencies. Data elements are primarily in the areas of management, class activity, health profile and home environment. Principle uses of the data include local program management, ACF regional management, ACYF central office management, management of services to children with disabilities, and dissemination to other interested parties.

Respondents: State governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of responents	Number of responses per Respondent	Average Burden Hours per response	Total burden hours
PIR	2,078	4	3.35	6,691

Estimated Total Annual Burden Hours: 6,691.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by title.

In addition, requests of copies may be made and comments forwarded to the Reports Clearance Officer over the Internet by sending a message to rkatson@acf.dhhs.gov. Internet messages must be submitted as an ASCII file without special characters or encryption.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: March 4, 1996.

Roberta Katson,

Director, Division of Information Resource Management Services.

[FR Doc. 96–5506 Filed 3–7–96; 8:45 am]

BILLING CODE 4184–01

Proposed Collection; Comment Request Proposed Project(s)

Title: Case Plan, Section 422, 471(a)(16), 475(5)(A) of the Social Security Act.

OMB No.: 0980–0140.

Description: Under section 471(a)(16) of title IV–E of the Social Security Act, in order for a State to be eligible for payments they must have an approved State plan which provides for the development of a case plan (as defined in section 475(1)) for each child receiving foster care maintenance payments and provides a case review system which meets the requirements in section 475(5)(B). Through these requirements the State also complies with title IV–B, section 422(b)(9) (as of 4/1/96) which assures certain protection for children in foster care.

Respondents: State governments.

ANNUAL BURDEN ESTIMATES

Instrument	No. of respondents	No. of responses per respondent	Average burden hours per response	Total burden hours
Case Plan	445,000	1	4	1,780,000

Estimated Total Annual Burden Hours: 1,780,000.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by title.

In addition, requests of copies may be made and comments forwarded to the Reports Clearance Officer over the Internet by sending a message to rkatson@acf.dhhs.gov. Internet messages must be submitted as an ASCII file without special characters or encryption.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: March 4, 1996.

Roberta Katson,

Director, Division of Information Resource Management Services.

[FR Doc. 96–5507 Filed 3–7–96; 8:45 am]

BILLING CODE 4184–01–N

Food and Drug Administration

[Docket No. 96F–0070]

Sequa Chemicals, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Sequa Chemicals, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the expanded safe use of ammonium zirconium lactate-citrate complexes for use as insolubilizers with protein binders in coatings for paper and paperboard intended for food-contact applications.

DATES: Written comments on the petitioner's environmental assessment by April 8, 1996.

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

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 6B4497) has been filed by Sequa Chemicals, Inc., One Sequa Dr., Chester, SC 29706–0070. The petition proposes to amend the food additive regulations in § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) to provide for the expanded safe use of ammonium zirconium lactate-citrate complexes for use as insolubilizers with protein binders in coatings for paper and paperboard intended for food-contact applications.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before March 8, 1996, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the Federal Register. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: February 22, 1996.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–5493 Filed 3–7–96; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

Availability For Licensing: Chromatin Insulator Protecting Expressed Genes of Interest for Human Gene Therapy or Other Mammalian Transgenic Systems

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH), Department of Health and Human Services (DHHS), seeks licensee(s) who can effectively pursue the preclinical, clinical and commercial development of the technology embodied in U.S. Patent Application SN 08/283,125 and corresponding foreign patent applications entitled, ''New DNA Fragment Acting as Chromatin Insulator to Protect Expressed Genes From *CIS*-Acting Regulatory Sequences in Mammalian Cells.'' The invention describes the isolation, identification, and characterization of a DNA element residing in higher eukaryotic chromatin structural domains. The technology provides the isolation of a functional DNA sequence comprising a chromatin insulating element from a vertebrate system and provides the first employment of the pure insulator element as a functional insulator in mammalian cells. The technology further relates to a method for insulating the expression of a gene from the activity of *cis*-acting regulatory sequences in eukaryotic chromatin.

This technology could be of major importance in providing a mechanism and a tool to restrict the action of *cis*-acting regulatory elements on genes whose activities or encoded products are needed or desired to be expressed in mammalian transgenic systems. This technology provides the first pure insulator element to function solely as an insulator element in human cells. Accordingly, this technology could have tremendous practical implications for transgenic technology and human gene therapies, either *in vitro* or *in vivo.*

The technology further provides a method and constructs for insulating the

expression of a gene or genes in transgenic animals such that the transfected genes will be protected and stably expressed in the tissues of the transgenic animal or its offspring. For example, even if the DNA of the construct integrates into areas of silent chromatin in the genomic DNA of the host animal, the gene will continue to be expressed. The invention could provide a means of improving the stable integration and expression of any transgenic construct of interest, with efficiencies higher than are achieved presently. Use of this invention may represent a large potential savings for licensee's constructing transgenic cell lines or animals. All fields of use are available for licensing. The patent rights in this technology have been assigned to the United States of America.

SUPPLEMENTARY INFORMATION: The NIH seeks licensee(s), who in accordance with requirements and regulations governing the licensing of government-owned inventions (37 CFR part 404), have the most meritorious plan for the development of the DNA Chromatin Insulator technology to a marketable status to meet the needs of the public and with the best terms for the NIH. The criteria that NIH will use to evaluate license applications will include, but not be limited to those set forth by 37 CFR 404.7(a)(1) (ii)–(iv).

ADDRESS: Requests for copies of the patent applications, inquiries, comments and other materials relating to the contemplated licenses should be directed to: Joseph G. Contrera, M.S., J.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; Telephone: (301) 496–7056 ext. 244; Facsimile: (301) 402–0220. A signed confidentiality agreement will be required to receive copies of the patent applications.

Dated: February 23, 1996.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 96–5448 Filed 3–7–96; 8:45 am]

BILLING CODE 4140–01–M

Consensus Development Conference on Cervical Cancer

Notice is hereby given of the NIH Consensus Development Conference on ''Cervical Cancer,'' which will be held April 1–3, 1996, in the Natcher Conference Center of the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. The conference begins at 8:30 a.m. on April 1, at 8 a.m. on April 2, and at 9 a.m. on April 3.

The introduction of the Pap test 50 years ago led to a steep decline in deaths from cervical cancer. Nonetheless, this form of cancer is still one of the most common, accounting for 6 percent of all malignancies in women and 5,000 deaths in the United States each year. Worldwide, cervical cancer remains the leading cause of cancer deaths among women.

The conference will focus on treatment and quality of life issues for women with cervical cancer. For women with early stage disease, these include pretreatment imaging, the role of lymph node resection, primary surgery and radiotherapy, and adjuvant treatment. For women with advanced-stage disease, critical issues include optimal radiotherapy techniques, neoadjuvant and concomitant chemotherapy, pelvic exenteration, and palliative treatment.

Other topics to be addressed include screening patterns and technology, the Bethesda classification for Pap smears, management of preinvasive disease, developments in radiobiology, and prospects for human papillomavirus vaccines.

This conference will bring together epidemiologists; obstetrician/gynecologists; and gynecologic, medical, and radiation oncologists as well as representatives from the public. After 1½ days of presentations and audience discussion, an independent, non-Federal consensus panel will weigh the scientific evidence and write a draft statement that it will present to the audience on the third day. The consensus statement will address the following key questions.

—How can we strengthen efforts to screen for and prevent cervical cancer?

—What is the appropriate management of low stage cervical cancer (FIGO stages I–IIA)?

—What is the appropriate management of advanced stage and recurrent cervical cancer?

—What are new directions for research in cervical cancer?

The primary sponsors for this conference are the National Cancer Institute and the NIH Office of Medical Applications of Research. The conference is cosponsored by the National Institute of Nursing Research, the National Institute of Allergy and Infectious Diseases, the Office of Research on Minority Health, and the Office of Research on Women's Health of the National Institutes of Health, and the Centers for Disease Control and Prevention. Advance information on the conference program and conference registration materials may be obtained from: Ann Besignano, Technical Resources International, Inc., 3202 Tower Oaks Blvd., Suite 200, Rockville, Maryland 20852, (301) 770–3153, confdept@tech-res.com.

The consensus statement will be submitted for publication in professional journals and other publications. In addition, the statement will be available beginning April 3, 1996, from the NIH Consensus Program Information Service, P.O. Box 2577, Kensington, Maryland 20891, phone 1–800–NIH–OMAR (1–800–644–6627).

Dated: February 21, 1996.

Ruth L. Kirschstein,

Deputy Director, NIH.

[FR Doc. 96–5450 Filed 3–7–96; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Notice of Closed Meeting

Pursuant to Sec. 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Cancer Institute Initial Review Group:

Purpose/Agenda: Review, discussion and evaluation of individual grant applications.

Committee Name: Subcommittee H—Clinical Groups.

Date: March 26–27, 1996.

Time: 8 am.

Place: The Holiday Inn Bethesda, 8120 Wisconsin Avenue, N.W., Bethesda, MD 20814.

Contact Person: Dr. John L. Meyer, Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 611C, 6130 Executive Boulevard MSC 7405, Bethesda, MD 20892–7405, Telephone: 301/496–7721.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: March 1, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–5446 Filed 3–7–96; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the following Heart, Lung, and Blood Special Emphasis Panel.

This meeting will be open to the public to provide concept review of proposed contract or grant solicitations.

Individuals who plan to attend and need special assistance, such as signed language interpretation or other reasonable accommodations, should inform the Contact Person listed below in advance of the meeting.

Name of Panel: Pediatric Hydroxyurea Phase III Clinical Trial.

Dates of Meeting: April 12, 1996.

Time of Meeting: 10:00 a.m.

Place of Meeting: National Institutes of Health, Two Rockledge Center, Room 9A2, 6701 Rockledge Drive, Bethesda, Maryland 20892.

Agenda: To review Phase III Pediatric Hydroxyurea in Sickle Cell Anemia Trial.

Contact Person: Duane R. Bonds, M.D., Rockledge II Building, Rm. 10158, 6701 Rockledge Drive, Bethesda, Maryland 20892–7950, (301) 435–0055.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: March 5, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–5509 Filed 3–7–96; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Heart, Lung, and Blood Program Project Review Committee, National Heart, Lung, and Blood Institute, March 20–21, 1996, 8:00 a.m., Holiday Inn Chevy Chase, Chevy Chase, Maryland, which was published in the Federal Register on February 1, 1996 (61 FR 3719).

The meeting date is changed to March 21–22, 1996. As previously advertised, the meeting is closed to the public.

Dated: March 5, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–5510 Filed 3–7–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: March 6, 1996.

Time: 11 a.m.

Place: Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Phyllis L. Zusman, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857; Telephone: 301, 443–1340.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing imitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281)

Dated: March 1, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–5508 Filed 3–5–96; 11:32 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Biological and Physiological Sciences.

Date: March 21, 1996.

Time: 3:00 p.m.

Place: NIH, Rockledge 2, Room 4206, Telephone Conference.

Contact Person: Dr. Betty Hayden, Scientific Review Administrator, 6701 Rockledge Drive, Room 4206, Bethesda, Maryland 20892, (301) 435–1223.

Name of SEP: Biological and Physiological Sciences.

Date: March 22, 1996.

Time: 4:00 p.m.

Place: NIH, Rockledge 2, Room 4206, Telephone Conference.

Contact Person: Dr. Betty Hayden, Scientific Review Administrator, 6701 Rockledge Drive, Room 4206, Bethesda, Maryland 20892, (301) 435–1223.

Name of SEP: Microbiological and Immunological Sciences.

Date: March 25, 1996.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 4178, Telephone Conference.

Contact Person: Dr. Jean Hickman, Scientific Review Administrator, 6701 Rockledge Drive, Room 4178, Bethesda, Maryland 20892, (301) 435–1146.

Name of SEP: Biological and Physiological Sciences.

Date: March 27, 1996.

Time: 8:30 a.m.

Place: NIH, Rockledge 2, Room 3163.

Contact Person: Dr. Mushtaq Khan, Scientific Review Administrator, 6701 Rockledge Drive, Room 4124, Bethesda, Maryland 20892, (301) 435–1778.

Name of SEP: Clinical Sciences.

Date: March 29, 1996.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 4112, Telephone Conference.

Contact Person: Dr. Gopal Sharma, Scientific Review Administrator, 6701 Rockledge Drive, Room 4112, Bethesda, Maryland 20892, (301) 435–1783.

Name of SEP: Microbiological and Immunological Sciences.

Date: April 3, 1996.

Time: 1:30 p.m.

Place: NIH, Rockledge 2, Room 4178, Telephone Conference.

Contact Person: Dr. Jean Hickman, Scientific Review Administrator, 6701 Rockledge Drive, Room 4178, Bethesda, Maryland 20892, (301) 435–1146.

Name of SEP: Clinical Sciences.

Date: April 4, 1996.

Time: 8:00 a.m.

Place: Holiday Inn-Chevy Chase, Chevy Chase, MD.

Contact Person: Dr. Gopal Sharma, Scientific Review Administrator, 6701 Rockledge Drive, Room 4112, Bethesda, Maryland 20892, (301) 435–1783.

Name of SEP: Clinical Sciences.

Date: April 4, 1996.

Time: 4:00 p.m.

Place: NIH, Rockledge 2, Room 4126, Telephone Conference.

Contact Person: Dr. Jerrold Fried, Scientific Review Administrator, 6701 Rockledge Drive, Room 4126, Bethesda, Maryland 20892, (301) 435–1777.

Purpose/Agenda: To review Small Business Innovation Research.

Name of SEP: Clinical Sciences.

Date: March 27, 1996.

Time: 8:00 a.m.

Place: Holiday Inn-Chevy Chase, Chevy Chase, MD.

Contact Person: Dr. Gopal Sharma, Scientific Review Administrator, 6701 Rockledge Drive, Room 4112, Bethesda, Maryland 20892, (301) 435–1783.

Name of SEP: Biological and Physiological Sciences.

Date: April 8, 1996.

Time: 9:00 a.m.

Place: DoubleTree Hotel, Rockville, MD.

Contact Person: Dr. Peggy McCardle, Scientific Review Administrator, 6701 Rockledge Drive, Room 5198, Bethesda, Maryland 20892, (301) 435–1258.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 1, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–5447 Filed 3–7–96; 8:45 am]

BILLING CODE 4140–01–M

Technology Assessment Conference on Management of Temporomandibular Disorders

Notice is hereby given of the NIH Technology Assessment Conference on ''Management of Temporomandibular Disorders,'' which will be held April 29-May 1, 1996, in the Natcher Conference Center of the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. The conference begins at 8:30 a.m. on April 29, at 8 a.m. on April 30, at 9 a.m. on May 1.

Temporomandibular disorders (TMD), a group of often painful conditions that affect the temporomandibular joint and muscles of mastication, confound and frustrate both patient and practitioner alike. Controversy surrounds virtually all aspects of TMD, from diagnosis and treatment to epidemiology and pathogenesis.

Even agreement on which conditions comprise temporomandibular disorders has been elusive. The term has been used to characterize individuals with a wide variety of symptoms and signs, such as pain in the face or jaw joint areas, headaches, earaches and dizziness, and clicking sounds in the jaw joint. A key issue to explore is the appropriateness of the label ''TMD'' for the numerous conditions now included under this rubric.

In the absence of universally accepted, scientifically based guidelines for diagnosing and managing temporomandibular disorders, diagnostic and treatment approaches of unproven value have proliferated in clinical practice. Concerns about their safety and efficacy, as well as potential for harm, have arisen among clinicians and patients. There is a need to examine the rationale for and outcomes of a variety of treatments currently used in practice, such as behavioral and pharmacologic management, orthotics, surgery, occlusal therapy, orthodontics, physical therapy and others.

This conference will bring together specialists in pain management, cellular and molecular biology, epidemiology, immunology, behavioral and social sciences, tissue engineering, and clinical dentistry, medicine and surgery, as well as representatives from the public.

Time has been set aside from the scientific agenda in order to allow presentations by representatives of interested organizations. These presentations should address policy issues and may be up to 5 minutes in duration. Presentation by individuals representing personal views may be permitted if time allows, Requests to testify must be received by April 12, 1996 and should be sent to Jerry Elliott, Federal Building, Room 6C02, Bethesda, Maryland 20892, phone (301) 496–1144.

After 1½ days of presentations and audience discussion, an independent, non-Federal technology assessment panel will weigh the scientific evidence and write a draft statement that it will present to the audience on the third day. The technology assessment statement will address the following key questions:

—What clinical conditions are classified as temporomandibular disorders, and what occurs if these conditions are left untreated?

—What types of symptoms, signs, and other assessments provide a basis for initiating therapeutic interventions?

—What are effective approaches to initial management and treatment of patients with various TMD subtypes?

—What are effective approaches to management and treatment of patients with persistent TMD pain and dysfunction?

—What are the most productive directions for future research, and what types of new collaborations and partnerships should be developed for pursuing these directions?

The primary sponsors of this conferences are the National Institute of Dental Research and the NIH Office of Medical Applications of Research. The conference is cosponsored by the National Institute of Allergy and Infectious Diseases, the National Institute of Arthritis and Musculoskeletal and Skin Diseases, the National Institute of Neurological Disorders and Stroke, the National Institute of Nursing Research, and the Office of Research on Women's Health.

Advance information on the conference program and conference registration materials may be obtained from: Laura Hazan, Technical Resources International, Inc., 3202 Tower Oaks Blvd., Suite 200, Rockville, Maryland 20852, (301) 770–31-53, confdept@tech-res.com.

The technology assessment statement will be submitted for publication in professional journals and other publications. In addition, the statement will be available beginning May 1, 1996, from the NIH Consensus Program Information Service, P.O. Box 2577, Kensington, Maryland 20891, phone 1–800–NIH–OMAR (1–800–644–6627).

Dated: February 20, 1996.

Ruth L. Kirschstein,

Deputy Director, NIH.

[FR Doc. 96–5449 Filed 3–7–96; 8:45 am]

BILLING CODE 4140–01–M

HARRY S. TRUMAN SCHOLARSHIP FOUNDATION

Harry S. Truman Scholarship 1995 Supplemental Competition

AGENCY: Harry S. Truman Scholarship Foundation.

ACTION: Notice of closing date for supplemental nominations from eligible institutions of higher education.

SUMMARY: Notice is hereby given that, pursuant to the authority contained in the Harry S. Truman Memorial Scholarship Act, Public Law 93–642 (20 U.S.C. 2001), nominations are being accepted from eligible institutions of higher education for 1995 Truman Scholarships. Procedures are prescribed in 45 CFR 1801 (August 22, 1994; vol. 59, no. 161. sec. 13).

In order to be assured consideration, all documentation in support of nominations for the supplemental competition must be received by the Truman Scholarship Review Committee, 2255 N. Dubuque Road, P.O. Box 168, Iowa City, IA 52243 no later than March 29, 1996, from participating two- and four-year institutions.

Dated: February 12, 1996.

Louis H. Blair,

Executive Secretary.

[FR Doc. 96–5480 Filed 3–7–96; 8:45 am]

BILLING CODE 4738–10–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–3778–N–75]

Office of the Assistant Secretary for Community Planning and Development; Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At this appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the Federal Register, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Army Corps of Engineers: Mr. Bob Swieconek, Civilian Facilities, Pulaski Building, Room 4224, 20 Massachusetts Avenue, NW, Washington, DC 20314–1000; (202) 761–1749; General Services Administration: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–2059; (These are not toll-free numbers).

Dated: March 1, 1996.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 03/08/96

Suitable/Available Properties

Buildings (by State)

Florida

Alpha Site
Naval Security Group Activity
Homestead Co: Dade FL 33018–
Landholding Agency: GSA
Property Number: 549540009
Status: Excess
Comment: 51,674 sq. ft., 2-story concrete block, most recent use—military operations, and approximately 760 acres, incorrectly published on 12/1/95.
GSA Number: 4–N–FL–1079.

Iowa

Bldg.—Bridgeview
Rathbun Lake Project, R.R. #3
Centerville Co: Appanoose IA 52544–
Landholding Agency: COE
Property Number: 319340003
Status: Unutilized
Comment: 416 sq. ft., 1-story, most recent use—storage, needs major rehab, off-site use only.

Bldg.—Island View
Rathbun Lake Project, R.R. #3
Centerville Co: Appanoose IA 52544–
Landholding Agency: COE
Property Number: 319340004
Status: Unutilized
Comment: 416 sq. ft., 1-story, most recent use—storage, needs major rehab, off-site use only.

Bldg.—Rolling Cove
Rathbun Lake Project, R.R. #3
Centerville Co: Appanoose IA 52544–
Landholding Agency: COE
Property Number: 319340005
Status: Unutilized
Comment: 416 sq. ft., 1-story, most recent use—storage, needs major rehab, off-site use only.

Silo
Tract 100, Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 319530033
Status: Excess
Comment: Concrete block, 1 story, presence of asbestos/lead paint, most recent use—storage, off-site use only.

Shed
Tract 100, Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 319530034
Status: Excess
Comment: Wood frame, off-site use only, most recent use—dog house.

White Shed
Tract 130, Camp Dodge
Johnston Co: Polk IA 50131–

Landholding Agency: COE
Property Number: 319530035
Status: Excess
Comment: 144 sq. ft., fair condition, presence of asbestos/lead paint, off-site use only, most recent use—storage.

Play House
Tract 130, Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 319530036
Status: Excess
Comment: 120 sq. ft., good condition, presence of asbestos/lead paint, off-site use only.

Corn Crib
Tract 136, Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 319530037
Status: Excess
Comment: Most recent use—storage, fair condition, off-site use only.

Pole Shed
Tract 137, Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 319530038
Status: Excess
Comment: 720 sq. ft., fair condition, off-site use only, most recent use—storage.

Storage Shed
Tract 138, Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 319530039
Status: Excess
Comment: 100 sq. ft., fair condition, presence of asbestos/lead paint, off-site use only, most recent use—storage.

Shed
Tract 138, Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 319530040
Status: Excess
Comment: 384 sq. ft., fair condition, presence of asbestos/lead paint, off-site use only, most recent use—storage.

Barn
Tract 138, Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 319530041
Status: Excess
Comment: 1280 sq. ft., needs rehab, presence of asbestos/lead paint, off-site use only.

House
Tract 126, Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 319530042
Status: Excess
Comment: 3583 sq. ft., wood frame, presence of asbestos/lead paint, off-site use only.

Grain Bin
Tract 139, Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 319530043
Status: Excess
Comment: Most recent use—grain bin/storage, fair condition, off-site use only.

Kansas

Trailer—Clinton Lake
Rt. 5, Box 109B
Lawrence Co: Douglas KS 66046–
Landholding Agency: COE
Property Number: 319410003
Status: Excess
Comment: Double-wide trailer (24×50), most recent use—residence, needs repair, off-site use only.

Kentucky

Green River Lock & Dam #3
Rochester Co: Butler KY 42273–
Location: SR 70 west from Morgantown, KY., approximately 7 miles to site.
Landholding Agency: COE
Property Number: 319010022
Status: Unutilized
Comment: 980 sq. ft.; 2 story wood frame; two story residence; potential utilities; needs major rehab.

Kentucky River Lock and Dam 3
Pleasureville Co: Henry KY 40057–
Location: SR 421 North from Frankfort, KY. to highway 561, right on 561 approximately 3 miles to site.
Landholding Agency: COE
Property Number: 319010060
Status: Unutilized
Comment: 897 sq. ft.; 2 story wood frame; structural deficiencies.

Bldg. 1
Kentucky River Lock and Dam
Carrolton Co: Carroll KY 41008–
Location: Take I–71 to Carrolton, KY exit, go east on SR #227 to Highway 320, then left for about 1.5 miles to site.
Landholding Agency: COE
Property Number: 319011628
Status: Unutilized
Comment: 1530 sq. ft.; 2 story wood frame house; subject to periodic flooding; needs rehab.

Bldg. 2
Kentucky River Lock and Dam
Carrolton Co: Carroll KY 41008–
Location: Take I–71 to Carrolton, KY exit, go east on SR #227 to highway 320, then left for about 1.5 miles to site.
Landholding Agency: COE
Property Number: 319011629
Status: Unutilized
Comment: 1530 sq. ft.; 2 story wood frame house; subject to periodic flooding; needs rehab.

Utility Bldg, Nolin River Lake
Moutardier Recreation Site Co: Edmonson KY
Landholding Agency: COE
Property Number: 319320002
Status: Unutilized
Comment: 541 sq. ft., concrete block, off-site use only.

Cave Run Lake
4 miles from Farmers Co: Bath KY
Landholding Agency: COE
Property Number: 319610001
Status: Unutilized
Comment: 1120 sq. ft. brick residence, needs, repair, off-site use only.

Michigan

Little Rapids Lightkeeper Sta.
Little Rapids Channel
Sault St. Marie Co: Chippewa MI 49873–
Landholding Agency: GSA
Property Number: 549530002
Status: Excess
Comment: 1411 sq. ft. wood frame dwelling with 480 sq. ft. garage, and 121 sq. ft. storage bldg., poor condition, needs rehab, possible asbestos.
GSA Number: 2–D–MI–722A.

Minnesota

Frame Dwelling—Lake Traverse
Rural Rt. 2
Wheaton Co: Traverse MN 56296–9630
Landholding Agency: COE
Property Number: 319520001
Status: Excess
Comment: 1453 sq. ft., 2-story residence, off-site use only.

Missouri

Tract 113—House
Smithville Lake
Smithville Co: Clay MO 64089–
Landholding Agency: COE
Property Number: 319540002
Status: Excess
Comment: 1200 sq. ft. residence, presence of lead base paint, off-site use only.

Nevada

13 Single Family Residences
Tonopah Housing Complex
Tonopah Co: Nye NV 89049–
Landholding Agency: GSA
Property Number: 54930005
Status: Excess
Comment: 1192–1898 sq. ft., 1 story wood residences, 4 bedrooms/2 bathrooms.
GSA Number: 9–U–NV–467–C.

New Mexico

Magdalena Dormitory
Poplar and 8th Streets
Magdalena Co: Soccorro NM 87825–
Landholding Agency: GSA
Property Number: 549540006
Status: Excess
Comment: 14 bldgs. consisting of dormitory/dining & storage facilities, apartments & garages, vacant for 8 years, needs rehab, potential utilities.
GSA Number: 7–I–NM–0543.

North Carolina

Bldg., 222 Bayshore Drive
Elizabeth City Co: Pasquotank NC 27909–
Landholding Agency: GSA
Property Number: 549540011
Status: Excess
Comment: 1173 sq. ft., wood frame, most recent use—residence, off-site use only.
GSA Number: 4–U–NC–714.

Bldg., 224 Bayshore Drive
Elizabeth City Co: Pasquotank NC 27909–
Landholding Agency: GSA
Property Number: 549540012
Status: Excess
Comment: 3487 sq. ft., wood frame, most recent use—residence, off-site use only.
GSA Number: 4–U–NC–715.

Bldg., 226 Bayshore Drive
Elizabeth City Co: Pasquotank NC 27909–
Landholding Agency: GSA
Property Number: 549540013
Status: Excess
Comment: 3576 sq. ft., wood frame, most recent use—residence, off-site use only.

GSA Number: 4–U–NC–716.

Bldg., 228 Bayshore Drive
Elizabeth City Co: Pasquotank NC 27909–
Landholding Agency: GSA
Property Number: 549540014
Status: Excess
Comment: 3697 sq. ft., wood frame, most recent use—residence, off-site use only.
GSA Number: 4–U–NC–717.

Bldg., Consolidated Road
Elizabeth City Co: Pasquotank NC 27909–
Landholding Agency: GSA
Property Number: 549540015
Status: Excess
Comment: 1388 sq. ft., brick residence, off-site use only.
GSA Number: 4–U–NC–718.

Ohio

Barker Historic House
Willow Island Locks and Dam
Newport Co: Washington OH 45768–9801
Location: Located at lock site, downstream of lock and dam structure
Landholding Agency: COE
Property Number: 319120018
Status: Unutilized
Comment: 1600 sq. ft. bldg, with ½ acre of land, 2 story brick frame, needs rehab, on Natl Register of Historic Places, no utilities, off-site use only.

Nat. Weather Met. Observatory
Huber Heights Co: Montgomery OH
Landholding Agency: GSA
Property Number: 549540005
Status: Excess
Comment: 1100 sq. ft., 1 story, most recent use—office/admin.
GSA Number: 2–C–OH–796.

Pennsylvania

Mahoning Creek Reservoir
New Bethlehem Co: Armstrong PA 16242–
Landholding Agency: COE
Property Number: 319210008
Status: Unutilized
Comment: 1015 sq. ft., 2 story brick residence, off-site use only.

One Unit/Residence
Conemaugh River Lake, RD #1, Box 702
Saltburg Co: Indiana PA 15681–
Landholding Agency: COE
Property Number: 319430011
Status: Unutilized
Comment: 2642 sq. ft., 1-story, 1-unit of duplex, fair condition, access restrictions.

Bldgs. 8, 9, 10
Portion of Former Valley Forge Gen. Hospital
Phoenixville Co: Chester PA 19406–
Landholding Agency: GSA
Property Number: 549610006
Status: Excess
Comment: former guest house—9182 sq. ft., former open mess—5840 sq. ft., former BOQ—2191 sq. ft., possible asbestos.
GSA Number: 4–GR(3)–PA–6662.

South Carolina

Bldg. 5
J.S. Thurmond Dam and Reservoir
Clarks Hill Co: McCormick SC
Location: ½ mile east of Resource Managers Office.
Landholding Agency: COE
Property Number: 319011548
Status: Excess
Comment: 1900 sq. ft.; 1 story masonry frame; possible asbestos; most recent use—storage, off-site removal only.

Tennessee

Cheatham Lock & Dam
Tract D, Lock Road
Nashville Co: Davidson TN 37207–
Landholding Agency: COE
Property Number: 319520003
Status: Unutilized
Comment: 1100 sq. ft. dwelling w/storage bldgs on 7 acres, needs major rehab, contamination issues, approx. 1 acre in fldwy, modif. to struct. subj. to approval of St. Hist. Presv. Ofc.

Virginia

Peters Ridge Site
Gathright Dam
Covington VA
Landholding Agency: COE
Property Number: 319430013
Status: Excess
Comment: 64 sq. ft., metal bldg.

Coles Mountain Site
Gathright Dam, Rt. 607 Co: Bath VA
Landholding Agency: COE
Property Number: 319430015
Status: Excess
Comment: 64 sq. ft., 1-story metal bldg.

West Virginia

R.T. Price House
U.S. Route 2
Williamson Co: Mingo WV 25661–
Landholding Agency: GSA
Property Number: 319520004
Status: Excess
Comment: 3116 sq. ft., brick, most recent use—office/conf., listed on Natl. Reg. of Historic Places, restriction against human habitation, recommend flood protection measures.
GSA Number: 4–D–WV–525.

Wisconsin

Former Lockmaster's Dwelling
Cedar Locks
4527 East Wisconsin Road
Appleton Co: Outagamie WI 54911–
Landholding Agency: COE
Property Number: 319011524
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster's Dwelling
Appleton 4th Lock
905 South Lowe Street
Appleton Co: Outagamie WI 54911–
Landholding Agency: COE
Property Number: 319011525
Status: Unutilized
Comment: 908 sq. ft.; 2 story wood frame residence; needs rehab.

Former Lockmaster's Dwelling
Kaukauna 1st Lock
301 Canal Street
Kaukauna Co: Outagamie WI 54131–
Landholding Agency: COE
Property Number: 319011527
Status: Unutilized
Comment: 1290 sq. ft.; 2 story wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster's Dwelling
Appleton 1st Lock
905 South Oneida Street
Appleton Co: Outagamie WI 54911–
Landholding Agency: COE
Property Number: 319011531
Status: Unutilized
Comment: 1300 sq. ft.; potential utilities; 2 story wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster's Dwelling
Rapid Croche Lock
Lock Road
Wrightstown Co: Outagamie WI 54180–
Location: 3 miles southwest of intersection State Highway 96 and Canal road.
Landholding Agency: COE
Property Number: 319011533
Status: Unutilized
Comment: 1952 sq. ft.; 2 story wood frame residence; potential utilities; needs rehab.

Former Lockmaster's Dwelling
Little KauKauna Lock
Little KauKauna
Lawrence Co: Brown WI 54130–
Location: 2 miles southeasterly from intersection of Lost Dauphin Road (County Trunk Highway ''D'') and River Street.
Landholding Agency: COE
Property Number: 319011535
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; needs rehab.

Former Lockmaster's Dwelling
Little Chute, 2nd Lock
214 Mill Street
Little Chute Co: Outagamie WI 54140–
Landholding Agency: COE
Property Number: 319011536
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; potential utilities; needs rehab; secured area with alternate access.

Land (by State)

Arkansas

Parcel 01
DeGray Lake
Section 12
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010071
Status: Unutilized
Comment: 77.6 acres.
Parcel 02
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010072
Status: Unutilized
Comment: 198.5 acres.

Parcel 03
DeGray Lake
Section 18
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010073
Status: Unutilized
Comment: 50.46 acres.

Parcel 04
DeGray Lake
Section 24, 25, 30 and 31
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010074

Status: Unutilized
Comment: 236.37 acres.

Parcel 05
DeGray Lake
Section 16
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010075
Status: Unutilized
Comment: 187.30 acres.

Parcel 06
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010076
Status: Unutilized
Comment: 13.0 acres.

Parcel 07
DeGray Lake
Section 34
Arkadelphia Co: Hot Spring AR 71923–9361
Landholding Agency: COE
Property Number: 319010077
Status: Unutilized
Comment: 0.27 acres.

Parcel 08
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010078
Status: Unutilized
Comment: 14.6 acres.

Parcel 09
DeGray Lake
Section 12
Arkadelphia Co: Hot Spring AR 71923–9361
Landholding Agency: COE
Property Number: 319010079
Status: Unutilized
Comment: 6.60 acres.

Parcel 10
DeGray Lake
Section 12
Arkadelphia Co: Hot Spring AR 71923–9361
Landholding Agency: COE
Property Number: 319010080
Status: Unutilized
Comment: 4.5 acres.

Parcel 11
DeGray Lake
Section 19
Arkadelphia Co: Hot Spring AR 71923–9361
Landholding Agency: COE
Property Number: 319010081
Status: Unutilized
Comment: 19.50 acres.

Lake Greeson
Section 7, 8 and 18
Murfreesboro Co: Pike AR 71958–9720
Landholding Agency: COE
Property Number: 319010083
Status: Unutilized
Comment: 46 acres.

California

Lake Mendocino
1160 Lake Mendocino Drive
Ukiah Co: Mendocino CA 95482–9404
Landholding Agency: COE
Property Number: 319011015
Status: Unutilized
Comment: 20 acres; steep, dense brush; potential utilities.

(P) Camp Elliott
Rosedale Tract
San Diego Co: San Diego CA
Landholding Agency: GSA
Property Number: 549310008
Status: Surplus
Comment: Parcel 1–0.15 acre, Parcel 2–0.17 acre, located in the narrow median strip between Murphy Canyon Rd. and State Highway 15, previously leased by homeless provider.
GSA Number: 9–GR(6)–CA–694A.

Colorado

Otis Lane
Chatfield Lake Project
Littletown Co: Jefferson CO 80123–
Landholding Agency: COE
Property Number: 319540001
Status: Excess
Comment: 25 ft. wide (5000 sq. ft.), subject to easements.

Kansas

Parcel 1
El Dorado Lake
Section 13, 24, and 18
(See County) Co: Butler KS
Landholding Agency: COE
Property Number: 319010064
Status: Unutilized
Comment: 61 acres; most recent use—recreation.

Kentucky

Tract 2625
Barkley Lake, Kentucky, and Tennessee
Cadiz Co: Trigg KY 42211–
Location: Adjoining the village of Rockcastle.
Landholding Agency: COE
Property Number: 319010025
Status: Excess
Comment: 2.57 acres; rolling and wooded.

Tract 2709–10 and 2710–2
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 2½ miles in a southerly direction from the village of Rockcastle.
Landholding Agency: COE
Property Number: 319010026
Status: Excess
Comment: 2.00 acres; steep and wooded.

Tract 2708–1 and 2709–1
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 2½ miles in a southerly direction from the village of Rockcastle.
Landholding Agency: COE
Property Number: 319010027
Status: Excess
Comment: 3.59 acres; rolling and wooded; no utilities.

Tract 2800
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 4½ miles in a southeasterly direction from the village of Rockcastle.
Landholding Agency: COE
Property Number: 319010028
Status: Excess
Comment: 5.44 acres; steep and wooded.

Tract 2915
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 6½ miles west of Cadiz.
Landholding Agency: COE
Property Number: 319010029
Status: Excess
Comment: 5.76 acres; steep and wooded; no utilities.

Tract 2702
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 1 mile in a southerly direction from the village of Rockcastle.
Landholding Agency: COE
Property Number: 319010031
Status: Excess
Comment: 4.90 acres; wooded; no utilities.

Tract 4318
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: Trigg Co. adjoining the city of Canton, KY. on the waters of Hopson Creek.
Landholding Agency: COE
Property Number: 319010032
Status: Excess
Comment: 8.24 acres; steep and wooded.

Tract 4502
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 3½ miles in a southerly direction from Canton, KY.
Landholding Agency: COE
Property Number: 319010033
Status: Excess
Comment: 4.26 acres; steep and wooded.

Tract 4611
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 5 miles south of Canton, KY.
Landholding Agency: COE
Property Number: 319010034
Status: Excess
Comment: 10.51 acres; steep and wooded; no utilities.

Tract 4619
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 4½ miles south of Canton, KY.
Landholding Agency: COE
Property Number: 319010035
Status: Excess
Comment: 2.02 acres; steep and wooded; no utilities.

Tract 4817
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 6½ miles south of Canton, KY.
Landholding Agency: COE
Property Number: 319010036
Status: Excess
Comment: 1.75 acres; wooded.

Tract 1217
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: On the north side of the Illinois Central Railroad.
Landholding Agency: COE
Property Number: 319010042
Status: Excess
Comment: 5.80 acres; steep and wooded.

Tract 1906
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 4 miles each of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010044

Status: Excess
Comment: 25.86 acres; rolling steep and partially wooded; no utilities.

Tract 1907
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42038–
Location: On the waters of Pilfen Creek, 4 miles east of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010045
Status: Excess
Comment: 8.71 acres; rolling steep and wooded; no utilities.

Tract 2001 #1
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: 4½ miles east of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010046
Status: Excess
Comment: 47.42 acres; steep and wooded; no utilities.

Tract 2001 #2
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 4½ miles east of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010047
Status: Excess
Comment: 8.64 acres; steep wooded; no utilities.

Tract 2005
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 5½ miles east of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010048
Status: Excess
Comment: 4.62 acres; steep and wooded; no utilities.

Tract 2307
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 7½ miles southeasterly of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010049
Status: Excess
Comment: 11.43 acres; steep; rolling and wooded; no utilities.

Tract 2403
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: 7 miles southeasterly of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010050
Status: Excess
Comment: 1.56 acres; steep and wooded; no utilities.

Tract 2504
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: 9 miles southeasterly of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010051
Status: Excess
Comment: 24.46 acres; steep and wooded; no utilities.

Tract 214
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: South of the Illinois Central Railroad, 1 mile east of the Cumberland River.
Landholding Agency: COE
Property Number: 319010052
Status: Excess
Comment: 5.5 acres; wooded; no utilities.

Tract 215
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 5 miles southwest of Kuttawa
Landholding Agency: COE
Property Number: 319010053
Status: Excess
Comment: 1.40 acres; wooded; no utilities.

Tract 241
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Landholding Agency: COE
Property Number: 319010054
Status: Excess
Comment: 1.26 acres; steep and wooded; no utilities.

Tracts 306, 311, 315 and 325
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 2.5 miles southwest of Kuttawa, KY. on the waters of Cypress Creek.
Landholding Agency: COE
Property Number: 319010055
Status: Excess
Comment: 38.77 acres; steep and wooded; no utilities.

Tracts 2305, 2306, and 2400–1
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: 6½ miles southeasterly of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010056
Status: Excess
Comment: 97.66 acres; steep rolling and wooded; no utilities.

Tracts 500–2
Barkley Lake, Kentucky and Tennessee
Kuttawa Co: Lyon KY 42055–
Location: Situated on the waters of Poplar Creek, aproximately 1 mile southwest of Kuttawa, KY.
Landholding Agency: COE
Property Number: 319010057
Status: Excess
Comment: 3.58 acres; hillside ridgeland and wooded; no utilities.

Tracts 5203 and 5204
Barkley Lake, Kentucky and Tennessee
Linton Co: Trigg KY 42212
Location: Village of Linton, KY state highway 1254.
Landholding Agency: COE
Property Number: 319010058
Status: Excess
Comment: 0.93 acres; rolling, partially wooded; no utilities.

Tracts 5240
Barkley Lake, Kentucky and Tennessee
Linton Co: Trigg KY 42212
Location: 1 mile northwest of Linton, KY.
Landholding Agency: COE
Property Number: 319010059
Status: Excess
Comment: 2.26 acres; steep and wooded; no utilities.

Tracts 4628
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 4½ miles south from Canton, KY.
Landholding Agency: COE
Property Number: 319011621
Status: Excess
Comment: 3.71 acres; steep and wooded; subject to utility easements.

Tracts 4619–B
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 4½ miles south from Canton, KY.
Landholding Agency: COE
Property Number: 319011622
Status: Excess
Comment: 1.73 acres; steep and wooded; subject to utility easements.

Tracts 2403–B
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42038–
Location: 7 miles southeasterly from Eddyville, KY.
Landholding Agency: COE
Property Number: 319011623
Status: Unutilized
Comment: 0.70 acres, wooded; subject to utility easements.

Tracts 241–B
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: South of Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Landholding Agency: COE
Property Number: 319011624
Status: Excess
Comment: 11.16 acres; steep and wooded; subject to utility easements.

Tracts 212 and 237
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Landholding Agency: COE
Property Number: 319011625
Status: Excess
Comment: 2.44 acres; steep and wooded; subject to utility easements.

Tract 215–B
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 5 miles southwest of Kuttawa
Landholding Agency: COE
Property Number: 319011626
Status: Excess
Comment: 1.00 acres; wooded; subject to utility easements.

Tract 233
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 5 miles southwest of Kuttawa
Landholding Agency: COE
Property Number: 319011627
Status: Excess
Comment: 1.00 acres; wooded; subject to utility easements.

Tract B—Markland Locks & Dam
Hwy 42, 3.5 miles downstream of Warsaw
Warsaw Co: Gallatin KY 41095—
Landholding Agency: COE
Property Number: 319130002
Status: Unutilized

Comment: 10 acres, most recent use—recreational, possible periodic flooding.

Tract A—Markland Locks & Dam
Hwy 42, 3.5 miles downstream of Warsaw
Warsaw Co: Gallatin KY 41095—
Landholding Agency: COE
Property Number: 319130003
Status: Unutilized
Comment: 8 acres, most recent use—recreational, possible periodic flooding.

Tract C—Markland Locks & Dam
Hwy 42, 3.5 miles downstream of Warsaw
Warsaw Co: Gallatin KY 41095—
Landholding Agency: COE
Property Number: 319130005
Status: Unutilized
Comment: 4 acres, most recent use—recreational, possible periodic flooding.

Tract N–819
Dale Hollow Lake & Dam Project
Illwill Creek, Hwy 90
Hobart Co: Clinton KY 42601–
Landholding Agency: COE
Property Number: 319140009
Status: Unutilized
Comment: 91 acres, most recent use—hunting, subject to existing easements.

Portion of Lock & Dam No. 1
Kentucky River
Carrolton Co: Carroll KY 41008–0305
Landholding Agency: COE
Property Number: 319320003
Status: Underutilized
Comment: approx. 3.5 acres (sloping), access monitored.

Portion of Lock & Dam No. 2
Kentucky River
Lockport Co: Henry KY 40036–9999
Landholding Agency: COE
Property Number: 319320004
Status: Underutilized
Comment: approx. 13.14 acres (sloping), access monitored.

Louisiana

Wallace Lake Dam and Reservoir
Shreveport Co: Caddo LA 71103–
Landholding Agency: COE
Property Number: 319011009
Status: Underutilized
Comment: 11 acres; wildlife/forestry; no utilities.

Bayou Bodcau Dam and Reservoir
Haughton Co: Caddo LA 71037–9707
Location: 35 miles Northeast of Shreveport, La.
Landholding Agency: COE
Property Number: 319011010
Status: Underutilized
Comment: 203 acres; wildlife/forestry; no utilities.

Minnesota

Parcel D
Pine River
Cross Lake Co: Crow Wing MN 56442–
Location: 3 miles from city of Cross Lake, between highways 6 and 371.
Landholding Agency: COE
Property Number: 319011038
Status: Excess
Comment: 17 acres; no utilities.

Tract 92
Sandy Lake
McGregor Co: Aitkins MN 55760–
Location: 4 miles west of highway 65, 15 miles from city of McGregor.
Landholding Agency: COE
Property Number: 319011040
Status: Excess
Comment: 4 acres; no utilities.

Tract 98
Leech Lake
Benedict Co: Hubbard MN 56641–
Location: 1 mile from city of Federal Dam, Mn.
Landholding Agency: COE
Property Number: 319011041
Status: Excess
Comment: 7.3 acres; no utilities.

Mississippi

Parcel 7
Grenada Lake
Sections 22, 23, T24N
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011019
Status: Underutilized
Comment: 100 acres; no utilities; intermittently used under lease—expires 1994.

Parcel 8
Grenada Lake
Section 20, T24N
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011020
Status: Underutilized
Comment: 30 acres; no utilities; intermittently used under lease—expires 1994.

Parcel 9
Grenada Lake
Section 20, T24N, R7E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011021
Status: Underutilized
Comment: 23 acres; no utilities; intermittently used under lease—expires 1994.

Parcel 10
Grenada Lake
Sections 16, 17, 18 T24N R8E
Grenacda Co: Calhoun MS 38901–0903
Landholding Agency: COE
Property Number: 319011022
Status: Underutilized
Comment: 490 acres; no utilities; intermittently used under lease expires 1994.

Parcel 2
Grenada Lake
Section 20 and T23N, R5E
Grenada Co: Grenada MS 38901–0903
Landholding Agency: COE
Property Number: 319011023
Status: Underutilized
Comment: 60 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 3
Grenada Lake
Section 4, T23N, R5E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011024
Status: Underutilized
Comment: 120 acres; no utilities; most recent use—wildlife and forestry management; (13.5 acres/agriculture lease).

Parcel 4
Grenada Lake
Section 2 and 3. T23N, R5E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011025
Status: Underutilized
Comment: 60 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 5
Grenada Lake
Section 7, T24N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011026
Status: Underutilized
Comment: 20 acres; no utilities; most recent use—wildlife and forestry management; (14 acres/agriculture lease).

Parcel 6
Grenada Lake
Section 9, T24N, R6E
Grenada Co: Yalobusha MS 38903–0903
Landholding Agency: COE
Property Number: 319011027
Status: Underutilized
Comment: 80 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 11
Grenada Lake
Section 20, T24N, R8E
Grenada Co: Calhoun MS 38901–0903
Landholding Agency: COE
Property Number: 319011028
Status: Underutilized
Comment: 30 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 12
Grenada Lake
Section 25, T24N, R7E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011029
Status: Underutilized
Comment: 30 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 13
Grenada Lake
Section 34, T24N, R7E
Grenada Co: Yalobusha MS 38903–0903
Landholding Agency: COE
Property Number: 319011030
Status: Underutilized
Comment: 35 acres; no utilities; most recent use—wildlife and forestry management; (11 acres/agriculture lease).

Parcel 14
Grenada Lake
Section 3, T23N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011031
Status: Underutilized
Comment: 15 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 15
Grenada Lake
Section 4, T24N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011032
Status: Underutilized
Comment: 40 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 16

Grenada Lake
Section 9, T23N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011033
Status: Underutilized
Comment: 70 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 17
Grenada Lake
Section 17, T23N, R7E
Grenada Co: Grenada MS 28902–0903
Landholding Agency: COE
Property Number: 319011034
Status: Underutilized
Comment: 35 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 18
Grenada Lake
Section 22, T23N, R7E
Grenada Co: Grenada MS 38902–0903
Landholding Agency: COE
Property Number: 319011035
Status: Underutilized
Comment: 10 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 19
Grenada Lake
Section 9, T22N, R7E
Grenada Co: Grenada MS 38901–0903
Landholding Agency: COE
Property Number: 319011036
Status: Underutilized
Comment: 20 acres; no utilities; most recent use—wildlife and forestry management.

Missouri

Harry S Truman Dam & Reservoir
Warsaw Co: Benton MO 65355–
Location: Triangular shaped parcel southwest of access road ''B'', part of Bledsoe Ferry Park Tract 150.
Landholding Agency: COE
Property Number: 319030014
Status: Underutilized
Comment: 1.7 acres; potential utilities.

North Dakota

Trailer Lots 1–6
Stromquist 1st Addition
Devils Lake Co: Ramsey ND 58301–
Landholding Agency: GSA
Property Number: 419530001
Status: Excess
Comment: 45720 sq. ft. in trailer park.

Ohio

Hannibal Locks and Dam
Ohio River
P.O. Box 8
Hannibal Co: Monroe OH 43931–0008
Location: Adjacent to the new Martinsville Bridge.
Landholding Agency: COE
Property Number: 319010015
Status: Underutilized
Comment: 22 acres; river bank.

Middleport Public Access Site
Robert C. Byrd Locks & Dam
Middleport Co: Meigs OH 45760–
Landholding Agency: GSA
Property Number: 319230001
Status: Excess
Comment: approximately 17.23 acres including parking lot, flowage easement, right-of-way for city street and utilities.
GSA Number: 2–D–OH–793.

Bethany Relay Station
8070 Tylersville Road
Union Township Co: Butler OH 45040–
Landholding Agency: GSA
Property Number: 549610008
Status: Excess
Comment: 625 acres, most recent use—radio relay station, bldg. and approx. 125 acres are unsuitable due to distance from flammable explosive material.
GSA Number: 1–Z–OH–726B.

Oklahoma

Pine Creek Lake
Section 27
(See County) Co: McCurtain OK
Landholding Agency: COE
Property Number: 319010923
Status: Unutilized
Comment: 3 acres; no utilities; subject to right of way for Oklahoma State Highway 3.

Pennsylvania

Mahoning Creek Lake
New Bethlehem Co: Armstrong PA 16242–9603
Location: Route 28 north to Belknap, Road #4
Landholding Agency: COE
Property Number: 319010018
Status: Excess
Comment: 2.58 acres; steep and densely wooded.

Tracts 610, 611, 612
Shenango River Lake
Sharpsville Co: Mercer PA 16150–
Location: I–79 North, I–80 West, Exit Sharon. R18 North 4 miles, left on R518, right on Mercer Avenue
Landholding Agency: COE
Property Number: 319011001
Status: Excess
Comment: 24.09 acres; subject to flowage easement.

Tracts L24, L26
Crooked Creek Lake Co: Armstrong PA 03051–
Location: Left bank—55 miles downstream of dam
Landholding Agency: COE
Property Number: 319011011
Status: Unutilized
Comment: 7.59 acres; potential for utilities.

Portion of Tract L–21A
Crooked Creek Lake, LR 03051
Ford City Co: Armstrong PA 16226–
Landholding Agency: COE
Property Number: 319430012
Status: Unutilized
Comment: Approximately 1.72 acres of undeveloped land, subject to gas rights.

Puerto Rico

La Hueca—Naval Station
Roosevelt Roads
Vieques PR 00765–
Landholding Agency: GSA
Property Number: 549420006
Status: Excess
Comment: 323 acres, cultural site.

Tennessee

Tract 6827
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 2½ miles west of Dover, TN
Landholding Agency: COE
Property Number: 319010927
Status: Excess
Comment: .57 acres; subject to existing easements.

Tracts 6002–2 and 6010
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 3½ miles south of village of Tabaccoport
Landholding Agency: COE
Property Number: 319010928
Status: Excess
Comment: 100.86 acres; subject to existing easements.

Tract 11516
Barkley Lake
Ashland City Co: Dickson TN 37015–
Location: ½ mile downstream from Cheatham Dam
Landholding Agency: COE
Property Number: 319010929
Status: Excess
Comment: 26.25 acres; subject to existing easements.

Tract 2319
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: West of Buckeye Bottom Road
Landholding Agency: COE
Property Number: 319010930
Status: Excess
Comment: 14.48 acres; subject to existing easements.

Tract 2227
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: Old Jefferson Pike
Landholding Agency: COE
Property Number: 319010931
Status: Excess
Comment: 2.27 acres; subject to existing easements.

Tract 2107
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: Across Fall Creek near Fall Creek camping area
Landholding Agency: COE
Property Number: 319010932
Status: Excess
Comment: 14.85 acres; subject to existing easements.

Tracts 2601, 2602, 2603, 2604
Cordell Hull Lake and Dam Project
Doe Row Creek
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 56
Landholding Agency: COE
Property Number: 319010933
Status: Unutilized
Comment: 11 acres; subject to existing easements.

Tract 1911
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: East of Lamar Road
Landholding Agency: COE
Property Number: 319010934
Status: Excess
Comment: 15.31 acres; subject to existing easements.

Tract 2321
J. Percy Priest Dam and Reservoir

Murfreesboro Co: Rutherford TN 37130–
Location: South of Old Jefferson Pike
Landholding Agency: COE
Property Number: 319010935
Status: Excess
Comment: 12 acres; subject to existing easements.

Tract 7206
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 2½ miles SE of Dover, TN.
Landholding Agency: COE
Property Number: 319010936
Status: Excess
Comment: 10.15 acres; subject to existing easements.

Tracts 8813, 8814
Barkley Lake
Cumberland Co: Stewart TN 37050–
Location: 1½ miles East of Cumberland City.
Landholding Agency: COE
Property Number: 3190100937
Status: Excess
Comment: 96 acres; subject to existing easements.

Tract 8911
Barkley Lake
Cumberland City Co: Montgomery TN 37050–
Location: 4 miles east of Cumberland City.
Landholding Agency: COE
Property Number: 319010938
Status: Excess
Comment: 7.7 acres; subject to existing easements.

Tract 11503
Barkley Lake
Ashland City Co: Cheatham TN 37015–
Location: 2 miles downstream from Cheatham Dam.
Landholding Agency: COE
Property Number: 319010939
Status: Excess
Comment: 1.1 acres; subject to existing easements.

Tracts 11523, 11524
Barkley Lake
Ashland City Co: Cheatham TN 37015–
Location: 2½ miles downstream from Cheatham Dam.
Landholding Agency: COE
Property Number: 319010940
Status: Excess
Comment: 19.5 acres; subject to existing easements.

Tract 6410
Barkley Lake
Bumpus Mills Co: Stewart TN 37028–
Location: 4½ miles SW. of Bumpus Mills.
Landholding Agency: COE
Property Number: 319010941
Status: Excess
Comment: 17 acres; subject to existing easements.

Tract 9707
Barkley Lake
Palmyer Co: Montgomery TN 37142–
Location: 3 miles NE of Palmyer, TN. Highway 149
Landholding Agency: COE
Property Number: 319010943
Status: Excess
Comment: 6.6 acres; subject to existing easements.

Tract 6949
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 1½ miles SE of Dover, TN.
Landholding Agency: COE
Property Number: 319010944
Status: Excess
Comment: 29.67 acres; subject to existing easements.

Tracts 6005 and 6017
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 3 miles south of Village of Tobaccoport.
Landholding Agency: COE
Property Number: 319011173
Status: Excess
Comment: 5 acres; subject to existing easements.

Tracts K–1191, K–1135
Old Hickory Lock and Dam
Hartsville Co: Trousdale TN 37074–
Landholding Agency: COE
Property Number: 319130007
Status: Underutilized
Comment: 92 acres (38 acres in floodway), most recent use—recreation.

Tract A–102
Dale Hollow Lake & Dam Project
Canoe Ridge, State Hwy 52
Celina Co: Clay TN 38551–
Landholding Agency: COE
Property Number: 319140006
Status: Underutilized
Comment: 351 acres, most recent use—hunting, subject to existing easements.

Tract A–120
Dale Hollow Lake & Dam Project
Swann Ridge, State Hwy No. 53
Celina Co: Clay TN 38551–
Landholding Agency: COE
Property Number: 319140007
Status: Underutilized
Comment: 883 acres, most recent use—hunting, subject to existing easements.

Tracts A–20, A–21
Dale Hollow Lake & Dam Project
Red Oak Ridge, State Hwy 53
Celina Co: Clay TN 38551–
Landholding Agency: COE
Property Number: 319140008
Status: Underutilized
Comment: 821 acres, most recent use—hunting, subject to existing easements.

Tract D–185
Dale Hollow Lake & Dam Project
Ashburn Creek, Hwy No. 53
Livingston Co: Clay TN 38570–
Landholding Agency: COE
Property Number: 319140010
Status: Underutilized
Comment: 883 acres, most recent use—hunting, subject to existing easements.

Texas

Parcel #222
Lake Texoma Co: Grayson TX
Location: C. Meyerheim survey A–829 J. Hamilton survey A–529
Landholding Agency: COE
Property Number: 319010421
Status: Excess
Comment: 52.80 acres; most recent use—recreation.

Washington

Second Stadium Home Site
1701 Martin Luther King Blvd.
Seattle Co: King WA 98144–
Landholding Agency: GSA
Property Number: 549540008
Status: Excess
Comment: 1.5061 acres of unimproved land, most recent use—temporary storage for construction equipment.
GSA Number: 9–GRI–WA–543.

Wisconsin

Portion, Kewaunee Eng. Depot
East Storage Yard
Kewaunee Co: Kewaunee WI 54216–
Landholding Agency: GSA
Property Number: 319440013
Status: Excess
Comment: 0.95 acres, storage bldg. on prop. owned by State, limited access (water access only).
GSA Number: 2–D–WI–572.

Suitable/Unavailable Properties

Buildings (by State)

Alaska

Ketchikan Ranger House
Ketchikan AK 99901–
Landholding Agency: GSA
Property Number: 549430009
Status: Surplus
Comment: 1832 sq. ft., 2 story residence, needs rehab, on National Register of Historic Places.
GSA Number: 9–A–AK–0746.

Arkansas

Federal Building
115 South Denver Avenue
Russellville Co: Pope AR 80205–
Landholding Agency: GSA
Property Number: 549530004
Status: Excess
Comment: 2640 sq. ft., 2 story plus basement, presence of asbestos, timber frame w/brick facing, most recent use—offices.
GSA Number: 7–G–AR–546.

California

Santa Fe Flood Control Basin
Irwindale Co: Los Angeles CA 91706–
Landholding Agency: COE
Property Number: 319011298
Status: Unutilized
Comment: 1400 sq. ft.; 1 story stucco; needs rehab; termite damage; secured area with alternate access.

Colorado

Former AF Finance Center
3800 York Street
Denver Co: Denver CO 80205–
Landholding Agency: GSA
Property Number: 549310011
Status: Excess
Comment: 293,932 sq. ft., 1-story timber frame with masonry exterior, fair condition, most recent use—storage, office, rehab.
GSA Number: 7–GR–CO–468–D.

Delaware

Regional Poultry Research Lab
Georgetown Co: Sussex DE 19947–
Landholding Agency: GSA
Property Number: 549540001
Status: Excess

Comment: 5 bldgs., brick/aluminum siding, most recent use—office/laboratories/ storage/poultry raising, off-site use only.
GSA Number: 4–A–DE–0459.

Florida

Bldg. CN7
Ortona Lock Reservation, Okeechobee Waterway
Ortona Co: Glades FL 33471–
Location: Located off Highway 78 approximately 7 miles west of intersection with Highway 27.
Landholding Agency: COE
Property Number: 319010012
Status: Unutilized
Comment: 1468 sq. ft.; one floor wood frame; most recent use—residence; secured with alternate access.

Bldg. CN8
Ortona Lock Reservation, Okeechobee Waterway
Ortona Co: Glades FL 33471–
Location: Located off Highway 78 approximately 7 miles west of intersection with Highway 27.
Landholding Agency: COE
Property Number: 319010013
Status: Unutilized
Comment: 1468 sq. ft.; one floor wood frame; most recent use—residence; secured with alternate access.

Ilinois

Bldg. 7
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010001
Status: Unutilized
Comment: 900 sq. ft.; 1 floor wood frame; most recent use—residence.

Bldg. 6
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010002
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence.

Bldg. 5
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010003
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence.

Bldg. 4
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010004
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence.

Bldg. 3
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010005
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame.

Bldg. 2
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010006
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence.

Bldg. 1
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010007
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence.

Defunct Radio Station Site
(Govt. Tract B–135), Chain of Rocks Canal
Co: Madison IL 62040–
Landholding Agency: COE
Property Number: 319520002
Status: Excess
Comment: 5 bldgs. (48x17, 8x10, 15x18, 6x6, 12x14), need extensive repairs, off-site use only.

Indiana

Bldg. 01, Monroe Lake
Monroe Cty. Rd. 37 North to Monroe Dam Rd.
Bloomington Co: Monroe IN 47401–8772
Landholding Agency: COE
Property Number: 319140002
Status: Unutilized
Comment: 1312 sq. ft., 1 story brick residence, off-site use only.

Bldg. 02, Monroe Lake
Monroe Cty. Rd. 37 North to Monroe Dam Rd.
Bloomington Co: Monroe IN 47401–8772
Landholding Agency: COE
Property Number: 319140003
Status: Unutilized
Comment: 1312 sq. ft., 1 story brick residence, off-site use only.

Kentucky

Federal Building
4th & Main Streets
Danville Co: Boyle KY 40422–
Landholding Agency: GSA
Property Number: 549430015
Status, Excess
Comment: 4890 sq. ft., 3-story, stone-concrete foundation, presence of asbestos, first floor occupied by US Court of Appeals Judge & staff until expiration of his tenure.
GSA Number: 4–G–KY–604.

Massachusetts

Lowell Federal Building
50 Kearny Square
Lowell Co: Middlesex MA 01854–
Landholding Agency: GSA
Property Number: 549320003
Status: Excess
Comment: 40,283 sq. ft., 3-story concrete and steel bldg., most recent use—storage/office and medical clinic.
GSA Number: 2–G–MA–778.

17 Single Family Residences
Navy Family Housing, Westover AFB
Chicopee Co: Hampden MA 01022–
Property Number: 549520002
Status: Excess
Comments: various sq. ft., good condition, utilities systems modification.

99 Duplex Residences
Navy Family Housing, Westover AFB
Chicopee Co: Hampden MA 01022–
Landholding Agency: GSA
Property Number: 549520003
Status: Excess
Comment: various sq. ft., good condition, utilities systems modification.

20 Fourplex Residences
Navy Family Housing, Westover AFB
Chicopee Co: Hampden MA 01022–
Landholding Agency: GSA
Property Number: 549520004
Status: Excess
Comment: various sq. ft., good condition, utilities systems modification.

Michigan

Detroit Job Corps Center
10401 E. Jefferson & 1438 Garland;
1265 St. Clair
Detroit Co: Wayne MI 42128–
Landholding Agency: GSA
Property Number: 549510002
Status: Surplus
Comment: Main bldg. is 80,590 sq. ft., 5-story, adjacent parking lot, 2nd bldg. on St. Clair Ave. is 5140 sq. ft., presence of asbestos in main bldg., to be vacated 8/97.
GSA Number: 2–L–MI–757.

Minnesota

Coast Guard Family Housing
404 East Hamilton Avenue
Baudette Co: Lake of the Woo MN 56623–
Landholding Agency: GSA
Property Number: 549230007
Status: Surplus
Comment: 1333 sq. ft., 1-story frame residence.
GSA Number: 2–U–MN–503–E.

Coast Guard Family Housing
406 East Hamilton Avenue
Baudette Co: Lake of the Woo MN 56623–
Landholding Agency: GSA
Property Number: 549230008
Status: Surplus
Comment: 1633 sq. ft., 1-story wood frame residence.
GSA Number: 2–U–MN–503–E.

Coast Guard Family Housing
408 East Hamilton Avenue
Baudette Co: Lake of the Woo MN 56623–
Landholding Agency: GSA
Property Number: 549230009
Status: Surplus
Comment: 1633 sq. ft., 1-story wood frame residence.
GSA Number: 2–U–MN–503–E.

Coast Guard Family Housing
418 East Hamilton Avenue
Baudette Co: Lake of the Woo MN 56623–
Landholding Agency: GSA
Property Number: 549230010

Status: Surplus
Comment: 1633 sq. ft., 1-story wood frame residence.
GSA Number: 2–U–MN–503–E.

Army Reserve Center
301 Lexington Ave. South
New Prague Co: LeSueur MN 56071–
Landholding Agency: GSA
Property Number: 549330003
Status: Surplus
Comment: 4316 sq. ft. brick veneer and concrete block office and training bldg. and a 1170 sq. ft. maintenance shop on 3.82 acres of land leased by the City.
GSA Number: 2–D–MN–558.

Missouri

Federal Office Building
911 Walnut Street
Kansas City Co: Jackson MO 64106–
Landholding Agency: GSA
Property Number: 549510005
Status: Excess
Comment: 210,098 sq. ft., concrete/brick structure, 50% occupied until 6/95, does not meet handicap reqs., most recent use—offices.
GSA Number: 7–G–MO–0626.

Nevada

5 Single Family Residences
Tonopah Housing Complex
Tonopah Co: Nye NV 89049–
Landholding Agency: GSA
Property Number: 549430004
Status: Excess
Comment: 1192 to 1378 sq. ft., 1 story wood frame residences, 3 bedrooms/1 bathroom.
GSA Number: 9–U–NV–467–C.

North Carolina

Portion VA Reservation
Nurses Quarters
Oteen Co: Buncombe NC
Landholding Agency: GSA
Property Number: 549320006
Status: Excess
Comment: 8752 sq. ft., 3-story stucco bldg., presence of asbestos, most recent use—educational facility.
GSA Number: 4–GR–NC–481B.

Federal Bldg.—Post Office
226 Carthage Street
Sanford Co: Lee NC 27330–
Landholding Agency: GSA
Property Number: 549440013
Status: Excess
Comment: 5195 sq. ft., 2 story brick frame, water damage in basement, existing lease for 88% of building, most recent use—office/storage.
GSA Number: 4–G–NC–713.

Ohio

Zanesville Federal Building
65 North Fifth Street
Zanesville Co: Muskingum OH
Landholding Agency: GSA
Property Number: 549520018
Status: Excess
Comment: 18750 sq. ft., most recent use—office, possible asbestos, eligible for listing on the Natl Register of Historic Places.
GSA Number: 2–G–OH–781A.

Pennsylvania

Tract 302B
Grays Landing Lock & Dam Project
Old Glassworks Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 319430017
Status: Unutilized
Comment: 502 sq. ft., 2-story, needs repair, most recent use—beauty shop/residence, if used for habitation must be flood proofed or removed off-site.

Tract 314
Grays Landing Lock & Dam Project
Old Glassworks Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 319430018
Status: Unutilized
Comment: 1864 sq. ft., 2-story, brick structure needs repair, most recent use—residential, if used for habitation must be floodproofed or removed off-site.

Tract 353
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 319430019
Status: Unutilized
Comment: 812 sq. ft., 2-story, log structure needs repair, most recent use—residential, if used for habitation must be flood proofed or removed off-site.

Tract 402
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 319430020
Status: Unutilized
Comment: 728 sq. ft., 2-story, needs repair, most recent use—residential/parsonage, if used for habitation must be flood proofed or removed off-site.

Tract 403A
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 319430021
Status: Unutilized
Comment: 620 sq. ft., 2-story, needs repair, most recent use—residential, if used for habitation must be flood proofed or removed off-site.

Tract 403B
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 319430022
Status: Unutilized
Comment: 1600 sq. ft., 2-story, brick structure, needs repair, most recent use—residential, if used for habitation must be flood proofed or removed off-site.

Tract 403C
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 319430023
Status: Unutilized
Comment: 672 sq. ft., 2-story carriage house/stable barn type structure, needs repair, most recent use—storage/garage, if used for habitation must be flood proofed or removed.

Tract 434
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 319430024
Status: Unutilized
Comment: 1059 sq. ft., 2-story, wood frame, 2 apt. units, historic property, if used for habitation must be flood proofed or removed off-site.

Tract 440
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 319430025
Status: Unutilized
Comment: 1000 sq. ft., 2-story, asbestos shingle siding, most recent use—residential, if used for habitation must be flood proofed or removed off-site.

Tract 224
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 319440001
Status: Unutilized
Comment: 1040 sq. ft., 2-story bldg., needs repair, historic struct., flowage easement, if habitation is desired property will be required to be flood proofed or removed off-site.

Tract 301
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 319440002
Status: Excess
Comment: 1330 sq. ft., 2-story brick bldg., needs repair, historic struct., flowage easement, if habitation is desired the property will be required to be flood proofed or removed.

Tract 408E
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 319440003
Status: Excess
Comment: 1187 sq. ft., 2-story brick bldg., historic structure, flowage easement.

Storage & Maint. Facility
1200 Airport Road
Hopewell Co: Beaver PA 15001–
Landholdng Agency: GSA
Property Number: 549330004
Comment: 44157 sq. ft., 1-story concrete block bldg. (inadequate heating) and 19 acres of land, easements for pipelines and public utilities.
GSA Number: 4–L–PA–766.

Tennessee

Transient Quarters
Dale Hollow Lake and Dam Project
Dale Hollow Resource Mgr Office, Rt 1, Box 64
Celina Co: Clay TN 38551–
Landholding Agency: COE
Property Number: 319140005
Status: Unutilized
Comment: 1400 sq. ft., concrete block, possible security restrictions, subject to existing easements.

Federal Building-Post Office
Liberty and Main Streets
Jacksboro Co: Campbell TN 37757–
Landholding Agency: GSA
Property Number: 549520006
Status: Excess

Comment: 3,967 sq. ft., 2 story, brick, steel frame; presence of asbestos; most recent use—office space/storage.
GSA Number: 4–G–TN–639.

Federal Bldg.—Post Office
Main Street and Maiden Lane
Wartburg TN 37887–
Landholding Agency: GSA
Property Number: 549520008
Status: Excess
Comment: 7,603 sq. ft., 1 story, brick structure; most recent use—post office and office space for federal tenants.
GSA Number: 4–G–TN–640.

Virginia

Bristol U.S. Army Reserve Ctr.
100 Piedmont Avenue
Bristol Co: Washington VA 24201–
Landholding Agency: GSA
Property Number: 219440317
Status: Excess
Comment: 13,460 sq. ft., 2-story plus basement, brick structure, presence of asbestos, needs some rehab. (Property was published incorrectly on 10/13/95).
GSA Number: 4–D–VA–711.

Washington

Hanford Site, 3000 Area
1st Street
Richland Co: Benton WA 99352–
Location: ¼ mile east of Stevens Drive
Landholding Agency: GSA
Property Number: 549540007
Status: Excess
Comment: 16 bldgs. on 70 acres, buildings are concrete block/asbestos siding/wood frame, used for offices/storage, 122,931 sq. ft. total site, pres. of asbestos, Bldg. 1154 on Natl. Register.
GSA Number: 10–B–WA–523–B.

Wisconsin

Former Lockmaster's Dwelling
DePere Lock
100 James Street
DePere Co: Brown WI 54115–
Landholding Agency: COE
Property Number: 319011526
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; needs rehab; secured area with alternate access.

Wyoming

Ranger Dwelling #1
205 Spring Street
Cokeville Co: Lincoln WY 83114–
Landholding Agency: GSA
Property Number: 549520015
Status: Excess
Comment: 1652 sq. ft., brick residence.
GSA Number: 7–A–WY–535.

Old Kelley House
Ranger Dwelling #2, 410 Pine Street
Cokeville Co: Lincoln WY 83114–
Landholding Agency: GSA
Property Number: 549520016
Status: Excess
Comment: 2480 sq. ft., log and wood frame home, needs rehab.
GSA Number: 7–A–WY–535–A.

Land (by State)

California

Receiver Site
Dixon Relay Station
7514 Radio Station Road
Dixon CA 95620–9653
Location: Approximately .16 miles southeast of Dixon, CA.
Landholding Agency: GSA
Property Number: 549010042
Status: Surplus
Comment: 80 acres, 1560 sq. ft. radio receiver bldg. on site, subject to grazing lease, limited utilities.
GSA Number: 9–2–CA–1162–A.

Receiver Site
Delano Relay Station
Route 1, Box 1350
Delano Co: Tulare CA 93215–
Location: 5 miles west of Pixley, 17 miles north of Delano.
Landholding Agency: GSA
Property Number: 549010044
Status: Surplus
Comment: 81 acres, 1560 sq. ft. radio receiver bldg. on site, subject to grazing lease, potential utilities, environmental restrictions.
GSA Number: 9–2–CA–1308.

Florida

Jacksonville Com. Annex
U.S. Highway 17
Orange Park Co: Clay FL 32073–
Landholding Agency: GSA
Property Number: 549520013
Status: Excess
Comment: 5.35 fee acres, bldgs. gutted, road easement.
GSA Number: 4–D–FL–780.

Illinois

Lake Shelbyville
Shelbyville Co: Shelby & Moultr IL 62565–9804
Landholding Agency: COE
Property Number: 319240004
Status: Unutilized
Comment: 5 parcels of land equalling 0.70 acres, improved w/4 small equipment storage bldgs. and a small access road, easement restrictions.

Indiana

Portion of Tract 1219
Salamonie Lake, SR 9
Huntington Co: Huntington IN 46750–
Landholding Agency: COE
Property Number: 319310002
Status: Unutilized
Comment: 0.88 acre, potential utilities.

Portion of Tract No. 1220
Salamonie Lake, SR 9
Huntington Co: Huntington IN 46750–
Landholding Agency: COE
Property Number: 319310003
Status: Unutilized
Comment: 0.30 acre, potential utilities.

Portion of Tract No. 1207
Salamonie Lake, SR 9
Huntington Co: Huntington IN 46750–
Landholding Agency: COE
Property Number: 319310004
Status: Unutilized
Comment: 0.28 acre, potential utilities.

Kentucky

Carr Fork Lake
5 miles SE of Hindman, Ky., Hwy. 60
Hindman Co: Knott KY
Landholding Agency: COE
Property Number: 319240003
Status: Unutilized
Comment: 2.81 acres, most recent use—drainage area for bank stabilization for adjacent cemetary.

Missouri

FAA VORTAC Swiss Site Co: Gasconade MO 65041–
Landholding Agency: GSA
Property Number: 549530001
Status: Excess
Comment: 26.5 acres, potential utilities.
GSA Number: 7–W–MO–627.

Nebraska

Farm Site
Mead Co: Saunders NE 68041–
Location: ⅛ mi north of the intersection of US Hwy 77 & St Hwy 92
Landholding Agency: GSA
Property Number: 549520017
Status: Excess
Comment: 11.35 acres, periodic flooding, sewage disposal, ''limited access highway''.
GSA Number: 7–C–NE–518.

Ohio

Middleport Public Access Site
Robert C. Byrd Locks & Dam
Middleport Co: Meigs OH 45760–
Landholding Agency: COE
Property Number: 319230001
Status: Underutilized
Comment: Approximately 17.23 acres including parking lot, flowage easement, right-of-way for city street and utilities.
GSA Number: 2–D–OH–793.

Pennsylvania

East Branch Clarion River Lake
Wilcox Co: Elk PA
Location: Free camping area on the right bank off entrance roadway.
Landholding Agency: COE
Property Number: 319011012
Status: Underutilized
Comment: 1 acre; most recent use—free campground.

Dashields Locks and Dam (Glenwillard, PA)
Crescent Twp. Co: Allegheny PA 15046–0475
Landholding Agency: COE
Property Number: 319210009
Status: Unutilized
Comment: 0.58 acres, most recent use—baseball field.

Texas

Part of Tract 340
Joe Pool Lake Co: Dallas TX
Landholding Agency: COE
Property Number: 319010400
Status: Unutilized
Comment: 1 acre; future use—recreation.

Washington

Portion of Tract 905
Lower Monumental Lock & Dam ½ mi SE of Lyons Ferry Marina Co: Whitman WA
Landholding Agency: COE
Property Number: 319320005
Status: Excess
Comment: 3.788 acres with encroaching private well.

Former Stadium Homes site
1701 28th Avenue, South

Seattle Co: King WA 98144–
Landholding Agency: GSA
Property Number: 549410005
Status: Excess
Comment: 1.46 acres; most recent use—highway equipment storage; potential for city utility services; land slopes.
GSA Number: 9–GR(1)–WA–543.

Sandpoint Control Tower
Near 7600 Sandpoint Way, NE
Seattle Co: King WA 98115–
Landholding Agency: GSA
Property Number: 549440003
Status: Excess
Comment: 11.3 acres, w/deteriorated bldg. and parking lot.
GSA Number: 9–C–WA–1069.

Suitable/To Be Excessed

Buildings (by State)

Michigan

Former C. G. Lightkeeper Sta.
Little Rapids Channel Project
St. Marys River
Sault Ste. Marie Co: Chippewa MI 49783–
Location: 3 miles east of downtown Sault Ste. Marie.
Landholding Agency: COE
Property Number: 319011573
Status: Excess
Comment: 1411 sq. ft.; 2 story; wood frame on .62 acres; needs rehab; secured area with alternate access.

Land (by State)

Georgia

Lake Sidney Lanier Co: Forsyth GA 30130–
Location: Located on Two Mile Creek adj. to State Route 369
Landholding Agency: COE
Property Number: 319440010
Status: Unutilized
Comment: 0.25 acres, endangered plant species.

Lake Sidney Lanier-3 parcels
Gainesville Co: Hall GA 30503–
Location: Between Gainesville H.S. and State Route 53 By-Pass
Landholding Agency: COE
Property Number: 319440011
Status: Unutilized
Comment: 3 parcels totalling 5.17 acres, most recent use—buffer zone, endangered plant species.

Indiana

Brookville Lake—Land
Liberty Co: Union IN 47353–
Landholding Agency: COE
Property Number: 319440009
Status: Unutilized
Comment: 6.91 acres, limited utilities.

Kansas

Parcel #1
Fall River Lake
Section 26 Co: Greenwood KS
Landholding Agency: COE
Property Number: 319010065
Status: Unutilized
Comment: 155 acres; most recent use—recreation and leased cottage sites.

Parcel No. 2, El Dorado Lake
Approx. 1 mi east of the town of El Dorado Co: Butler KS
Landholding Agency: COE
Property Number: 319210005
Status: Unutilized
Comment: 11 acres, part of a relocated railroad bed, rural area.

Massachusetts

Buffumville Dam
Flood Control Project
Gale Road
Carlton Co: Worcester MA 01540–0155
Location: Portion of tracts B–200, B–248, B251, B–204, B–247, B–200 and B–256
Landholding Agency: COE
Property Number: 319010016
Status: Excess
Comment: 1.45 acres.

Minnesota

Tract #3
Lac Qui Parle Flood Control Project
County Rd. 13
Watson Co: Lac Qui Parle MN 56295–
Landholding Agency: COE
Property Number: 319340006
Status: Unutilized
Comment: Approximately 2.9 acres, fallow land.

Tract #34
Lac Qui Parle Flood Control Project
Marsh Lake
Watson Co: Lac Qui Parle MN 56295–
Landholding Agency: COE
Property Number: 319340007
Status: Unutilized
Comment: Approx. 8 acres, fallow land.

Tennessee

Tract D–456
Cheatham Lock and Dam
Ashland Co: Cheatham TN 37015–
Location: Right downstream bank of Sycamore Creek.
Landholding Agency: COE
Property Number: 319010942
Status: Excess
Comment: 8.93 acres; subject to existing easements.

Texas

Tract J–957
Whitney Lake
Bosque Co: Bosque TX
Location: Via Avenue B within the community of Kopperi.
Landholding Agency: COE
Property Number: 319110029
Status: Unutilized
Comment: 1.368 acres; potential utilities; encroachments on large portion of property.

Tract J–936
Portion of Whitney Lake Proj.
Bosque Co: Bosque TX
Location: Off F. M. Highway 56 within the community of Kopperl.
Landholding Agency: COE
Property Number: 319110032
Status: Unutilized
Comment: 5.661 acres; potential utilities.
GSA Number: 7–D–TX–0505M.

Corpus Christi Ship Channel
Corpus Christi Co: Neuces TX
Location: East side of Carbon Plant Road, approx. 14 miles NW of downtown Corpus Christi
Landholding Agency: COE
Property Number: 319240001
Status: Unutilized
Comment: 4.4 acres, most recent use—farm land.

Unsuitable Properties

Buildings (by State)

Alaska

USCG MSD Office (2 buildings)
2958 Tongass Avenue
Ketchikan Co: Ketchikan AK 99901–
Landholding Agency: GSA
Property Number: 879130004
Status: Excess
Reason: Extensive deterioration.

California

Former Naval Research Bldg.
Pasadena Co: Los Angeles CA 91106–
Landholding Agency: GSA
Property Number: 549430001
Status: Excess
Reason: Extensive deterioration.
GSA Number: 9–N–CA–1304A.

NW Seal Rock & Lighthouse
St. George Reef Co: Del Norte CA
Landholding Agency: GSA
Property Number: 549430012
Status: Excess
Reason: Other
Comment: Inaccessible.
GSA Number: 9–U–CA–556B.

Naval Indust. Rsve. Ord. Plant
Pomona Co: Los Angeles CA 91769–2426
Landholding Agency: GSA
Property Number: 549520019
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material.
GSA Number: 9–N–CA–734B

Cape Mendocino Lighthouse
Capetown Co: Humboldt CA
Landholding Agency: GSA
Property Number: 549540004
Status: Excess
Reason: Other; Secured Area
Comment: Structural deficiencies.
GSA Number: 9–U–CA–622–B.

Indiana

Brookville Lake-Bldg.
Brownsville Rd. in Union
Liberty Co: Union IN 47353–
Landholding Agency: COE
Property Number: 319440004
Status: Excess
Reason: Extensive deterioration.

Iowa

House, Tract 100
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 319530002
Status: Excess
Reason: Extensive deterioration.

Play House, Tract 100
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 319530003
Status: Excess
Reason: Extensive deterioration.

House, Tract 122
Camp Dodge

Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 319530004
Status: Excess
Reason: Extensive deterioration.

Shed, Tract 122
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 319530005
Status: Excess
Reason: Extensive deterioration.

Garage, Tract 122
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 319530006
Status: Excess
Reason: Extensive deterioration.

Machine Shed, Tract 122
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 319530007
Status: Excess
Reason: Extensive deterioration.

Barn, Tract 122
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 319530008
Status: Excess
Reason: Extensive deterioration.

2-Car Garage, Tract 122
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 319530009
Status: Excess
Reason: Extensive deterioration.

Barn, Tract 128
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 319530010
Status: Excess
Reason: Extensive deterioration.

Shed, Tract 128
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 319530011
Status: Excess
Reason: Extensive deterioration.

House, Tract 129
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 319530012
Status: Excess
Reason: Extensive deterioration.

Play House, Tract 129
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 319530013
Status: Excess
Reason: Extensive deterioration.

Kennel, Tract 129
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 319530014
Status: Excess
Reason: Extensive deterioration.

Corn Crib, Tract 129
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 319530015
Status: Excess
Reason: Extensive deterioration.

Barn W, Tract 129
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 319530016
Status: Excess
Reason: Extensive deterioration.

Barn E, Tract 129
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 319530017
Status: Excess
Reason: Extensive deterioration.

Shed, Tract 129
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 319530018
Status: Excess
Reason: Extensive deterioration.

House, Tract 130
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 319530019
Status: Excess
Reason: Extensive deterioration.

Out House, Tract 130
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 319530020
Status: Excess
Reason: Extensive deterioration.

Chicken House, Tract 130
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 319530021
Status: Excess
Reason: Extensive deterioration.

Shed, Tract 1130
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 319530022
Status: Excess
Reason: Extensive deterioration.

Barn, Tract 135
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 319530023
Status: Excess
Reason: Extensive deterioration.

Smokehouse, Tract 135
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 319530024
Status: Excess
Reason: Extensive deterioration.

Shed, Tract 137
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 319530025
Status: Excess
Reason: Extensive deterioration.

Shed—White, Tract 137
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 319530026
Status: Excess
Reason: Extensive deterioration.

Leanto, Tract 137
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 319530027
Status: Excess
Reason: Extensive deterioration.

Grain Bins (8), Tract 138
Camp Dodge
Johnston Co: Polk IA 50131–
Landholding Agency: COE
Property Number: 319530028
Status: Excess
Reason: Extensive deterioration.

Kansas

Pole Barn, Tract 200
Benedictine Bottoms Mitigation Site Co: Atchison KS
Landholding Agency: COE
Property Number: 319530029
Status: Unutilized
Reason: Extensive deterioration.

3 Metal Pole Barns, Tract 203
Benedictine Bottoms Mitigation Site Co: Atchison KS
Landholding Agency: COE
Property Number: 319530030
Status: Unutilized
Reason: Extensive deterioration.

Granaries, Tract 203
Benedictine Bottoms Mitigation Site Co: Atchison KS
Landholding Agency: COE
Property Number: 319530031
Status: Unutilized
Reason: Extensive deterioration.

Kentucky

Spring House
Kentucky River Lock and Dam No. 1
Highway 320
Carrollton Co: Carroll KY 41008–
Landholding Agency: COE
Property Number: 219040416
Status: Unutilized
Reason: Other
Comment: Spring House.

Building
Kentucky River Lock and Dam No. 4
1021 Kentucky Avenue
Frankfort Co: Franklin KY 40601–9999
Landholding Agency: COE
Property Number: 219040417
Status: Unutilized
Reason: Other
Comment: Coal Storage.

Building
Kentucky River Lock and Dam No. 4
1021 Kentucky Avenue
Frankfort Co: Franklin KY 40601–9999
Landholding Agency: COE
Property Number: 219040418
Status: Unutilized

Reason: Other
Comment: Coal Storage.

Barn
Kentucky River Lock and Dam No. 3
Highway 561
Pleasureville Co: Henry KY 40057–
Landholding Agency: COE
Property Number: 219040419
Status: Underutilized
Reason: Other
Comment: 110 year old barn with crumbled foundation.

Latrine
Kentucky River Lock and Dam No. 3
Highway 561
Pleasureville Co: Henry KY 40057–
Landholding Agency: COE
Property Number: 319040009
Status: Unutilized
Reason: Other
Comment: Detached Latrine.

6-Room Dwelling
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273–
Location: Off State Hwy 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 319120010
Status: Unutilized
Reason: Floodway.

2-Car Garage
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273–
Location: Off State Hwy 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 319120011
Status: Unutilized
Reason: Floodway.

Office and Warehouse
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273–
Location: Off State Hwy 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 319120012
Status: Unutilized
Reason: Floodway.

2 Pit Toilets
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273–
Landholding Agency: COE
Property Number: 319120013
Status: Unutilized
Reason: Floodway.

Maine

Bldg. 487
Bangor International Airport
Bangor Co; Penobscot ME 04401–
Landholding Agency: GSA
Property Number: 549530006
Status: Excess
Reason: Within airport runway clear zone
GSA Number: 5700–26051.

Minnesota

Naval Weapons Industrial
Reserve Plant
1902 West Minnehaha
St. Paul Co: Ramsey MN
Landholding Agency: GSA
Property Number: 549410004
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material.
GSA Number: 2–N–MN–559.

Missouri

Tract 2222
Stockton Project
Aldrich Co: Polk MO 65601–
Landholding Agency: COE
Property Number: 319510001
Status: Excess
Reason: Extensive deterioration.

Montana

Sioux Pass Radio Relay Tower
17 Miles South of Culbertson Co: Richland MT 57212–
Landholding Agency: GSA
Property Number: 549320012
Status: Excess
Reason: Other.
Comment: No public access.
GSA Number: 7–F–MT–594.

Nebraska

Storage Bldg.
Omaha District Svc Base
Omaha Co: Douglas NE 68112–
Landholding Agency: COE
Property Number: 319530032
Status: Excess
Reason: Extensive deterioration.

New York

Naval Indus. Rsv. Ordance Pl.
121 Lincoln Avenue
Rochester Co: Monroe NY 14611–
Landholding Agency: GSA
Property Number: 549430011
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material.
GSA Number: TENT–2–N–NY–592.

Point AuRoche Light
Beekmantown Co: Clinton NY 12901–
Landholding Agency: GSA
Property Number: 879420002
Status: Excess
Reason: Floodway, Extensive deterioration.
GSA Number: 2–4–NY–817.

Ohio

Lab
Ohio River Division Laboratories
Mariemont Co: Hamilton OH 15227–4217
Landholding Agency: COE
Property Number: 319510002
Status: Unutilized
Reason: Secured Area.

Storage Facility
Ohio River Division Laboratories
Mariemont Co: Hamilton OH 15227–4217
Landholding Agency: COE
Property Number: 319510003
Status: Unutilized
Reason: Secured Area.

Office Building
Ohio River Division Laboratories
Mariemont Co: Hamilton OH 15227–4217
Landholding Agency: COE
Property Number: 319510004
Status: Unutilized
Reason: Secured Area.

Tennessee

Bldg. 204
Cordell Hull Lake and Dam Project
Defeated Creek Recreation Area
Carthage Co: Smith TN 37030–
Location: US Highway 85
Landholding Agency: COE
Property Number: 319011499
Status: Unutilized
Reason: Floodway.

Tract 2618 (Portion)
Cordell Hull Lake and Dam Project
Roaring River Recreation Area
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 135
Landholding Agency: COE
Property Number: 319011503
Status: Underutilized
Reason: Floodway.

Water Treatment Plant
Dale Hollow Lake & Dam Project
Obey River Park, State Hwy 42
Livingston Co: Clay TN 38351–
Landholding Agency: COE
Property Number: 319140011
Status: Excess
Reason: Other.
Comment: Water treatment plant.

Water Treatment Plant
Dale Hollow Lake & Dam Project
Lillydale Recreation Area, State Hwy 53
Livingston Co: Clay TN 38351–
Landholding Agency: COE
Property Number: 319140012
Status: Excess
Reason: Other.
Comment: Water treatment plant.

Water Treatment Plant
Dale Hollow Lake & Dam Project
Willow Grove Recreation Area, State Hwy 53
Livingston Co: Clay TN 38351–
Landholding Agency: COE
Property Number: 319140013
Status: Excess
Reason: Other.
Comment: Water treatment plant.

Virginia

Tidewater Agriculture Station
6321 Holland Road
Suffolk VA 23437–
Landholding Agency: GSA
Property Number: 549540002
Status: Excess
Reason: Other.
Comment: No legal access.
GSA Number: 4–A–VA–709.

Washington

Portion—Former Sage Complex
Moses Lake Co: Grant WA 98837–
Landholding Agency: GSA
Property Number: 549530007
Status: Underutilized
Reason: Secured Area.
GSA Number: 9–G–WA–513M.

Land (by State)

California

Central Valley Project
San Luis Drain
Tracy Co: San Joaquin CA 95376–
Landholding Agency: GSA
Property Number: 549230003
Status: Excess
Reason: Other.
Comment: Landlocked.
GSA Number: 9–I–CA–1325.

Parcel B
Santa Rosa Co: Sonoma CA
Landholding Agency: GSA
Property Number: 5499310016

Status: Excess
Reason: Other.
Comment: Sewage Treatment Plant.
GSA Number: 9–G–CA–580C.

Portion of Lot 7
Former State of California Land/Stockpile
Yreka Co: Siskiyou CA
Landholding Agency: GSA
Property Number: 549330006
Status: Excess
Reason: Other.
Comment: Inaccessible.
GSA Number: 9–G–CA–956A.

Indiana

Portion of Tract No. 1224
Salamonie Lake
Huntington Co: Huntington IN 46750–
Landholding Agency: COE
Property Number: 319310001
Status: Unutilized
Reason: Other.
Comment: Landlocked.

Kentucky

Tract 4626
Barkley, Lake, Kentucky and Tennessee
Donaldson Creek Launching Area
Cadiz Co: Trigg KY 42211–
Location: 14 miles from US Highway 68.
Landholding Agency: COE
Property Number: 319010030
Status: Underutilized
Reason: Floodway.

Tract AA–2747
Wolf Creek Dam and Lake Cumberland
US HWY. 27 to Blue John Road
Burnside Co: Pulaski KY 42519–
Landholding Agency: COE
Property Number: 319010038
Status: Underutilized
Reason: Floodway.

Tract AA–2726
Wolf Creek Dam and Lake Cumberland
KY HWY. 80 to Route 769
Burnside Co: Pulaski KY 42519–
Landholding Agency: COE
Property Number: 319010039
Status: Underutilized
Reason: Floodway.

Tract 1358
Barkley Lake, Kentucky and Tennessee
Eddyville Recreation Area
Eddyville Co: Lyon KY 42038–
Location: US Highway 62 to state highway 93.
Landholding Agency: COE
Property Number: 319010043
Status: Excess
Reason: Floodway.

Red River Lake Project
Stanton Co: Powell KY 40380–
Location: Exit Mr. Parkway at the Stanton and Slade Interchange, then take SR Hand 15 north to SR 613.
Landholding Agency: COE
Property Number: 319011684
Status: Unutilized
Reason: Floodway.

Barren River Lock & Dam No. 1
Richardsville Co: Warren KY 42270–
Landholding Agency: COE
Property Number: 319120008
Status: Unutilized
Reason: Floodway.

Green River Lock & Dam No. 3
Rochester Co: Butler KY 42273–
Location: Off State Hwy. 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 319120009
Status: Unutilized
Reason: Floodway.

Green River Lock & Dam No. 4
Woodbury Co: Butler KY 42288–
Location: Off State Hwy. 403, which is off State Hwy 231
Landholding Agency: COE
Property Number: 319120014
Status: Underutilized
Reason: Floodway.

Green River Lock & Dam No. 5
Readville Co: Butler KY 42275–
Location: Off State Hwy. 185.
Landholding Agency: COE
Property Number: 319120015
Status: Unutilized
Reason: Floodway.

Green River Lock & Dam No. 6
Brownsville Co: Edmondson KY 42210–
Location: Off State Hwy. 259
Landholding Agency: COE
Property Number: 319120016
Status: Underutilized
Reason: Floodway.

Vacant land west of locksite
Greenup Locks and Dam
5121 New Dam Road
Rural Co: Greenup KY 41144–
Landholding Agency: COE
Property Number: 319120017
Status: Unutilized
Reason: Floodway.

Tract 6404, Cave Run Lake
U.S. Hwy 460
Index Co: Morgan KY
Landholding Agency: COE
Property Number: 319240005
Status: Underutilized
Reason: Floodway.

Tract 6803, Cave Run Lake
State Road 1161
Pomp Co: Morgan KY
Landholding Agency: COE
Property Number: 319240006
Status: Underutilized
Reason: Floodway.

Maryland

Tract 131R
Youghiogheny River Lake, Rt. 2, Box 100
Friendsville Co: Garrett MD
Landholding Agency: COE
Property Number: 319240007
Status: Underutilized
Reason: Floodway.

Minnesota

Parcel G
Pine River
Cross Lake Co: Crow Wing MN 56442–
Location: 3 miles from city of Cross Lake between highways 6 and 371.
Landholding Agency: COE
Property Number: 319011037
Status: Excess
Reason: Other.
Comment: Highway right of way.

Mississippi

Parcel 1
Grenada Lake
Section 20
Grenada Co: Grenada MS 38901–0903
Landholding Agency: COE
Property Number: 319011018
Status: Underutilized
Reason: Within airport runway clear zone.

Missouri

Ditch 19, Item 2, Tract No. 230
St. Francis Basin Project
2½ miles west of Malden Co: Dunklin MO
Landholding Agency: COE
Property Number: 319130001
Status: Unutilized
Reason: Floodway.

Confluence Levee (32B)
Missouri & Osage Rivers Co: Cole & Osage MO
Landholding Agency: COE
Property Number: 319430001
Status: Unutilized
Reason: Floodway.

86 Tracts—Lake Proj. Lands
Harry S. Truman Dam Co: Henry, St. Clai MO
Landholding Agency: GSA
Property Number: 549540010
Status: Excess
Reason: Floodway.
GSA Number: 7D–MO–607F.

Montana

Sherryl Tap Point Site
3 miles south of Drummond, MT Co: Granite MT
Landholding Agency: GSA
Property Number: 549240006
Status: Excess
Reason: Other.
Comment: Inaccessible.
GSA Number: 7–B–MT–0598.

North Dakota

Tracts 1 & 2
Garrison Dam
Lake Sakakawea
Williston Co: Williams ND 58801–
Landholding Agency: COE
Property Number: 319410015
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material; Floodway.

Ohio

Mosquito Creek Lake
Everett Hull Road Boat Launch
Cortland Co: Trumbull OH 44410–9321
Landholding Agency: COE
Property Number: 319440007
Status: Underutilized
Reason: Floodway.

Mosquito Creek Lake
Housel—Craft Rd., Boat Launch
Cortland Co: Trumbull OH 44410–9321
Landholding Agency: COE
Property Number: 319440008
Status: Underutilized
Reason: Floodway.

Lewis Research Center
Cedar Point Road
Cleveland Co: Cuyahoga OH 44135–
Landholding Agency: GSA
Property Number: 549610007
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material; Within airport runway clear zone.
GSA Number: 2–Z–OH–598–I.

Pennsylvania

Lock and Dam #7
Monongahela River
Greensboro Co: Greene PA
Location: Left hand side of entrance roadway to project.
Landholding Agency: COE
Property Number: 319011564
Status: Unutilized
Reason: Floodway.

Lock and Dam #3
Monongahela River
Elizabeth Co: Allegheny PA 15037–0455
Landholding Agency: COE
Property Number: 319240014
Status: Unutilized
Reason: Floodway.

Puerto Rico

Flamenco Point
Island of Culebra PR
Landholding Agency: GSA
Property Number: 549530003
Status: Excess
Reason: Other.
Comment: No Public Access.
GSA Number: 1–N–PR–482.

South Carolina

Land—2.66 acres
Port Royal Co: Beaufort SC 29902–6148
Landholding Agency: GSA
Property Number: 549240009
Status: Excess
Reason: Floodway.
GSA Number: 4–N–SC–0489A.

Tennessee

Brooks Bend
Cordell Hull Dam and Reservoir
Highway 85 to Brooks Bend Road
Gainesboro Co: Jackson TN 38562–
Location: Tracts 800, 802–806, 835–837, 900–902, 1000–1003, 1025
Landholding Agency: COE
Property Number: 219040413
Status: Underutilized
Reason: Floodway.

Cheatham Lock and Dam
Highway 12
Ashland City Co: Cheatham TN 37015–
Location: Tracts E–513, E–512–1 and E–512–2
Landholding Agency: COE
Property Number: 219040415
Status: Underutilized
Reason: Floodway.

Tract 6737
Blue Creek Recreation Area
Barkley Lake, Kentucky and Tennessee
Dover Co: Stewart TN 37058–
Location: U.S. Highway 79/TN Highway 761
Landholding Agency: COE
Property Number: 319011478
Status: Underutilized
Reason: Floodway.

Tracts 3102, 3105, and 3106
Brimstone Launching Area
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562–
Location: Big Bottom Road
Landholding Agency: COE
Property Number: 319011479
Status: Excess
Reason: Floodway.

Tract 3507
Proctor Site
Cordell Hull Lake and Dam Project
Celina Co: Clay TN 38551–
Location: TN Highway 52
Landholding Agency: COE
Property Number: 319011480
Status: Unutilized
Reason: Floodway.

Tract 3721
Obey
Cordell Hull Lake and Dam Project
Celina Co: Clay TN 38551–
Location: TN Highway 53
Landholding Agency: COE
Property Number: 319011481
Status: Unutilized
Reason: Floodway.

Tracts 608, 609, 611 and 612
Sullivan Bend Launching Area
Cordell Hull Lake and Dam Project
Carthage Co: Smith TN 37030–
Location: Sullivan Bend Road
Landholding Agency: COE
Property Number: 319011482
Status: Underutilized
Reason: Floodway.

Tract 920
Indian Creek Camping Area
Cordell Hull Lake and Dam Project
Granville Co: Smith TN 38564–
Location: TN Highway 53
Landholding Agency: COE
Property Number: 319011483
Status: Underutilized
Reason: Floodway.

Tracts 1710, 1718 and 1703
Flynns Lick Launching Ramp
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562–
Location: Whites Bend Road
Landholding Agency: COE
Property Number: 319011484
Status: Underutilized
Reason: Floodway.

Tract 1810
Wartrace Creek Launching Ramp
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38551–
Location: TN Highway 85
Landholding Agency: COE
Property Number: 319011485
Status: Underutilized
Reason: Floodway.

Tract 2524
Jennings Creek
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 85
Landholding Agency: COE
Property Number: 319011486
Status: Unutilized
Reason: Floodway.

Tracts 2905 and 2907
Webster
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38551–
Location: Big Bottom Road
Landholding Agency: COE
Property Number: 319011487
Status: Unutilized
Reason: Floodway.

Tracts 2200 and 2201
Gainesboro Airport
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562–
Location: Big Bottom Road
Landholding Agency: COE
Property Number: 319011488
Status: Underutilized
Reason: Within airport runway clear zone; Floodway.

Tracts 710C and 712C
Sullivan Island
Cordell Hull Lake and Dam Project
Carthage Co: Smith TN 37030–
Location: Sullivan Bend Road
Landholding Agency: COE
Property Number: 319011489
Status: Unutilized
Reason: Floodway.

Tract 2403, Hensely Creek
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 85
Landholding Agency: COE
Property Number: 319011490
Status: Unutilized
Reason: Floodway.

Tracts 2117C, 2118 and 2120
Cordell Hull Lake and Dam Project
Trace Creek
Gainesboro Co: Jackson TN 38562–
Location: Brooks Ferry Road
Landholding Agency: COE
Property Number: 319011491
Status: Unutilized
Reason: Floodway.

Tracts 424, 425 and 426
Cordell Hull Lake and Dam Project
Stone Bridge
Carthage Co: Smith TN 37030–
Location: Sullivan Bend Road
Landholding Agency: COE
Property Number: 319011492
Status: Unutilized
Reason: Floodway.

Tract 517
J. Percy Priest Dam and Reservoir
Suggs Creek Embayment
Nashville Co: Davidson TN 37214–
Location: Interstate 40 to S. Mount Juliet Road.
Landholding Agency: COE
Property Number: 319011493
Status: Underutilized
Reason: Floodway.

Tract 1811
West Fork Launching Area
Smyrna Co: Rutherford TN 37167–
Location: Florence Road near Enon Springs Road
Landholding Agency: COE
Property Number: 319011494
Status: Underutilized
Reason: Floodway.

Tract 1504
J. Perry Priest Dam and Reservoir
Lamon Hill Recreation Area
Smyrna Co: Rutherford TN 37167–
Location: Lamon Road
Landholding Agency: COE
Property Number: 319011495
Status: Underutilized
Reason: Floodway.

Tract 1500
J. Perry Priest Dam and Reservoir
Pools Knob Recreation
Smyrna Co: Rutherford TN 37167–

Location: Jones Mill Road
Landholding Agency: COE
Property Number: 319011496
Status: Underutilized
Reason: Floodway.

Tracts 245, 257, and 256
J. Perry Priest Dam and Reservoir
Cook Recreation Area
Nashville Co: Davidson TN 37214–
Location: 2.2 miles south of Interstate 40 near Saunders Ferry Pike
Landholding Agency: COE
Property Number: 319011497
Status: Underutilized
Reason: Floodway.

Tracts 107, 109 and 110
Cordell Hull Lake and Dam Project
Two Prong
Carthage Co: Smith TN 37030–
Location: US Highway 85
Landholding Agency: COE
Property Number: 319011498
Status: Unutilized
Reason: Floodway.

Tracts 2919 and 2929
Cordell Hull Lake and Dam Project
Sugar Creek
Gainesboro Co: Jackson TN 38562–
Location: Sugar Creek Road
Landholding Agency: COE
Property Number: 319011500
Status: Unutilized
Reason: Floodway.

Tracts 1218 and 1204
Cordell Hull Lake and Dam Project
Granville—Alvin Yourk Road
Granville Co: Jackson TN 38564–
Landholding Agency: COE
Property Number: 319011501
Status: Unutilized
Reason: Floodway.

Tract 2100
Cordell Hull Lake and Dam Project
Galbreaths Branch
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 53
Landholding Agency: COE
Property Number: 319011502
Status: Unutilized
Reason: Floodway.

Tract 104 et. al.
Cordell Hull Lake and Dam Project
Horseshoe Bend Launching Area
Carthage Co: Smith TN 37030–
Location: Highway 70 N
Landholding Agency: COE
Property Number: 319011504
Status: Underutilized
Reason: Floodway.

Tracts 510, 511, 513 and 514
J. Percy Priest Dam and Reservoir Project
Lebanon Co: Wilson TN 37087–
Location: Vivrett Creek Launching Area, Alvin Sperry Road
Landholding Agency: COE
Property Number: 319120007
Status: Underutilized
Reason: Floodway.

Tract A–142, Old Hickory Beach
Old Hickory Blvd.
Old Hickory Co: Davison TN 37138–
Landholding Agency: COE
Property Number: 319130008
Status: Underutilized
Reason: Floodway.

Texas

Tracts 104, 105–1, 105–2 & 118
Joe Pool Lake Co: Dallas TX
Landholding Agency: COE
Property Number: 319010397
Status: Underutilized
Reason: Floodway.

Part of Tract 201–3
Joe Pool Lake Co: Dallas TX
Landholding Agency: COE
Property Number: 319010398
Status: Underutilized
Reason: Floodway.

Part of Tract 323
Joe Pool Lake Co: Dallas TX
Landholding Agency: COE
Property Number: 319010399
Status: Underutilized
Reason: Floodway.

Tract 702–3
Granger Lake
Route 1, Box 172
Granger Co: Williamson TX 76530–9801
Landholding Agency: COE
Property Number: 319010401
Status: Unutilized
Reason: Floodway.

Tract 706
Granger Lake
Route 1, Box 172
Granger Co: Williamson TX 76530–9801
Landholding Agency: COE
Property Number: 319010402
Status: Unutilized
Reason: Floodway.

Tract J–936
Portion of Whitney Lake Proj.
Bosque Co: Bosque TX
Location: Off F. M. Highway 56 within the community of Kopperl.
Landholding Agency: GSA
Property Number: 319110032
Status: Excess
Reason: Other.
Comment: No public access.
GSA Number: 7–D–TX–0505M.

Eagle Pass Auxiliary Airfield
10 mi. NW of Eagle Pass Co: Maverick TX 78853–
Landholding Agency: GSA
Property Number: 549520001
Status: Excess
Reason: Within airport runway clear zone.

West Virginia

Ohio River
Pike Island Locks and Dam
Buffalo Creek
Wellsburg Co: Brooke WV
Landholding Agency: COE
Property Number: 319011529
Status: Unutilized
Reason: Floodway.

Morgantown Lock and Dam
Box 3 RD #2
Morgantown Co: Monongahelia WV 26505–
Landholding Agency: COE
Property Number: 319011530
Status: Unutilized
Reason: Floodway.

London Lock and Dam
Route 60 East
Rural Co: Kanawha WV 25126–
Location: 20 miles east of Charleston, W. Virginia
Landholding Agency: COE
Property Number: 319011690
Status: Unutilized
Reason: Other.
Comment: .03 acres; very narrow strip of land located too close to busy highway.

Tract 1118—Matewan Project
Matewan Co: Mingo WV 25678–
Landholding Agency: GSA
Property Number: 549540003
Status: Excess
Reason: Floodway.
GSA Number: 4–D–WV–0524.

[FR Doc. 96–5297 Filed 3–7–96; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Central Utah Project Completion Act; Notice of Intent To Negotiate a Contract Among the Central Utah Water Conservancy District, East Juab County Water Conservancy District, and Department of the Interior for Irrigation Water From the Bonneville Unit of the Central Utah Project, Utah

AGENCY: Office of the Assistant Secretary—Water and Science, Department of the Interior.

ACTION: Notice of intent to negotiate a contract among the Central Utah Water Conservancy District (CUWCD), East Juab County Water Conservancy District (EJCWCD), and Department of the Interior (DOI) for Irrigation Water from the Bonneville Unit of the Central Utah Project.

SUMMARY: Public Law 102–575 Section 202(a)(1)(C) stipulates that: ''Amounts authorized to carry out subparagraph (A) may not be obligated or expended, and may not be borrowed against, until binding contracts for the purchase for the purpose of agricultural irrigation of at least 90 percent of the irrigation water to be delivered from the features of the Central Utah Project described in subparagraph (A) have been executed.'' Subparagraph A relates to construction of the Spanish Fork Canyon/Nephi Irrigation System of the Bonneville Unit, Central Utah Project. A negotiated contract among CUWCD, EJCWCD, and DOI will meet the requirements of Section 202(a)(1)(C).

DATES: Dates for public negotiation sessions will be announced in local newspapers.

FOR FURTHER INFORMATION: Additional information on matters related to this Federal Register notice can be obtained at the address and telephone number set forth below:

Mr. Reed Murray, Program Coordinator, CUP Completion Act Office,

Department of the Interior, 302 East 1860 South, Provo UT 84606–6154, Telephone: (801) 379–1237, Internet: rmurray@uc.usbr.gov

Dated: February 26, 1996.

Ronald Johnston,

CUP Program Director, Department of the Interior.

[FR Doc. 96–5522 Filed 3–7–96; 8:45 am]

BILLING CODE 4310–RK–P

Fish and Wildlife Service

Endangered and Threatened Species Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application.

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.).*

PRT–811679

Applicant: Arthur H. Clarke, Ecosearch, Inc., Portland, Texas.

The applicant requests a permit to take (capture, handle and release) Higgins' eye pearly mussel (*Lampsilis higginsi*) in the East Branch of the Mississippi River at Prairie du Chien, Crawford County, Wisconsin, for enhancement of the species in the wild through scientific study of impacts to populations.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Division of Endangered Species, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review 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, Division of Endangered Species, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612/725–3536 x250); FAX: (612/725–3526).

Dated: February 29, 1996.

John A. Blankenship,

Assistant Regional Director, Ecological Services, Region 3, Fish and Wildlife Service, Fort Snelling, Minnesota.

[FR Doc. 96–5523 Filed 3–7–96; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Indian Affairs

Draft Environmental Impact Statement (DEIS) for the Proposed El Rancho Electric Substation, Santa Fe County, New Mexico

AGENY: Bureau of Indian Affairs, Interior.

ACTION: Notice of availability of DEIS and public comment dates.

SUMMARY: The Draft Environmental Impact Statement (DEIS) is for the proposed approval by the Bureau of Indian Affairs (BIA) of a one acre easement on Indian trust land of the Pueblo of San Ildefonso for the Jemez Mountains Electric Cooperative, Inc. (Cooperative). The parcel is located in the community of El Rancho, Santa Fe County, New Mexico. The Cooperative intends to construct, operate and maintain a 69/kV electric distribution substation and related facilities on the land.

In a related action, the Rural Utilities Service (RUS, Department of Agriculture, is considering the approval of the advance of loan funds for construction of the facilities. The BIA is serving as the lead agency. The RUS is participating as a cooperating agency.

This notice is published pursuant to Sec. 1503.1 of the Council on Environmental Quality Regulations (40 CFR, Parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), the Department of Interior Manual (516 DM 1–6), and the environmental policies and procedures of the RUS; and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

DATES: Written comments must arrive by May 7, 1996, at the address given below. We will consider all comments received during this period in preparing the Final EIS.

ADDRESSES: Send written comments to Mr. Charles Tippeconnic, Bureau of Indian Affairs, Albuquerque Area Office, Branch of Natural Resources, P.O. Box 26567, Albuquerque, New Mexico 87125–6567.

If you would like a copy of this DEIS, please write Mr. Tippeconnic at the above address, or call (505) 766–3374. We have sent copies of the DEIS to all agencies and individuals who previously asked for them.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Tippeconnic at the above address, or at (505) 766–3374.

SUPPLEMENTARY INFORMATION: The Proposed Action would permit the Cooperative to construct a new 69/12.47 kV electric distribution substation and related facilities on 1.0 acre of land. Equipment within the substation would include terminal and switching equipment for the 69 kV transmission line, a 69–12.47 kV, 10,000 kVA power transformer, one regulator bank, four electronic vacuum reclosers, a control house and supports for the bus work and low voltage terminations. The proposed project would also include the construction of a 69 kV transmission line and four underground distribution tie lines.

The action is needed in order to meet the increasing demand for electrical power in the El Rancho service area. Service is now being supplied by a temporary substation, located approximately one and one half miles from the proposed project site. That substation is constantly operating at 100% of its 1500 kVA capacity, which is no longer sufficient to deliver reliable electric power. Moreover, a higher capacity substation is needed in the El Rancho area to serve as a backup source of power for a wider region.

The No Action alternative would deny approval of the easement. This would not necessarily prohibit the Cooperative from upgrading its service, but would certainly result in higher consumer costs. The proposed substation site is optimal for the distribution of power within its load area. The operating costs increase with distance from this central point. Other alternatives to the proposed action include upgrading the existing substation, or constructing a new substation at one of five alternate locations.

The significant issues identified and analyzed in the DEIS include cultural resources, aesthetic qualities, and existing and future land use.

Dated: February 21, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96–5567 Filed 3–7–96; 8:45 am]

BILLING CODE 4310–02–P

Bureau of Land Management

[NV–010–1990–01]

Notice of Availability for the Bootstrap Project Draft Environmental Impact Statement and Notice of Comment Period and Public Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Pursuant to section 102 (2)(C) of the National Environmental Policy Act, 40 CFR 1500–1508 and 43 CFR 3809, notice is given that the Bureau of Land Management has prepared, with the assistance of a third-party consultant, a Draft EIS on Newmont's proposed Bootstrap Project in northeastern Nevada, and has made copies of the document available for public review.

The Draft EIS analyzes the potential environmental impacts that could result from the opening of a new open-pit mine and the reopening of an existing open-pit mine on the northern end of the Carlin Trend in northeastern Nevada.

DATES: Written comments on the Draft EIS will be accepted until close of business on April 29, 1996. A public meeting for oral and written comments is scheduled to be held: March 26, 1996 in Elko, Nevada, at the Bureau of Land Management Office, 3900 E. Idaho St.; 7:00 p.m.

ADDRESSES: Written comments on the Draft EIS should be addressed to: Bureau of Land Management, Elko District Office, Attn: Deb McFarlane, EIS Coordinator, 3900 E. Idaho St., Elko, NV 89801.

The Draft EIS is available for inspection at the following locations: Bureau of Land Management State Office (Reno), Bureau of Land Management Elko District Office, Carson City and Elko County libraries, the University of Nevada libraries in Reno and Las Vegas, and the Great Basin College library in Elko.

FOR FURTHER INFORMATION CONTACT: For additional information, write to the above address or call Deb McFarlane at (702) 753–0200.

SUPPLEMENTARY INFORMATION: Newmont proposes to reopen the Bootstrap open-pit mine and to open the Tara open-pit mine. The two mines and associated facilities would disturb approximately 1,271 acres of land, including 886 acres of public land. Both proposed pits are close enough to existing dewatering operations that no dewatering is required for the project.

A copy of the Draft EIS has been sent to all individuals, agencies, and groups who have expressed interest in the project or as mandated by regulation or policy. A limited number of copies are available upon request from the Bureau of Land Management at the address listed above. Public participation has occurred during the EIS process. A Notice of Intent was filed in the Federal Register in December 1994 and an open scoping period was held for 30 days. Two public scoping meetings to solicit comments and ideas were held in December 1994. All comments presented to the Bureau of Land Management throughout the EIS process have been considered.

Dated: February 28, 1996.

Helen Hankins,

District Manager.

[FR Doc. 96–5601 Filed 3–7–96; 8:45 am]

BILLING CODE 4310–HC–P

[MT–960–1990–00]

Resource Advisory Council Meeting, Butte, Montana

AGENCY: Butte District Office, Bureau of Land Management, Interior.

ACTION: Notice of Butte District Resource Advisory Council meeting, Butte, Montana.

SUMMARY: The Council will convene at 9:00 AM on March 28, 1996, to work on those Grazing Standards and Guidelines which were not completed at the February 29 meeting and any new business the Council may want to discuss. The meeting will be held at the Butte Copper King Inn, 4655 Harrison Avenue, in the Anselmo and Badger rooms. The meeting is of an urgent nature to meet the time frames established to complete the Standards and Guidelines.

The meeting is open to the public and written comments may be given to the Council. Oral comments may be presented to the Council at 3 PM. The time allotted for oral comment may be limited, depending on the number of persons wishing to be heard. Individuals who plan to attend and need further information about the meeting; or need special assistance, such as sign language or other reasonable accommodations, should contact the Butte District, 106 North Parkmont (P.O. Box 3388), Butte, Montana 59702–3388; telephone 406–494–5059.

FOR FURTHER INFORMATION CONTACT: Orval Hadley at the above address or telephone number.

Dated: March 1, 1996.

Michele D. Good,

Acting District Manager.

[FR Doc. 96–5504 Filed 3–7–96; 8:45 am]

BILLING CODE 4310–DN–P

National Park Service

Notice of the Intention to Extend an Existing Concession Contract—Lake Mead National Recreation Area

SUMMARY: Pursuant to the Act of October 9, 1965, (79 Stat. 969; 16 U.S.C. 20 et seq.), notice is hereby given that the National Park Service intends to extend a concession contract at Lake Mead National Recreation Area for a period of three years. This extension is necessary to allow the continuation of public services during the completion period of the planning documents for the Overton Beach site in the park. The current concessioner has performed its obligation to the satisfaction of the Secretary and retains its right of preference under this administrative action of extending the existing contract.

SUPPLEMENTARY INFORMATION: The concession contract at Lake Mead National Recreation Area will expire on December 31, 1996, unless extended. The National Park Service will not renew this contract for an extended period until planning can be conducted to determine the future direction for concession services at Overton Beach site within Lake Mead National Recreation Area. The necessary planning process is expected to begin and will affect the future concession activities. The planning process is expected to take two to three years to complete. Until that planning process is completed, it will not be in the best interest of Lake Mead National Recreation Area to enter into a long term concession contract. For these reasons, it is the intention of the National Park Service to extend the current contract for a period of three years beginning January 1, 1997.

Information regarding this notice can be sought from: Chief, Division of Concession Management, Lake Mead National Recreation Area, 601 Nevada Highway, Boulder City, Nevada 89005, or call: (702) 293–8902, Attention: Ms. Kyra Thibodeau.

Dated: February 27, 1996.

Stephen G. Crabtree,

Acting Field Director, Pacific West Area.

[FR Doc. 96–5452 Filed 3–7–96; 8:45 am]

BILLING CODE 4310–70–P

Trail of Tears National Historic Trail Advisory Council; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act, Public Law 92-463, that a meeting of the Trail of Tears National Historic Trail Advisory Council will be held

April 16, 1996 at 8:15 a.m., at the Riverfront Hilton Inn, at the foot of the Main Street Bridge, North Little Rock, Arkansas.

The Trail of Tears National Historic Trail Advisory Council was established pursuant to Public Law 100-192 establishing the Trail of Tears National Historic Trail to advise the National Park Service on such issues as preservation of trail routes and features, public use, standards for posting and maintaining trail markers, as well as administrative matters.

The matters to be discussed include:

—Plan Implementation Status
—Trail Association Status
—Cooperative Agreements Negotiation
—Fundraising

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with David Gaines, Superintendent.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact David Gaines, Superintendent, Long Distance Trails Group Office-Santa Fe, National Park Service, P.O. Box 728, Santa Fe, New Mexico 87504-0728, telephone 505/988-6888. Minutes of the meeting will be available for public inspection at the office of the Superintendent, located in Room 205, Pinon Building, 1220 South St. Francis Drive, Santa Fe, New Mexico.

Dated: February 26, 1996.

David M. Gaines,

Superintendent.

[FR Doc. 96–5451 Filed 3–7–96; 8:45 am]

BILLING CODE 4310–70–M

Bureau of Reclamation

Notice of Request for Revisions of a Currently Approved Information Collection

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intentions of the Bureau of Reclamation to revise a currently approved information collection for Certification and Reporting Summary Forms for Acreage Limitation, 43 CFR 426. Revisions are to the forms and the estimated burden hours.

DATES: Comments on this notice must be received by May 7, 1996 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed revised forms are available by submitting a written request to the Bureau of Reclamation, D–5200, PO Box 25007, Denver, Colorado 80225–0007 or by calling (303) 236–1061, extension 323. Written comments are to be submitted to Reclamation at the above address.

SUPPLEMENTARY INFORMATION:

Title: Certification and Reporting Summary Forms for Acreage Limitation, 43 CFR Part 426.

OMB Approval Number: 1006–0006.

Abstract: These forms are to be used by water district offices to summarize individual landholder certification and reporting forms as required by the Reclamation Reform Act of 1982 (Title II of Pub. L. 97–293) and 43 CFR Part 426, Rules and Regulations for Projects Governed by Federal Reclamation Law. This information allows Reclamation to establish water users' compliance with Reclamation law.

Frequency: Annually.

Respondents: Contracting organizations for Reclamation project irrigation water.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 40 hours per response.

Estimated Number of Respondents: 307.

Estimated Number of Responses per Respondent: 1.25.

Estimated Annual Responses: 384.

Estimated Total Annual Burden on Respondents: 15,360 hours.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: February 27, 1996.

J. Austin Burke,

Director, Program Analysis Office.

[FR Doc. 96–4935 Filed 3–7–96; 8:45 am]

BILLING CODE 4310–94–P

Notice of Request for Revisions of a Currently Approved Information Collection

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intentions of the Bureau of Reclamation to revise a currently approved information collection for Landholders' Certification and Reporting Forms for Acreage Limitation, 43 CFR 426. Revisions are to the forms and the estimated burden hours.

DATES: Comments on this notice must be received by May 7, 1996 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed revised forms are available by submitting a written request to the Bureau of Reclamation, D–5200, PO Box 25007, Denver, Colorado 80225–0007 or by calling (303) 236–1061, extension 323. Written comments are to be submitted to Reclamation at the above address.

SUPPLEMENTARY INFORMATION:

Title: Landholders' Certification and Reporting Forms for Acreage Limitation, 43 CFR Part 426.

OMB Approval Number: 1006–0005.

Abstract: This information collection requires certain landholders to complete forms demonstrating their compliance with the acreage limitation provisions of Reclamation law. The forms establish each landholder's status with respect to landownership limitations, full-cost pricing thresholds, lease requirements, and other provisions of Reclamation law.

Frequency: Annually.

Respondents: Owners and lessees of land on Federal Reclamation projects whose landholdings exceed specified thresholds.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.32 hours per response.

Estimated Number of Respondents: 42,000.

Estimated Number of Responses per Respondent: 1.01.

Estimated Number Annual Responses: 42,400.

Estimated Total Annual Burden on Respondents: 13,500 hours.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: February 27, 1996.

J. Austin Burke,

Director, Program, Analysis Office.

[FR Doc. 96–4936 Filed 3–7–96; 8:45 am]

BILLING CODE 4310–94–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–383]

In the Matter of: Certain Hardware Logic Emulation Systems and Components Thereof; Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337 and provisional acceptance of motion for temporary relief.

SUMMARY: Notice is hereby given that a complaint and a motion for temporary relief were filed with the U.S. International Trade Commission on January 26, 1996, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Quickturn Design Systems, Inc., 440 Clyde Avenue, Mountain View, California 94043. Supplements to the complaint and motion were filed on February 16, 1996, and February 23, 1996. The complaint as supplemented alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain hardware logic emulation systems and components thereof by reason of alleged direct, induced, and contributory infringement of claims 2–5, 15, 17–21, and 27 of U.S. Letters Patent 5,109,353, claims 1, 3–5, 7, 10–18, 22, 24, 26, and 28 of U.S. Letters Patent 5,329,470, claim 8 of U.S. Letters Patent 5,036,473, claims 1–3, 6–8, 15, 20, and 21 of U.S. Letters Patent 5,448,496, and claims 1 and 2 of U.S. Letters Patent 5,452,231. The complaint further alleges that there exists an industry in the United States as required by subsection (a)(2) of section 337. The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and permanent cease and desist orders.

The motion for temporary relief requests that the Commission issue a temporary exclusion order and temporary cease and desist orders prohibiting the importation into and the sale within the United States after importation of certain hardware logic emulation systems and components thereof that infringe claim 8 of U.S. Letters Patent 5,036,473 or claim 1, 2, 3, or 15 of U.S. Letters Patent 5,448,496 during the course of the Commission's investigation.

ADDRESSES: The complaint and motion for temporary relief, except for any confidential information contained therein, are 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., Room 112, Washington, D.C. 20436, telephone 202–205–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

FOR FURTHER INFORMATION CONTACT: Thomas L. Jarvis, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2568.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10. The authority for provisional acceptance of the motion for temporary relief is contained in section 210.58, 19 CFR 210.58.

SCOPE OF INVESTIGATION: Having considered the complaint and the motion for temporary relief, the U.S. International Trade Commission, on March 4, 1996, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain hardware logic emulation systems or components thereof by reason of infringement of claim 2–5, 15, 17–21, or 27 of U.S. Letters Patent 5,109,353, claim 1, 3–5, 7, 10–18, 22, 24, 26, or 28 of U.S. Letters Patent 5,329,470, claim 8 of U.S. Letters Patent 5,036,473, claim 1–3, 6–8, 15, 20, or 21 of U.S. Letters Patent 5,448,496, or claims 1 or 2 of U.S. Letters Patent 5,452,231, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) Pursuant to section 210.58 of the Commission's Rules of Practice and Procedure, 19 CFR 210.58, the motion for temporary relief under subsection (e) of section 337 of the Tariff Act of 1930, which was filed with the complaint, is provisionally accepted and referred to the presiding administrative law judge for investigation.

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is

Quickturn Design Systems, Inc., 440 Clyde Avenue, Mountain View, California 94043

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint and motion for temporary relief are to be served:

Mentor Graphics Corp., 8005 S.W. Boeckman Road, Wilsonville, Oregon 97070

Meta Systems, 4 Rue Rene Razel, 91400 Saclay, France

(c) Thomas L. Jarvis, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, S.W., Room 401J, Washington, D.C. 20436, shall be the Commission investigative attorney, party to this investigation; and

(4) For the investigation and temporary relief proceedings instituted, the Honorable Paul J. Luckern is designated as the presiding Administrative Law Judge.

Responses to the complaint, the motion for temporary relief, and the notice of investigation must be submitted by the named respondents in accordance with sections 210.13 and 210.59 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13 and 210.59. Pursuant to sections 201.16(d), 210.13(a), and 210.59 of the Commission's Rules, 19 CFR 201.16(d), 210.13(a), and 210.59, such responses will be considered by the Commission if received not later than 10 days after the date of service by the Commission of the complaint, the motion for temporary relief, and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint, in the motion for temporary relief, and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint, the motion for temporary relief, and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint, motion for temporary relief, and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: March 4, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–5488 Filed 3–7–96; 8:45 am]

BILLING CODE 7020–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Appellate Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Appellate Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Appellate Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation and will start each day at 8:30 a.m.

DATES: April 15–16, 1996.

ADDRESSES: The Fairmont Hotel, 950 Mason Street, San Francisco, California.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, D.C. 20544, telephone (202) 273–1820.

Dated: March 1, 1996.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 96–5305 Filed 3–7–96; 8:45 am]

BILLING CODE 221001–M

DEPARTMENT OF JUSTICE

Antitrust Division

[Case No. 1:94CV02693]

United States v. Vision Service Plan; Public Comments and United States' Response to Public Comments

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b)–(h), the United States publishes below the comments received on the proposed Final Judgment in *United States* v. *Vision Service Plan*, Case No. 1:94CV026923, United States District Court for the District of Columbia, together with the response of the United States to the comments.

Copies of the response and the public comments are available on request for inspection and copying in room 215 of the Antitrust Division, U.S. Department of Justice, 325 7th Street, N.W., Washington, D.C. 20004, and for inspection at the Office of the Clerk of the United States District Court for the District of Columbia; 3rd Street and Constitution Ave., NW.; room 1825; Washington, DC 20001.

Rebecca P. Dick,

Deputy Director of Operations, Antitrust Division.

United States' Response to Public Comments

I. Introduction

Pursuant to the requirements of the Antitrust Procedures and Penalties Act, (commonly referred to as the ''Tunney Act''), 15 U.S.C. 16 (b)–(h), the United States hereby responds to public comments regarding the Final Judgment initially proposed as the basis for settling this proceeding in the public interest. Since the comments regarding the first proposed Final Judgment were submitted, the parties have agreed to a superseding, proposed Revised Final Judgment, filed on November 1, 1995, which reflects changes to a few provisions. After careful consideration of the comments on the formerly proposed Final Judgment, viewed in light of the proposed Revised Final Judgment, the United States concludes that the Revised Final Judgment will provide an effective and appropriate remedy for the antitrust violation alleged in the Complaint. Once the public comments and this response have been published in the Federal Register, pursuant to 15 U.S.C. 16(d), the United States will request that the Court enter the Revised Final Judgment.

II. Procedural History

On December 15, 194, the United States filed a Complaint alleging that Vision Service Plan (''VSP''), in all or parts of the many states in which it does business as a vision-care insurer, has entered into agreements with its panel doctors that unreasonably restrain competition by discouraging the doctors from discounting their fees for vision-care services, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. Simultaneously with the filing of the Complaint, the United States filed a proposed Final Judgment and a Stipulation signed by both it and the defendant, agreeing to the entry of the Final Judgment following compliance with the Tunney Act.

Pursuant to the Tunney Act, on December 23, 1994, VSP filed the required description of certain written and oral communications made on its behalf; the United States filed a Competitive Impact Statement (''CIS'') on January 13, 1995. A summary of the terms of the proposed Final Judgment and the CIS and directions for the submission of written comments were published in the *Washington Post* for seven consecutive days, from January 22–28, 1995. The proposed Final Judgment and the CIS were published in the Federal Register on January 26, 1995. 60 FR 5210–17 (1995). The 60-day period for public comments on the then proposed Final Judgment began on January 27, 1995, and expired on March 27, 1995. Five comments were received.

The United States filed the five comments with the Court on May 12, 1995, and was preparing to file its response to them when VSP raised issues about the application of certain provisions of the then-proposed Final Judgment to its operations. On June 23, 1995, the United States advised the Court that the parties were considering whether those issues warranted any modification to the proposed Final Judgment. Reflecting the outcome of those negotiations are the parties' Superseding Stipulation, the proposed Revised Final Judgment, and the Revised CIS, filed on November 1, 1995. The latter two documents are styled as ''Revised'' because they reflect changes made to a few of the provisions of the proposed Final Judgment and to related portions of the CIS. The Government agreed to these revisions to remedy certain problems that VSP had experienced while operating under the terms of the originally proposed Final Judgment, which, pursuant to Stipulation, it had been doing since the proposed Final Judgment was filed.

In a letter accompanying the superseding filings, the United States informed the Court of its intent to provide public notice of the proposed Revised Final Judgment and the Revised CIS in accordance with the Tunney Act. Pursuant to the Act, under cover of a letter dated November 27, 1995, the defendant filed the required description of certain written and oral communications made on its behalf. A summary of the terms of the proposed Revised Final Judgment and the Revised CIS and directions for the submission of written comments were published in the *Washington Post* for seven consecutive days, from November 12–18, 1995. The proposed Revised Final Judgment and the Revised CIS were published in the Federal Register on November 13, 1995. 60 FR 57017–21 (1995). The 60-day period for public comments started on November 14, 1995, and expired on January 13, 1995. No comments on the proposed Revised Final Judgment were received.

III. Factual Background

VSP contracts with businesses, government agencies, health-care insurers, and other organizations to provide prepaid vision-care insurance to

employee groups and beneficiaries in 46 states and the District of Columbia. In 1994, VSP covered about 15 million persons, and its revenues totaled about $650 million. The United States sought injunctive relief to remedy the anticompetitive consequences of a fee non-discrimination clause in VSP's agreements with doctors in private practice who have agreed to become VSP ''panel doctors'' and, accordingly, provide vision care to patients covered by VSP.[1] VSP contracts with at least 17,000 such doctors—predominantly optometrists and a relatively small number of ophtalmologists—across the nation. The challenged clause is similar in substance to clauses commonly called ''most-favored-nation'' (''MFN'') clauses. VSP's MFN clause required each of its panel doctors to charge VSP no more than the lowest price the doctor charged any non-VSP patient or insurance plan.

As a result of the MFN clause, a VSP-panel doctor could not charge any non-VSP plan or patient less than VSP for equivalent services. If the doctor wished to charge a non-VSP plan or patient less than he or she had been charging VSP, the doctor would also have had to grant an equal discount to VSP for all VSP-insured patients the doctor served. In all or parts of many states in which VSP does business, it contracts with a high percentage of local optometrists,[2] and in these areas most optometrists earn a significant part of their professional income from VSP. For these doctors, the financial consequences of granting a greater discount for services provided to all of their VSP patients would be substantial, so they ceased or refrained from discounting below VSP-payment levels to anyone. In addition to discouraging the discounting of vision care services below VSP-payment levels, VSP's MFN clause made it impossible for some competing vision-care plans to obtain or retain sufficient panel doctors to serve their members at competitive prices, thus limiting the amount of competition faced by VSP from other plans.

IV. Response to Public Comments

All five of the comments address the originally proposed Final Judgment. Some of the comments contend that Section V of that Judgment, which expressly permits VSP to engage in certain activities, undermines the prohibitions of the Judgment. Other comments urge that additional relief be ordered for the conduct that was challenged. Finally, several of the comments concern practices that the United States did not challenge and that are not enjoined by the Judgment. The United States has concluded that the Revised Final Judgment reasonably and appropriately addresses the harm alleged in the Complaint. Therefore, following publication of the comments and this response, pursuant to the Tunney Act, and submission of the United States' certification of compliance with the Act, the United States intends to urge this Court to enter the proposed Revised Final Judgment based on the Court's determination that that Judgment is in the public interest.

A. Comments About the Permitted Activities

Two comments from Alaska, Arizona, Hawaii, Nevada, New Mexico, Oregon and Washington, (''the seven states'') and comments from Northwest Administrators and First American Health Concepts question Section V of the formerly proposed Final Judgment, which expressly permitted VSP to collect from its panel doctors sufficient information about the fees they charged non-VSP plans and patients to enable VSP to calculate each doctor's modal or median fees, which were then to be used by VSP in setting its own fees to panel doctors. The commenters raised various concerns about these provisions.

In their initial comment, the seven states reported that several of them have been examining the competitive effects of various VSP business practices in addition to the MFN clause. Although they recognized that the proposed Final Judgment was ''an agreement between the parties with no precedential effect,'' they nevertheless expressed concern about ''a potential problem with the inclusion of certain language in the [proposed Final Judgment] which could potentially inhibit future law enforcement efforts by the states'' against possible horizontal price-fixing by VSP. They feared that the provisions in Section V permitting certain activities may be ''taken out of context to support horizontal price-fixing activity, which is beyond the scope of [this] * * * lawsuit.''

It is well established, however, that ''a consent judgment, even one entered at the behest of the Antitrust Division, does not immunize the defendant from liability for actions, including those contemplated by the decree, that violate the rights of nonparties.'' *Broadcast Music, Inc.* v. *Columbia Broadcasting System, Inc.*, 441 U.S. 1, 13 (1979). Therefore, nothing in the formerly proposed Final Judgment would have precluded any of the states, or any other party, from bringing future antitrust claims against VSP, whether based on a per se or rule of reason analysis. Nor would any provision in the formerly proposed Final Judgment have obstructed entry of full and appropriate relief in a subsequent suit. These conclusions apply equally to the proposed Revised Final Judgment.

In their later comment, the states asserted directly that the gathering by VSP of fee information and its setting of fees, in the manner permitted by Section V of the formerly proposed Final Judgment, would be per se violations of the Sherman Act when undertaken by a provider-controlled plan. Even if VSP were controlled by optometrists, as the states apparently believe they can prove, its setting of fees to its panel doctors, as an activity related to the offering of a separate and additional product—insurance—might in some circumstances be analyzed under the rule of reason rather than the per se rule.[3] *See generally id.* at 19–24. Insurance plans such as VSP commonly establish doctor panels to provide services to their insureds and set the fees that the plan will pay the panel doctors for these services. VSP's fee-setting policies may be reasonably ancillary to its operation of a vision-care insurance plan, and, if so, they would appear to be subject to rule of reason analysis.

The seven states also asserted that permitting VSP to base its fees on its panel doctors' modal or median prices to non-VSP plans for patients risks the same anticompetitive harm that has resulted from VSP's enforcement of its MFN clause. Two other commenters, Northwest Administrators and First American Health Concepts, raised similar arguments. Under the Revised Final Judgment, VSP will no longer maintain the option, contained in the formerly proposed Final Judgment, to calculate payments made to its panel doctors based on a doctor's modal or median fees. Rather, under Section V of the Revised Final Judgment, VSP will retain the option of calculating the fees that it pays panel doctors based merely on their usual and customary fees charged to private patients before any discounts are applied. The proposed

[1] Such service consist primarily of diagnostic services and the dispensing of optical goods, such as corrective lenses and frames.

[2] For example, in 1993 VSP reported that 98% of all optometrists licensed in Nevada were VSP-panel doctors, and today in California, VSP contracts with about 90% of optometrists in independent private practice.

[3] Statements 6 and 8 of the *Statements of Enforcement Policy and Analytical Principles Relating to Health Care and Antitrust*, jointly issued by the Department of Justice and the Federal Trade Commission in 1994 and cited by the states, do not address the issuance of insurance, the activity at issue here.

Revised Final Judgment's narrowing of VSP's permitted fee-calculation options to a method based on a panel doctor's usual and customary fees, defined as such fees before any discounts are applied, eliminates any possibility that VSP's permitted fee-setting activity will inhibit discounting.[4]

The commenters also objected to some of the practices permitted under Section V of the formerly proposed Final Judgment on other grounds. First American Health Concepts contended that the collection of fee information would enable VSP to punish panel doctors if they discount to or even participate in non-VSP plans. This claim, however, ignores Sections IV (C) and (D) of the Final Judgment (and Revised Final Judgment), which clearly prohibit such conduct.[5] In any event, the proposed Revised Final Judgment no longer permits VSP to obtain fee information that reflects a panel doctor's discounting.

First American also contended that the information-collection provision (Section V(A) of the formerly proposed Final Judgment) would have enabled VSP to impose burdensome recordkeeping requirements on doctors. But most doctors already keep, in the ordinary course of their business, all of the information VSP would have been allowed to seek. At any rate, Section V(A) of the proposed Revised Final Judgment effectively reduces a panel doctor's potential fee-reporting obligations to an annual submission of the doctor's usual and customary fees for a retrospective period of up to 12 months. Such a requirement entails no more than submission of the doctor's fee schedule(s) in effect for the relevant period.

As the preceding discussion shows, the theme of many of the comments was that Section V of the formerly proposed Final Judgment went too far in granting VSP leeway to continue to operate its business despite the restrictions imposed by Section IV. Although the United States believes that Section V of the formerly proposed Final Judgment granted VSP nothing that compromised the remedy embodied in Section IV, the proposed Revised Final Judgment's narrowing of VSP's permitted activities substantially addresses most of the commenters' arguments. Moreover, the United States fully intends to monitor VSP's practices under the Revised Final Judgment and to seek enforcement or additional relief if warranted. Should competitive problems again restrain optometrists from discounting their fees for vision-care services to plans competing with VSP or to others, the United States stands ready to take all appropriate action.

B. Comments Seeking Additional Relief for the Challenged Conduct

Northwest Administrators urged that additional relief be obtained in the then-proposed Final Judgment. Its comment applies equally to be the Revised Final Judgment, which also does not provide for the additional relief sought. Northwest Administrators wanted the formerly proposed Final Judgment to require VSP to take affirmative steps to encourage doctors to rejoin competing plans and to repay doctors the difference between what VSP has paid them and what it would have paid them in the absence of its MFN clause. Pursuant to the Stipulation filed with the Complaint in this action, VSP has already provided all of its panel doctors with an addendum to its Panel Doctor's Agreement that expressly nullifies the MFN clause. In addition, the proposed Revised Final Judgment would require VSP to give each panel doctor a copy of the Judgment, which enjoins VSP from taking actions to deter panel doctors from participating in non VSP plans. As to payments, it is not the role of the United States to secure monetary damages for private parties.

C. Comments About Conduct Not Challenged in the Complaint

The Optical Laboratories Association and First American Health Concepts urged that the formerly proposed Final Judgment (and, by extension, the Revised Final Judgment) be expanded to cover a variety of conduct not challenged in the Complaint. Essentially, these commenters disagreed with the United States' prosecutorial decision about what conduct to challenge. As explained below, however, the Tunney Act does not authorize the Court to reject the proposed Revised Final Judgment on the ground that it does not enjoin conduct, allegedly in violation of the antitrust laws, that was not challenged in the Complaint. The scope of a governmental antitrust challenge is a matter solely within the discretion of the United States and is beyond the scope of the Court's Tunney Act review.

V. The Legal Standard Governing the Court's Public Interest Determination

The Tunney Act directs the court to determine whether entry of the proposed Judgment ''is in the public interest.'' 15 U.S.C. § 16(e). In making that determination, ''the court's function is not to determine whether the resulting array of rights and liabilities is one that will *best* serve society, but only to confirm that the resulting settlement is within the *reaches* of the public interest.'' *United States* v. *Wester Elec. Co.*, 993 F.2d 1572, 1576 (D.C. Cir.), *cert. denied*, 114 S. Ct. 487 (1993) (emphasis added, internal quotation and citation omitted).[6] Consequently, the Court should evaluate the relief set forth in the proposed Revised Final Judgment in light of the claims alleged in the Complaint and should enter the decree if it falls within the government's ''rather broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp*., 56 F.3d 1448, 1461 (D.C. Cir. 1995). The Tunney Act does not empower the Court to reject the remedies in the proposed Decree based on the belief that ''other remedies were preferable.'' *Id*. at 1460.

The Court is not ''to make *de novo* determination of facts and issues.'' *Western Elec.* 993 F.2d at 1577. Rather, ''[t]he balancing of competing social and political interests affected by a proposed antitrust decree must be left, in the first instance, to the discretion of the Attorney General.'' *Id*. (internal quotation and citation omitted throughout). In particular, the Court must defer to the Department's assessment of like, competitive

[4] Similarly, VSP's permitted use (under the formerly proposed Final Judgment) of modal or median fee calculations as the basis for its own fees, unlike VSP's enforcement of its MFN clause, should not have discouraged doctors from discounting to non-VSP plans or patients. A substantial percentage of vision-care patients are uninsured, and for the most part, these are not the patients who are able to obtain discounts in any amount. Thus, a VSP-panel doctor's median or modal fee, even though calculated in part on fees charged to other plans to which the doctor does offer a discount, would likely have been well above the lowest fee charged by the doctor to a non-VSP plan or patient. Under the formerly proposed Final Judgment, discounting by a VSP-panel doctor to some non-VSP plans or patents was, therefore, not likely to have significantly depressed the doctor's income from VSP. Thus, this method of fee-setting by VSP, unlike the MFN clause, should not have operated to deter effective competition to VSP from other vision-care plans. Indeed, the modification of this provision of the decree (the substitution of a ''usual and customary'' for a ''median'' or ''modal'' basis from which VSP may set its panel doctors' fees) arose from VSP's practical difficulties in implementing a ''median'' or ''modal'' methodology, rather than from competitive concerns.

[5] Section IX of the Revised Final Judgment authorizes the United States to investigate VSP's compliance with the Judgment at any time upon reasonable notice. The United States may inspect and copy VSP documents, interview VSP employees, and require VSP to submit written reports under oath. Moreover, the Judgment, once entered, is an injunction, violations of which are punishable by the Court's contempt power.

[6] The *Western Electric* decision concerned a consensual modification of an existing antitrust decree. The Court of Appeals assumed that the Tunney Act was applicable.

consequences, which it may reject ''only if it has exceptional confidence that adverse antitrust consequences will result—perhaps akin to the confidence that would justify a court in overturning the predictive judgments of an administrative agency.''[7] *Id*. Thus, the Court may not reject a decree simply ''because a third party claims it could be better treated.'' *Microsoft*, 56 F.3d at 1461 n.9.

To a great extent it is the realities and uncertainties of litigation that constrain the role of courts in Tunney Act proceedings. *See United States* v. *Gillette Co.,* 406 F. Supp. 713, 715–16 (D. Mass. 1975). As Judge Greene has observed,

> If courts acting under the Tunney Act disapproved proposed consent decrees merely because they did not contain the exact relief which the court would have imposed after a finding of liability, defendants would have no incentive to consent to judgment and this element of compromise would be destroyed. The consent decree would thus as a practical matter be eliminated as an antritrust enforcement tool, despite Congress' directive that it be preserved.

United States v. *American Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982), *aff'd sub nom*. *Maryland* v. *United States*, 460 U.S. 1001 (1983) (Mem.). Indeed, where, as here, the proposed consent decree comes before the Court at the time the Complaint is filed, ''the district judge must be even more deferential to the government's predictions as to the effect of the proposed remedies * * *'' *Mircosoft*, 56 F.3d at 1461.

Moreover, the entry of a governmental antitrust decree forecloses no private party from seeking and obtaining appropriate antitrust remedies. Thus, VSP will remain liable for any illegal acts, and any private party may challenge such conduct if and when appropriate. If any of the commenting parties has a basis for suing VSP, they may do so. The legal precedent discussed above holds that the scope of a Tunney Act proceeding is limited to whether entry of *this* particular proposed Consent Decree, agreed to by the parties as settlement of *this* case, is in the public interest.

[7] The Tunney Act does not give a court authority to impose different terms on the parties. *See, e.q., United States* v. *American Tel. & Tel. Co.*, 552 F. Supp. 131, 153 n. 95 (D.D.C. 1982), *aff'd sub nom*. *Maryland* v. *United States*, 460 U.S. 1001 (1983) Mem.); *accord* H.R. Rep. No. 1463, 93d Cong., 2d Sess. 8 (1974). A court, of course, can condition entry of a decree on the parties' agreement to a different bargain, *see, e.g., AT&T*, 552 F. Supp. at 225, but if the parties do not agree to such terms, the court's only choices are to enter the decree the parties proposed or to leave the parties to litigate.

Finally, the Tunney Act does not contemplate judicial reevaluation of the wisdom of the government's determination of which violations to allege in the Complaint. The government's decision not to bring a particular case on the facts and law before it at a particular time, like any other decision not to prosecute, ''involves a complicated balancing of a number of factors which are peculiarly within [the government's] expertise,'' such as ''whether [the government's] resources are best spent on this violation or another, whether the [government] is likely to succeed if it acts, whether the particular enforcement action requested best fits the [government's] overall policies, and, indeed, whether the [government] has enough resources to undertake the action at all.'' *Heckler* v. *Chaney*, 470 U.S. 821, 831 (1985); *See also Maryland* v. *United States*, 460 U.S. 1001, 1106 (1983) (Rehnquist, J., dissenting from summary affirmance). The Court may not ''reach beyond the complaint to evaluate claims that the government did *not* make and to inquire as to why they were not made.'' *Microsoft*, 56 F.3d at 1459 (emphasis added). Entry of the proposed Revised Final Judgment will not prevent the government from investigating and challenging, if appropriate, conduct not addressed in the current action.

VI. Conclusion

The Tunney Act requires that public comments and this response be published in the Federal Register. When that publication has been accomplished, the United States will notify the Court and urge entry of the proposed Revised Final Judgment based on the Court's determination that the Judgment is in the public interest.

Dated: February 16, 1996.

Respectfully submitted,

Steven Kramer,

Richard S. Martin,

U.S. Department of Justice, Antitrust Division, Bicentennial Building—Room 9420, 600 E Street NW., Washington, DC 20530, (202) 307–0997.

January 19, 1995.

Gail Kursh

Chief Professional & Intellectual Property Section, Antitrust Division, U.S. Department of Justice, 600 E. Street NW., Room 9300, Washington, DC 20530.

Dear Ms. Kursh: These comments are submitted regarding United States of America vs. Vision Service Plan, case number 1:94CV02693.

Northwest Administrators, Inc. (NW) is a third party administrator which manages a vision care plan which competes with Vision Service Plan in the Northwestern United States. Our vision plan is known as the Northwest Benefit Network (NBN) vision care plan. During the past several years, NBN has experienced the anti-competitive actions by VSP as described in the U.S. Justice Department ''Complaint''. Eventually, we took our concerns to the Washington State Attorney General, which has conducted its own investigation.

We are concerned that the proposed settlement will enable VSP to continue to engage in anti-competitive activities, and we request that your settlement be modified to include the following:

1. VSP should be prohibited from asking participating panel doctors for any information regarding fees accepted from other plans or regarding participation in any other plan. By allowing this activity, you permit them to identify doctors who they may wish to punish for cooperating with competing plans. By allowing them to collect fee information about their competitors, they will be in a position to continue to use the information in restraint of trade even if they don't do so under the authority of a ''most favored nation'' contract clause.

To support my concern, I am enclosing a copy of a letter from VSP to its panel doctors in which VSP states, ''In the future, VSP's payments will be based on the range of fees the doctor accepts, rather than the lowest fee.'' The ''range'' of a doctor's fees, by definition, includes the lowest and highest fees which the doctor accepts. This is the type of information which VSP has misused in the past.

2. ''Permitted Activities'' described on page five of your Final Judgment neutralize several of the activities described in ''Prohibited Conduct'' on page four and five of your Final Judgment. For example, VSP is prohibited from ''monitoring or auditing the fees any VSP panel doctor charges any non-VSP patient or any non-VSP plan; and communicating in any fashion with any VSP panel doctor regarding the doctor's participation in any non-VSP plan or regarding the doctor's fees charged to any non-VSP patient or to any non-VSP plan.'' In the very next section, under ''Permitted Activities'', VSP is allowed to collect fee information and to audit fee information regarding doctors' charges to non-VSP patients. The only way to insure that such information is not used for anti-competitive activities is to prohibit them from collecting or possessing such information.

3. VSP should be required to notify all doctors who withdrew from competing plans that they will not in any way be penalized for re-enrolling in other non-VSP plans. As currently written, your ''Compliance Measures'' simply assist VSP in becoming more monopolistic. To enhance competition and provide equitable relief, competing plans which were damaged should be made whole. Due to VSP's dominant market position, when forced to choose between dropping their participation in VSP and dropping their participation in non-VSP plans, providers almost always choose to drop their participation in non-VSP plans. Your efforts should be to help non-VSP plans regain lost providers; not to help VSP to become bigger and stronger. Non-VSP plans should be

allowed to monitor the distribution of such notices to insure that all affected providers receive proper notification.

4. VSP should be required to repay all doctors who were penalized for participating in other non-VSP plans. VSP should be required to reimburse the difference in the amount they would have paid and the reduced amount paid because the doctor was on a competing plan which paid less than VSP.

Finally, I would like to request clarification of Section X of the Final Judgment which states that ''This Final Judgment shall expire within five years from the date of its entry.'' Does that mean that VSP can resurrect their ''Most Favored Nation'' activities after five years?

We would like to express our sincere gratitude to the Justice Department for helping to level the playing field and for attempting to restore a competitive market environment. We also appreciate your consideration of our suggestions regarding the proposed settlement with VSP.

Sincerely,

James H. Baker,

Vice President.

March 17, 1995.

Gail Kursh,

Chief, Professions & Intellectual Property Section, Department of Justice, Antitrust Division, 600 E. Street NW., Room 9300, Washington, DC 20530.

Re: U.S. v. Vision Service Plan, USDC for District of Columbia, Case No. 1:94CV02693

Dear Sir/Madam: This comment on the proposed Final Judgment in the above—entitled case is filed on behalf of the Optical Laboratories Association, ''(OLA''), a trade association who address is P.O. Box 2000, Merrifield, VA 22116–2000. Many of the members of the Association have agreements with VSP as ''VSP contract laboratories'' to ''perform opthalmic prescription work for VSP''.

The thrust of this comment is that the proposed consent order should be expanded to prohibit the MFN clause in VSP's contracts with its contract laboratories.

A vision service plan needs agreements with two sets of providers: a panel of optometrists to perform refractions for the plan members; and a panel of optical laboratories to perform prescription work and provide completed devices—lenses and frames—to be delivered to the plan members. A plan which cannot secure the services of adequate panels in each of these areas cannot be competitive in the market place.

The Department's Competitive Impact Statement adequately describes conditions in the optical industry, and provides justification for the proposed consent order. However, it does not go far enough. The word ''laboratory'' could be substituted for the word ''optometrist'' wherever the latter word appears in the Statement to describe the reluctance of contract laboratories to give discounts to plans that compete with VSP. This means that the market can be made competitive for other vision service plans only if the laboratories can be freed from enforcement of VSP's MFN clause.

Attached is a copy of VSP's ''Laboratory Agreement''. Paragraph ''J'' refers to prices and provides that—''these prices . . . reflect discounts which are greater than Laboratory gives to any non-VSP customer.'' Paragraph ''H'' provides that—''Laboratory agrees not to sell . . . any vision care group plan . . .'' There can be no doubt that the agreement is designed to lock the laboratory into a non-competitive position.

Also attached is a copy of a typical letter received by a contract laboratory after VSP had audited its prices. There is no question that VSP enforces its MFN clause.

In view of the above, it is submitted that in order to assure competitive conditions in the market for vision care plans, VSP must be enjoined from enforcing a MFN clause in any Laboratory Agreement.

Respectfully submitted,

Optical Laboratories Association, by:

Joseph S. Gill,

VSP Laboratory Agreement

The undersigned optical laboratory, hereinafter referred to as ''Laboratory,'' hereby agrees to perform ophthalmic prescription work for VISION SERVICE PLAN, hereinafter referred to as ''VSP,'' as a ''VSP contract laboratory.''

A. Term. This contract shall be effective upon the date of acceptance by VSP and shall remain in full force and effect until terminated by either party hereto giving the other fifteen (15) days prior written notice of intent to terminate. Laboratory agrees to complete and deliver any prescription orders already in process on the date of termination of this contract, and VSP agrees to pay for these prescriptions at the contract prices listed herein. Laboratory agrees that VSP will exercise its sole discretion in determining that laboratories with which it will contract and that VSP reserves the right to cancel this contract and remove Laboratory's name from its approved list, subject only to the fifteen (15) day notice provided for hereinabove.

B. Laboratory Representations. Laboratory agrees and represents that:

(1) It adheres to applicable ANSI Z–80 Standards.

(2) It conducts a complete wholesale optical service, serving all optometrists and ophthalmologists without discrimination as to race, color or creed.

(3) It has surfacing and finishing capabilities in-house or through the parent company (a lab by the same name) which is located within the same region.

(4) It is not owned, in whole or in part, by any person practicing as an optometrist, ophthalmologist or dispensing optician or by any person owning any part of a dispensary or retail outlet.

(5) It has listed below all persons having an ownership interest in Laboratory.

(6) It will notify VSP immediately of any change in ownership of laboratory.

(7) It understands and agrees that this contract is not assignable and becomes invalid if the Laboratory changes ownership, name, or address.

(8) It agrees to adhere to and be bound by all policies and procedures of VSP.

(9) It agrees to notify VSP of any price changes by sending its revised price lists to the VSP Contract Laboratory Department within thirty (30) days of the effective new prices.

C. Audits and Inspections. Laboratory agrees that representatives of VSP may visit Laboratory at any reasonable time during normal business hours for the purpose of inspecting Laboratory's facilities, stock, and fabrication operations, and to audit any records. Laboratory will allow VSP representatives to analyze pricing and discount information by reviewing wholesale invoices and statements selected from Laboratory's files. Laboratory will provide VSP all wholesale prescription price lists used for any and all Laboratory customers, including buying groups. Pricing information shall be held in strictest confidence by VSP, and shall be utilized solely for VSP's internal purposes. Pricing information will not be disseminated to any other laboratory or third party.

D. Name Use. Laboratory agrees not to sue the name ''Vision Service Plan, ''VSP,'' the VSP logo, or any variation of any of them without having first obtained the express written consent of VSP and agrees that using either the name of servicemarks of VSP for any purpose without the express written consent of VSP is a violation of state and federal law and will result in immediate termination of this contract.

E. Financial Incentives. Laboratory agrees not to offer or provide any discounts, gifts, premiums, or other financial inducements to VSP member doctors to attract VSP prescriptions. Laboratory agrees *not* to include the VSP volume when determining a VSP member doctor's volume discount on private prescriptions.

F. Insurance. Laboratory agrees to provide and maintain general and product liability insurance in a minimum amount of $1,000,000 per occurrence and to have VSP named as an additional insured on the general and product liability policies.

G. Cooperation. Laboratory agrees not to take any actions demonstrating any unwilliness or inability to work cooperatively for the best interest of VSP, its doctors, subscribers or subscriber groups.

H. Competition. Laboratory agrees not to sell or offer to sell, directly or indirectly (including through any partnership, association or corporation in which Laboratory owns more than 10% of outstanding shares), any vision care group plan except safety eyewear programs.

I. Redos. Laboratory shall honor lab and doctor redos for at least six (6) months from the date of completion of the original Rx. Lab redos shall be remade until correct at no charge, and the VSP member doctor will be the final judge of quality. A doctor redo shall be remade at no additional charge. Laboratory agrees that the contract prices paid for original Rxs cover the costs of doctor redos.

J. Prices. Laboratory agrees to perform VSP prescription work for the prices listed below. These prices include all materials and labor involved in supplying finished and mounted prescription lenses to VSP member doctors and reflect discounts which are greater than Laboratory gives to any non-VSP customer.

All single Vision Lenses ..... $_____

All bifocal Lenses ..... $_____
All Other Prescriptions Including Trifocal, Lenticular, Double Seg., Etc. ..... $_____
Laboratory will supply frames for VSP prescriptions at the catalog price on the date the prescription is completed less: 15%
$_____

Laboratory agrees there will be no service charge to VSP or the doctor for supplying any frame normally available to Laboratory's customers. The price for each category of prescription lenses includes all types of lenses within that category, and is the total price, except for times on the VSP Lab Options List. Laboratory agrees not to charge the VSP member doctor directly unless authorized by VSP. Laboratory agrees not to refuse any VSP prescription because of its cost. Laboratory agree to at all times give VSP prescriptions the same priority as non-VSP prescriptions. Laboratory understands and agrees that some prescriptions within each of these categories are more expensive than others, and these prices cover all prescriptions. Laboratory agrees not to divulge any of these prices to any other party.

K. Laboratory Ownership. The following are the only persons who have an ownership interest in the Laboratory:

Name of owner(s)	Percentage of ownership
[None Listed]	

Vision Service Plan, Contract Laboratory Program, 333 Quality Drive, Rancho Cordova, CA 95670–7989, (910) 851–5000 (800) 852–7609, Telefax (916) 851–4866

Enclosed is a new laboratory contract for your completion. Please carefully review this new contract. Among other changes, note the following.

* The minimum general and product liability insurance coverage has increased to $1,000,000 per occurrence. In addition, VSP is to be named as an additional insured on the policies.

* When we last surveyed all contract laboratories on their current liability limits, it was evident that most labs already realized the necessity of higher liability coverage. We found that 85% of our contract labs carried at least $1,000,000 coverage.

Please forward a Certificate of Insurance reflecting the minimum of $1,000,000 general and product liability, as well as showing VSP as an additional insured.

* The laboratory agrees not to sell any competing vision care group plan. Safety eyewear programs may continue to be sold by contract laboratories.

* As a result of increased communications between VSP and contract labs, a paragraph titled ''Confidential Information'' has been added. This will help ensure confidentiality of any information exchanged.

* The laboratory's bid prices must reflect competitive pricing for VSP.

A recent price audit was conducted on your laboratory prices. The audit utilizes the frequency of options, different lens prescriptions and styles, and miscellaneous add-on items, and then compares the amount VSP pays against your laboratory's private pricing.

VSP has found through this audit process that VSP is not receiving a discount off maximum discounted private prices. As a remedy to this situation, we ask that you submit a new bid to continue as a VSP Contract Laboratory.

Your cooperation on returning the completed contract with new bid prices and Certificate of Insurance by (_____) is appreciated. If you have any questions, please call me.

Sincerely,

Teri M. Lew,

Contract Laboratory Program Administrator.

TML/td

Enclosures

March 28, 1995.

Gail Kursh,

Chief, Professional and Intellectual Property Section, Antitrust Division, United States Department of Justice, 600 W. Street NW., Room 9300, Washington, D.C. 20530

Re: *United States v. Vision Service Plan*, Case Number 1:94CV02693

Dear Ms. Kursh: The undersigned states offer the following comments in the matter of *United States v. Vision Service Plan*. We are pleased that you have attempted to address some of the problems raised by VSP's practices and applaud your enforcement efforts. However, on behalf of the chief antitrust enforcement officers of our respective states we would like to point out a potential problem with the inclusion of language in the Consent Decree which could potentially inhibit any future enforcement efforts by the states. Although we recognize that the proposed Consent Decree is merely an agreement between the parties with no precedential effect, we nevertheless feel that the Decree could be improved to more adequately address the public interest in this matter.

As you are aware, Vision Service Plan (VSP) is based in California and does business throughout the western United States. As your investigation revealed, many states have been impacted by VSP's activities. Consequently, for some time now several states have been examining VSP's practices and their effects on consumers in our region. The scope of our review is somewhat broader than the DOJ investigation, focusing on other issues in addition to the most favored nation clause.

Our purpose in submitting comments is to raise our concern that the Consent Decree as proposed might be interpreted as a court-sanctioned seal of approval for the activities which have been specifically identified in Section V of the Decree. That section permits, *inter alia*, the defendant to continue to gather fee information from participating doctors. The fees gathered are then permitted to be used as part of a determination of median or modal fees, which are in turn used to set reimbursement rates. Although this activity has been permitted in the context of responding to your concerns about misuse of most favored national clauses, we are concerned that it will be taken out of context to support horizontal price-fixing activity, which is beyond the scope of activity addressed in your lawsuit. It would be disturbing to see such a result.

We suggest that our concern would be eliminated if Section V is simply moved to the Stipulation between the parties, rather than made a part of the court's order. Alternative by, language should be inserted which makes it clear that the permitted activities are permitted only insofar as they are not part of action which would be otherwise illegal, such as horizontal price-fixing. Either solution would address our concern by clarifying the scope of the Consent Decree, yet would not affect the substance of your settlement with VSP.

Thank you for your consideration. Please feel free to contact us if you have any questions.

Very truly yours,

Tina E. Kondo,

Brian Dew,

Assistant Attorneys General, State of Washington.

Daveed Schwartz,

Assistant Attorney General, State of Alaska.

Kenneth S. Countryman,

Assistant Attorney General, State of Arizona.

Michael T. Lee,

Deputy Attorney General, State of Hawaii.

Marty Howard,

Deputy Attorney General, State of Nevada.

Susan G. White,

Assistant Attorney General, State of New Mexico.

Andy Aubertine,

Assistant Attorney General, State of Oregon.

April 21, 1995.

Ms. Anne Bingaman,

Assistant Attorney General, Antitrust Division, U.S. Department of Justice, 600 E. Street N.W., Washington, D.C. 20530

Re: *United States* v. *Vision Service Plan*, Case No. 1:94CV026993 TPJ

Dear Ms. Bingaman: Pursuant to conversations with the Department of Justice (the Department), the undersigned states submit this Additional Comment in the matter of *United States* v. *Vision Service Plan*. We are concerned that entry of the proposed Final Judgment, as drafted, would not be in the public interest. Entry of the decree would give VSP a court order which arguably allows it to engage in activity which the Ninth Circuit, the Department and the Federal Trade Commission (FTC) consider to be per se illegal. Although the decree contains prohibitions against certain activities associated with most favored nation clauses, Section V can be interpreted as overruling them and allows VSP to engage in many of these activities. Although we applaud the Department's recognition that VSP's business practices have severe and significant anticompetitive effects and support the Department's efforts to address the problem, we fear that the proposed Final Judgment will create more problems than it

will solve. Accordingly, we object to entry of the proposed Final Judgment.

I

Section V May Allow VSP to Engage in Activities That Would Otherwise be per se Illegal

In *Hahn* v. *Oregon Physicians' Service,* 868 F.2d 1022 (9th Cir. 1988), the Ninth Circuit held that a provider-controlled plan which collected fee information and set reimbursement rates and maximum fee caps for other providers could be construed as a horizontal price fixing conspiracy, and thus per se illegal. Moreover, the Department and the FTC, in jointly prepared guidelines declare that activities such as information gathering and fee setting by provider-controlled plans is per se illegal.

A. Provider Control

VSP is a provider-controlled plan. Historically, all of its directors have been doctors. Its mission ''is to put . . . dollars into optometric bank accounts.'' [1] Currently, twelve of its thirteen directors are doctors. Each of these twelve director-doctors is also a VSP panel doctor. Under these panel doctors' direction, VSP collects information about the fees charged by all panel doctors. The director-doctors are ultimately responsible for using this information to set fee reimbursement rates and maximum fee caps for their fellow doctors. Each of these activities: information gathering and fee setting, is per se illegal when engaged in by a provider-controlled plan.[2]

B. Information Gathering

A number of provisions in Section V arguably would allow VSP to engage in illegal information gathering. Section V(A) of the proposed Final Judgment would allow VSP to collect fee information from panel doctors in order to determine doctors' median or modal fees. The median fee is defined as ''the fee below and above which there are an equal number of fees,'' and the modal fee is defined as the fee charged most frequently to non-VSP patients. Either measurement requires knowledge of every fee charged by a doctor during the preceding year. Accordingly, this section would allow VSP's doctor-controlled board to collect information about all fees charged by fellow member doctors during the preceding year and use this information to set fee reimbursement rates and maximum fee caps.

The Department and the FTC explicitly condemn this activity. ''If an exchange among competing providers of price or cost information results in an agreement among competitors as to the prices for health care services . . . that agreement will be considered unlawful per se.'' Statement of Department of Justice and Federal Trade Commission Enforcement Policy on Provider Participation in Exchanges of Price and Cost Information, BNA Antitrust Trade and Regulation Reporter, Sep. 29, 1994, p. S–14.

C. Fee Setting

A number of provisions in Section V arguably would allow VSP to engage in illegal fee setting. Section V(B) would allow VSP to calculate the fees it pays to panel doctors on the basis of median or modal fees. Section V(D) would allow VSP to devise a fee system for new panel members based on average fees. Section V(E) would allow VSP to maintain the current fee reimbursements and maximum fee caps it has already set. Taken together, these sections seem to allow VSP's doctor-controlled board to continue to set fee reimbursement rates and maximum fee caps as long as they do not base them on the lowest fees charged by panel doctors. The fact that providers are setting fees for fellow providers, however, should be more of a concern than the statistic used to set the fee.[3]

The Department notes that Section V would allow VSP to use a fee schedule, which is ''an approach used by other vision care insurance plans.'' Competitive Impact Statement, p. 12. VSP is not like other vision care insurance plans. It is controlled by doctors. ''Even if a fee schedule is therefore desirable, it is not necessary that the doctors do the price fixing.'' *Arizona* v. *Maricopa County Medical Society,* 457 U.S. 332, 352 (1982).

15 U.S.C.A. § 16(e) (1995) requires that the proposed Final Judgment be in the public interest. If the proposed Final Judgment is entered, it will give to VSP, a collection of doctors the government contends have already acted anticompetitively, a court order which arguably allows further behavior the Ninth Circuit, the Department and the FTC all consider per se illegal. This behavior will most likely result in even higher vision care costs in areas where VSP is dominant. Because of Section V, the proposed Final Judgment not only fails to remedy the anticompetitive effects of VSP's actions, it arguably makes them worse. Entry of such a consent judgment can not be in the public interest.

II

Section V Compromises the Decree's Ability to Terminate Alleged Violations

The proposed Final Judgment, as drafted, also fails the public interest test because it does not terminate the alleged violations. The complaint alleges that one of the ''agreements'' between VSP and panel doctors that has raised prices for vision care services is the most favored nation (MFN) clause. The complaint also alleges that the MFN clause creates disincentives to discounting. Although Section IV of the proposed Final Judgment purports to prohibit various activities associated with the MFN clause, section V overrules these restrictions and explicitly permits VSP to engage in many of these activities. Because of section V, the decree also fails to remove the disincentives to discounting.

A. MFN Activities

Section IV of the proposed Final Judgment attempts to prevent illegal conduct regarding most favored nation clauses. Although Sections IV(E) and IV(F) would prohibit VSP from monitoring, auditing or communicating with any panel doctor about the fees the doctor charges any non-VSP patient or plan, Section V(C) allows VSP to audit any of its doctors and Section V(A), as discussed above, allows VSP to collect (monitor and communicate) information on each fee charged by a doctor to a non-VSP patient or plan. Section IV(B) would prohibit VSP from linking panel doctor payments to fees charged by the doctor to non-VSP patients or plans. Section V(B), however, allows VSP to calculate payments to doctors on median or modal fees which are, by definition, calculated exclusively on fees paid to non-VSP patients or plans. Finally, whereas Section IV(C) would prohibit VSP from differentiating payments to doctors who charge lower fees to non-VSP patients or plans, Section V(E) allows VSP to maintain current fees which, because of most favored nation enforcement, already differentiate.

B. Discounting Disincentives

Use of modal or median fees in place of the lowest fee fails to remove disincentives to discounting. For example, the median fee, ''the fee below and above which there are an equal number of fees,'' is potentially lowered anytime a provider discounts his fee to a non-VSP patient or plan. Providers are still unlikely to risk reducing the amounts they receive from VSP, which constitutes a significant portion of many practices, by accepting anything less than their VSP fees.[4]

Section V thus not only facilitates price fixing, it also compromises the proposed Final Judgment's attempts to prohibit MFN activities and remove disincentives to discounting. Moreover, by allowing VSP to maintain the current fees which are the result of years of VSP's misuse of most favored

[1] ''The mission of our corporation as stated by the founders, reaffirmed by the present board, and by all of the leaders in between, is to put patients into our panel doctors' offices and dollars into optometric bank accounts.'' February 12, 1987 Speech by VSP's President, John O'Donnell, p. 8. Exhibit 62 to Declaration of Jeffrey M. Shohet in Support of Plaintiffs' Motion for Partial Summary Judgment in *Allstate Optical Services, Inc.* v. *California Vision Service,* Docket No. C87–20572WAI, U.S. District Court, Southern District of California.

[2] A ''safe harbor'' exists where a provider-controlled plan shares substantial financial risk through capitation or withholding of at least 20%. Statement 8 of The Department of Justice and Federal Trade Commission Statements of Enforcement Policy and Analytical Principles Relating to Health Care and Antitrust. VSP, however, does not use capitation and only withholds a maximum of 2%. Accordingly, VSP does not qualify for the safe harbor.

[3] As the Department points out at p. 7 of the Competitive Impact Statement, one of the effects of VSP's practices is that fees for vision care services are 30% higher in areas where VSP is dominant. The Department implies that VSP currently bases its fees on the lowest fees accepted by its doctors. By encouraging VSP to set fees based on any amount other than the lowest fees, however, costs for vision care services are likely to rise even higher.

[4] Perhaps most significantly, the proposed Final judgment fails to address what is arguably the strongest disincentive to discounting. Many optometrists feel that VSP is ''optometry's plan.'' They see discounting or membership on a competitor's panel as forms of disloyalty. The decree thus would leave intact the most significant disincentive to discounting.

nation clauses, the proposed Final Judgment fails to remedy a specific practice alleged in the Complaint. It would not be in the public interest to simply tell VSP to ''sin no more'' without also addressing the unfair advantage it has already gained.[5]

III. Conclusion

Nothing is alleged in the VSP complaint which would necessitate the inclusion of Section V. This section arguably would allow VSP to engage in conduct that would otherwise be illegal. Section V also reduces the safeguards of Section IV to nothing more than an illusion. For these reasons we object to entry of the proposed Final Judgment in this matter.

Respectfully Submitted this 21st day of April, 1995.

Very truly yours,

Tina E. Kondo,

Brian L. Dew,

Assistant Attorneys General, State of Washington.

Bruce M. Botelho,

Attorney General.

Daveed A. Schwartz,

Assistant Attorney General, State of Alaska.

Kenneth S. Countryman,

Assistant Attorney General, State of Arizona.

Michael T. Lee,

Deputy Attorney General, State of Hawaii.

Marty Howard,

Deputy Attorney General, State of Nevada.

Susan G. White,

Assistant Attorney General, State of New Mexico.

Andrew E. Aubertine,

Assistant Attorney General, State of Oregon.

United States of America, Plaintiff, vs. *Vision Service Plan,* Defendant.

[No. CV 94–2693 TPJ]

Comment of First American Health Concepts, Inc.

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b), First American Health Concepts, Inc., (''FAHC''), an interested person, submits to the Department of Justice for filing with the United States District Court for the District of Columbia and publication in the Federal Register its written Comment on the Final Judgment proposed by the parties to this action. This Comment is supported by the attached Memorandum of Points and Authorities and all Exhibits hereto.[1]

Respectfully Submitted this 29th day of March, 1995.

Shimmel Hill, Bishop & Gruender, P.C.

Daniel F. Gruender,

Michael V. Perry,

Glenn B. Hotchkiss,

3700 North 24th Street, Phoenix, Arizona 85016, Attorneys for First American Health, Concepts, Inc.

Memorandum of Points and Authorities

I. Introduction

FAHC is an Arizona corporation formed in 1981 and a competitor of the Defendant, Vision Service Plan (''VSP''), in the market for pre-paid vision care services. Both FAHC and VSP offer their enrolled members eye examinations and eyeware (eyeglasses and contact lenses) through a network of affiliated service providers, primarily optometrists and opticians.

FAHC incorporates the factual recitations contained in the Competitive Impact Statement Sections I and II filed in this action.

FAHC opposes the proposed Final Judgment for the following reasons. As explained in § II(B) below, mere elimination of the Most Favored Nations (''MFN'') provision by name from the VSP Panel Doctor Agreement does not remedy VSP's anti-competitive practice of penalizing panel doctors for accepting lower fees from competing plans because § V(B) of the proposed Final Judgment permits VSP to continue calculating the fees it will pay its panel doctors in relation to what those doctors accept from non-VSP patients. As explained in § II(C) below, the proposed Final Judgment is deficient because it does not even address, let along prohibit, VSP's illegal tying/exclusive dealing arrangement between a VSP panel doctor's membership on a VSP panel and then purchase of eyeglasses from a VSP-controlled sources.

For all these reasons, and as further explained in § II(D), FAHC respectfully suggests that the proposed Final Judgment be modified in the following respects:

(1) VSP should be prohibited from calculating the fees it will pay its panel doctors based *directly or indirectly* on the fees those doctors charge to non-VSP patients;

(2) VSP should be prohibited from requiring VSP panel doctors to maintain or produce any information relating to the fees those doctors charge to non-VSP patients, and also should be prohibited from auditing VSP panel doctors' records to discover such information; and

(3) VSP should be prohibited from tying the VSP membership of its panel doctors to the purchase of vision products manufactured by VSP-owned or controlled sources or requiring that VSP panel doctors obtain vision products only from VSP-controlled sources.

II. Analysis

A. Introduction

The Tunney Act requires that before entering the proposed Final Judgment, this Court must first determine that entry of the Final Judgment is in the public interest. 15 U.S.C. § 16(e). As stated in *United States* v. *Airline Tariff Pub. Co.,* 836 F.Supp. 9, 11 (D.D.C. 1993):

Courts have developed a two-pronged public interest inquiry. First, courts inquire as to whether the proposed relief effectively will foreclose the possibility that antitrust violations will occur or recur * * *. Second, courts consider whether the relief impinges upon other public policies. (citations omitted)

In making the public interest determination, the Court must evaluate whether the proposed Final Judgment provides a valid antitrust remedy by ''pry[ing] open to competition a market that has been closed by [VSP's] illegal restraints.'' *International Salt Co.* v. *United States,* 332 U.S. 392, 401 (1947). *See also United States* v. *Microsoft,* 159 F.R.D. 318, 331 (D.D.C. 1995). Stated another way, in assessing whether a proposed consent judgment passes muster, the Court must determine that it (a) rectifies the behavior the government perceives to be a current antitrust violation, and (b) does not allow the settling defendant to engage in similar anti-competitive behavior. *Airline Tariff, supra,* at 12–13. The Court must independently review the proposed Final Judgment using the above analysis, and may not merely rubber stamp it. *Microsoft, supra,* at 329. Finally, in making the public interest determination, this Court is not restricted to the allegations of DOJ's Complaint, and instead, may look beyond the four corners of the Complaint to all relevant conduct and circumstances. *Microsoft, supra,* at 331. For the reasons set forth below, the proposed Final Judgment does not serve the public interest and should be rejected.

B. The Proposed Final Judgment Is Deficient Because It Allows VSP To Demand From Its Panel Doctors Information Regarding Fees Charged Non-VSP Patients And To Continue Calculating The Fees It Pays Its Panel Doctors In Relation To What Those Doctors Charge Non-VSP Patients.

On the simplest level, DOJ Claims that the proposed Final Judgment will eliminate VSP's anti-competitive practices and open the vision services industry to an unparalleled degree of competition. The proposed Final Judgment will bring about this result, DOJ says, because it renders the MFN provision in the VSP Panel Doctor's Agreement null and void. The vice in that MFN provision (and what presumably led DOJ to sue VSP in the first place) is that it allows VSP to calculate the fees it will pay its panel doctors in relation to the fees those same doctors charge non-VSP patients and non-VSP plans. DOJ knows that VSP has a history of cutting providers' rates under the guise of the MFN alleging the provider is accepting lower fees from another competitor even when that allegation is incorrect or the fees involved are not comparable. Based on this evidence, there is no reason to expect VSP will not do the same with any other formula permitted. Based on what DOJ knows, it should, as it did in the case of Delta Dental, prohibit VSP access to any fee information of providers for others than its own patients and not put its imprimatur on any fee setting mechanism.

[5] It is unclear why the proposed Final Judgment in this case differs so significantly from the proposed Final Judgment in the Department's recent Arizona Delta Dental case. The complaint in the Delta Dental case, like the VSP case, included allegations of misuse of most favored nations clauses. The decree in Delta Dental does not contain a section of permitted activities. There is no apparent difference in the Complaints that would explain the presence of Section V in this case.

[1] FAHC incorporates at Exhibits A and B the letters dated October 10, 1994 and October 17, 1994, and all exhibits thereto, submitted to the Department of Justice by Daniel F. Gruender.

An additional problem with the proposed Final Judgment is that while it prohibits VSP from enforcing the MFN provision, it expressly allows VSP to continue its anti-competitive practice of setting its fees in relation to the fees charged by its competitors.

Part of the problem with the permitted Section V is it is based on the erroneous assumption that non-VSP fees will be for the identical or comparable level of service and product as VSP's. In fact, some providers use composite rates, one price for any exam, whether limited, intermediate or comprehensive, and the same type of lens and glasses while this is not in fact the case with VSP. Accordingly, efforts to construct ''median'' or ''modal'' fees are meaningless because it involves a comparison of dissimilar services or products.

There is no doubt but that the proposed Final Judgment allows VSP to disguise and continue its anti-competitive comparative fee-setting policy. Section IV of the proposed Final Judgment prohibits VSP from maintaining or enforcing the MFN and from linking payments made by VSP to its panel doctors to the fees charged by those doctors to any non-VSP patient or plan. However, the entirety of § IV is qualified by the clause ''[e]xcept as permitted in Section V.'' Section V *permits* VSP to ''calculate the fees that it pays to a VSP panel doctor for services rendered to VSP patients based on either the panel doctor's modal or median fee. * * *.'' § V(B). In turn, ''modal fee' and ''median fee'' are both defined in terms of ''the fee(s) charged * * * for each service rendered to *non-VSP patients* * * *.'' § II(F) & (G) (emphasis added). In short, Section V expressly authorizes VSP to continue some vaguely defined comparative fee-setting policy which resulted in this lawsuit and which Section IV purports to prohibit.

DOJ tacitly concedes that the proposed Final Judgment will not prohibit VSP from basing its payments on the fees paid by its competitors:

> Though Section V does not allow VSP *routinely* to base its payments on the lowest fee charged by its panel doctors to any non-VSP plan or patient—as VSP has done through its MFN clause—Section V does permit VSP to base its payments to panel doctors on their median or modal fees charged to non-VSP plans and patients, two measures of usual and customary fees that are not linked *directly* to the lowest fee charged.

Impact Statement at 13 (emphasis added). Apparently, DOJ's position is that VSP may base its payments to its panel doctors on the fees those doctors receive from non-VSP patients or plans so long as VSP does not do so routinely or directly.

The fallacy in DOJ's reasoning is obvious. If the fee-setting mechanism embodied in the MFN provision is the competitive evil DOJ says it is,[2] then the policy must be prohibited whether it is implemented routinely or sporadically, directly or indirectly. Otherwise, VSP is free to do indirectly what it is prohibited from doing directly, in which case the very idea that competition will increase and consumers will benefit is laughable.

DOJ's only response is to suggest that in light of the fact that many patients have no vision coverage at all, the VSP panel doctor's median or modal (i.e., non-VSP) fee is not likely to be the doctor's lowest fee. Impact Statement at 13. This argument also misses the mark. The point is not that the median or modal fee will be a given doctor's *lowest* fee, but rather, that it will be a *lower* fee than the previously determined VSP fee. In that event, VSP can (and undoubtedly will) lower its fee to the lower level, the VSP panel doctor will suffer financially due to his membership in a competing plan, and the doctor's financial incentive will be to drop his membership in the competing plan to the detriment of that plan which reduces the competitor's ability to be an effective competitor which results in higher costs to the consumer. This is exactly the anti-competitive chain of events of which DOJ complains in its Complaint. *See* Complaint at ¶¶9–11.

DOJ's inadequate remedy also presents a significant obstacle to a doctor's decision to join another panel in addition to VSP. Under § V(A) of the proposed Final Judgment, VSP can compel a panel doctor to provide on an annual basis information sufficient to determine that doctor's modal and median fee. The modal fee is defined as the doctor's most frequently charged fee to non-VSP patients or for non-VSP covered services, while the median fee is defined as the doctor's fee below and above which there are an equal number of fees charged to non-VSP patients or for non-VSP covered services. Proposed Final Judgment at § II(F) & (G).

DOJ's modal/median fee scheme will require doctors to carry an enormous record-keeping burden in order to comply with VSP's requirements. Each doctor who participates in both a VSP panel and a competing panel will have to maintain (and produce at least annually), and probably compile and compute from, extensive records regarding each non-VSP patient and the fees charged to each non-VSP patient. The cost of this type of record-keeping could well be prohibitive. The failure to comply with the record-keeping requirement could be even worse because the proposed Final Judgment also permits VSP to impose unspecified penalties on doctors who misrepresent their fees or the frequency with which they charge those fees.[3] Proposed Final Judgment at § V(F). Rather than go through all that red tape and risk unspecified reductions and potential penalties and costs, providers will stay off of other panels just as they have under the MFN by whatever name it has been called.

When faced with this Hobson's choice (between the cost of compliance and penalties for non-compliance), the only way for a doctor to escape the record-keeping burden and potential risks, expenses and uncertainties of ''modals'' and ''medians'' as well as penalties, is to drop his membership in a competing panel or simply not join if the fees are not the same as VSP. That is what most plans that have resisted VSP's MFN enforcement tactics have been forced to do, namely raise their rates to those provided by VSP. In other words, if a doctor chooses to join a VSP panel, and *only* a VSP panel, the onerous record-keeping requirements of § V(A) do not apply to him because he is not providing services to any non-VSP patients.[4] Again, the clear incentive is for the doctor to drop his membership in a competing plan and provide services only through VSP, and the end result is a corresponding diminution in the number of doctors available to competing plans such as FAHC or other non-VSP plans and programs, and, of course, less competition for VSP who is growing by leaps and bounds.[6]

If DOJ is serious about increasing competition in the vision services industry by providing incentives for providers to join more than one vision services plan (or at least by removing the disincentives to doing so), that goal can be accomplished only by prohibiting VSP, as the Justice Department required of a similar plan using a MFN clause and fee setting mechanism in the dental industry, from setting the fees it will pay its panel doctors in comparison to the lower fees those doctors accept from competing plans.[6] DOJ does not explain why it prohibited Delta Dental from doing what it permits VSP to do. Any lesser remedy leaves VSP's litigation-inducing, anti-competitive practice intact.

C. The Proposed Final Judgment Is Deficient Because It Fails to Even Address the Tying/Exclusive Dealing Arrangement Between Membership on a VSP Panel and the Lenses VSP Panel Doctors Must Dispense.

1. Introduction

In addition to the defects discussed above, the proposed Final Judgment fails to serve the public interest because it does not even address a VSP-imposed requirement which is either a tying arrangement or an exclusive dealing arrangement. Specifically, the VSP Member Doctor's Procedure Manual (the ''Manual'') requires that VSP panel doctors must obtain lenses to be dispensed to patients only from VSP-approved

[2] In its Complaint, DOJ states that the MFN provision/comparative fee policy: 1) unreasonably restrains competition among vision service care insurance plans; 2) results in higher prices for vision care services for non-VSP patients; and 3) deprives consumers of vision care services of the benefits of free and open competition. *See* Complaint at § 18(a)-(c). FAHC agrees, which is why it files this Comment to see that this anti-competitive practice is stopped rather than reformulated.

[3] The proposed Final Judgment does not define the term ''misrepresent'' as that term is utilized in § V(F). Therefore, a doctor who inadvertently fails to keep accurate records of all non-VSP patient charges might be accused of misrepresenting his non-VSP fees.

[4] Of course, to the extent that a doctor provides services to a non-VSP patient who is not affiliated with a competing plan, the record-keeping requirements would, in theory, still apply. However, it is doubtful that VSP would enforce the requirements where a competing plan is not involved.

[5] See Exhibit C and Exhibit D.

[6] See Delta Dental Consent Judgment and Competitive Impact Statement in case of *Delta Dental.* Exhibits E and F.

laboratories.[7] This requirement should be (but is not) prohibited by the proposed Final Judgment.

2. Tying Arrangement

A tying arrangement is ''an agreement by a party to sell one product but only on the condition that the buyer also purchases a different (or tied) product, or at least agrees that he will not purchase that product from any other supplier.'' *Northern Pacific Railway Co.* v. *United States,* 356 U.S. 1, 5-6 (1958) Not all tying arrangements violate the antitrust laws. A tying arrangement will violate § 1 of the Sherman Act if the seller has ''appreciable economic power'' in the tying product market and if the arrangement affects a substantial volume of commerce in the tied market. *Eastman Kodak Co.* v. *Image Technical Services, Inc.,* 119 L.Ed.2d 265, 280 (1992). According to the Supreme Court, ''the essential characteristic of an invalid tying arrangement lies in the seller's exploitation of its control over the tying product to force the buyer into the purchase of a tied product that the buyer either did not want at all, or might have preferred to purchase elsewhere on different terms.'' *Jefferson Parish Hospital District No. 2* v. *Hyde,* 466 U.S. 2, 12 (1984).

The elements of an invalid tying arrangement are: (1) Two separate products or services, (2) the tying of the sale of one product or service to the purchase of another product or service, (3) sufficient market power in the tying product to restrain trade in the market for the tied product, and (4) a not insubstantial amount of interstate commerce in the tied product. *Virtual Maintenance, Inc.* v. *Prime Computer, Inc.,* 11 F.3d 660, 664 n.6 (6th Cir. 1993). Tying arrangements which satisfy all four elements violate § 1 of the Sherman Act and § 3 of the Clayton Act.[8]

a. Separate Tying and Tied Products Or Services

By definition, the tying product must be separate from the tied product. Otherwise, there is really only one product, and there can be no tying arrangement. In determining whether one or two products are involved, courts focus on the character of the demand for the two products. *Jefferson Parish, supra,* at 19. Thus, there must be a demand for the tied product separate from the tying product sufficient to identify a distinct market for the tied product. *Id.* at 21-22. Although the products must be separate, a tying arrangement may exist between two functionally related but separate products. *See, e.g., Jefferson Parish, supra* at 22-24 (hospital services and anesthesiological services held to be two distinguishable services for tying arrangement purposes).

There is no doubt that a doctor's membership on a VSP panel[9] and the lenses that doctor dispenses to patients are sufficiently distinct so as to constitute two separate products for tying arrangement purposes. But for the tying arrangement, VSP panel doctors would be free to acquire lenses for their VSP patients from sources not affiliated with VSP, or even to make the lenses themselves. These alternative sources for eyeglass lenses conclusively demonstrate that VSP panel membership and the lenses to be dispensed to patients are two separate ''products'' for tying arrangement purposes.

b. Tying of Sale of One Product To Purchase of Another Product

The fact of a tie may be established either by reliance on a contract term, or by showing that defendant coerced the purchaser into accepting the tied product. *Waldo, supra,* at 727. In this case, the tie is beyond dispute because the Manual expressly requires VSP panel doctors to acquire lenses only from VSP-approved sources. *See* footnote 5, *supra.* In turn, the requirements of the Manual are incorporated by reference in the Panel Doctor's Agreement.[10]

c. Market Power To Restrain Trade in the Market for the Tied Product

The requisite market power may in inferred from a dominant market share without a showing of actual restraint on competition in the relevant market. *Eastman Kodak, supra,* at 282; *Jefferson Parish, supra,* at 17–18. In the event of dominant market share, the tie is per se illegal, and is not subject to a rule of reason analysis of actual market conditions. *Jefferson Parish, supra,* at 13–15.

VSP enjoys a dominant market share in California, other Western states, and quite probably, in most of the states in which it does business. FAHC is not able to more specifically identify VSP's share of the relevant market(s) because DOJ has avoided raising this issue in either its Complaint or Impact Statement. The proposed Final Judgment also is silent on VSP's market share. This lack of crucial information is reason enough to reject the proposed Final Judgment. *See Microsoft, supra,* at 332–33 (rejecting proposed decree in part because parties had failed to provide court with sufficient information to make the public interest determination).

With respect to the market share component of an illegal tying arrangement, FAHC asks this Court to take judicial notice of VSP's dominant market share in California. FAHC also respectfully suggests that DOJ and VSP should be required to come forward with evidence of VSP's market share in the relevant market(s) so as to provide this Court with adequate information to analyze VSP's anti-competitive practices, including the tying arrangement.

d. Substantial Interstate Commerce

The last element of a tying arrangement is that more than an insubstantial amount of interest commerce must be affected by the tie. As the Supreme Court noted in *Jefferson Parish,* ''if only a single purchaser were 'forced' with respect to the purchase of a tied item, the resultant impact on competition would not be sufficient to warrant the concern of antitrust law.'' *Id.* at 16. However, from a dollar volume perspective, the requirement is easily reached. *See, e.g., United States* v. *Loew's,* 371 U.S. 38 (1962) ($60,800 sufficient).

VSP operates on a nationwide basis. Impact Statement at 2. VSP plans cover more than 15 million people. *Id.* VSP revenues in 1994 alone exceeded $650 million. *Id.* These facts clearly establish that VSP's anti-competitive practices affect a substantial amount of interstate commerce.

VSP's requirement that its panel doctors dispense only lenses obtained from VSP-approved sources as a condition of VSP panel membership is a classic tying arrangement which the proposed Final Judgment completely ignores. The proposed Final Judgment should be modified to prohibit this blatant anti-competitive practice. At the very least, this Court should require DOJ and VSP to explain why this practice does not violate the antitrust laws or should not be prohibited.[11]

3. Exclusive Dealing Arrangement

VSP's lens requirement also constitutes an exclusive dealing arrangement[12] in that it requires VSP panel doctors to obtain lenses only from VSP-controlled sources. Unlike tying arrangements, exclusive dealing arrangements are subject to review under a rule of reason analysis. *Jefferson Parish, supra,* at 44–45 (O'Connor, J., concurring) (citing *Tampa Electric Co.* v. *Nashville Coal Co.,* 365 U.S. 320, 333–35 (1961)). The relevant inquiry is whether the restraint in question promotes or suppresses competition. *National Society of Professional Engineers* v. *United States,* 435 U.S. 679, 691 (1978). *Tampa Electric* sets forth a three-part test for determining the reasonableness of the restraint: (1) A determination of the line of commerce involved, (2) a determination of the area of effective competition, and (3) a determination of whether competition has been foreclosed in a substantial share of the

[7] Under the heading ''Ophthalmic Laboratories,'' the Manual states ''VSP doctors must use one of the VSP contract laboratories listed in the Laboratory Section of this Manual.'' Manual at G-1. The Manual also states ''VSP POLICY DOES NOT ALLOW THE PANEL DOCTOR TO FABRICATE AND/OR SUPPLY LENSES OUT OF HIS OWN OFFICE STOCK. ALL TINTING MUST BE DONE BY THE VSP CONTRACT LAB THAT SUPPLIED THE LENSES.'' Manual at G-1 (capitalization in original).

[8] Clayton Act § 3 is implicated only if both the tying product and the tied product are ''commodities,'' i.e., durable goods. *Waldo* v. *North American Van Lines, Inc.,* 669 F.Supp. 722, 727 (W.D. Pa. 1987). If either product is a service, only Sherman Act § 1 is implicated. *Id.*

[9] The tying ''product'' is really the patient referrals which flow from membership on a VSP panel. It is this source of referrals which optometrists wish to purchase, and which induces them to join the VSP panel. For purposes of convenience, however, this Comment will refer to the tying product simply as VSP panel membership.

[10] The VSP Panel Doctor's Agreement states ''THE DOCTOR AGREES to adhere to [VSP] policies and procedures as set forth in the panel doctors' manual * * * .'' Panel Doctor's Agreement at ¶4.

[11] Specifically, Sherman Act § 1 and Clayton Act § 3.

[12] In her concurrence in *Jefferson Parish,* Justice O'Connor noted that tying arrangements and exclusive dealing arrangements are similar in nature. *Id.* at 33, 44–45. Therefore, she separately analyzed the contract for anesthesiological services at issue in that case as both a tying arrangement and an exclusive dealing arrangement. *Id.* FAHC takes the same approach here with respect the VSP lens requirement.

relevant market. *Tampa Electric, supra,* at 327–29.

The line of commerce determination simply involves identifying the type of goods or services involved in the particular restraint. *Tampa Electric, supra,* at 327. In this case, VSP's exclusive dealing arrangement with its panel doctors relates specifically to eyeglass lenses.

The area of effective competition determination is a function of the market in which the seller operates, and the market to which the purchaser can turn to obtain alternate supplies. *Id.* at 327. Here, the ''seller'' is VSP (through the labs it approves and controls) and the ''purchasers'' are the panel doctors. Because VSP operates on a national basis, and its panel doctors are located nationwide, the area of effective competition is the entire country.[13]

Finally, the Court must determine whether the restraint forecloses a *substantial* share of competition in the relevant market. *Id.* at 328–29. By any standard, the amount of competition foreclosed is substantial. VSP typically controls as much as 98% of the total number of optometrists in a given market,[14] and more than 17,000 doctors in all. Impact Statement at 3. VSP's share of the pre-paid vision care services market is as high as 75% in some states such as California.[15] Finally, the VSP-controlled portion of its panel doctors' income is ''substantial.'' Complaint at ¶9.

Thus, VSP, through its control over the vast majority of doctors and pre-paid vision care patients, is able to dictate the source of a substantial percentage of eyeglass lenses purchased in this country. Every pair of lenses purchased from a VSP-controlled source pursuant to the lens requirement forecloses all other lens suppliers from the market. The foreclosure of a substantial percentage of the lens market is obvious.

VSP's lens requirement is an illegal exclusive dealing requirement which violates both § 1 of the Sherman Act and § 3 of the Clayton Act. The proposed Final Judgment must be modified to prohibit this anti-competitive practice.

D. The Proposed Final Judgment Should Be Modified To Remedy All of VSP's a Anti-Competitive Practices

Where a proposed consent decree provides an ineffective remedy—one which does not pry open the relevant market to competition—a court can and should modify or reject the decree. *See, e.g., Microsoft, supra,* at 333–34. Where the proposed decree does not address anti-competitive practices, particularly those it prohibited in the similar circumstances in the dental industry, the reviewing court cannot shut its eyes to the obvious. *Id.* at 334.

The proposed Final Judgment provides an ineffective remedy because: (1) It expressly allows VSP to continue setting its fees in comparison to its competitors, thereby allowing VSP the benefit of the MFN provision even while purporting to prohibit enforcement of that provision, and (2) it fails to even address the VSP lens requirement which is an illegal tying arrangement and/or exclusive dealing arrangement which has the anti-competitive effect of extending VSP's dominance in the pre-paid vision care market to the market for vision products.

As earlier noted, the inadequate remedy set forth in the proposed final Judgment is especially disappointing given that just this past December, DOJ tackled the health care industry's use of most favored nations clauses in *United States* v. *Delta Dental Plan of Arizona, Inc.*[16] That case arose out of a nearly identical most favored nations clause contained in the standard agreement defendant forced on its participating dentists. There, as here, the effect of the clause was to lower participating dentists' ''usual and customary fee'' to the lowest fee charged to any other person or plan.

While the violations in the *Delta Dental* case and this one are nearly identical, the final judgments are not. The *Delta Dental* judgment, which is attached hereto as Exhibit E, completely prohibits the defendant from maintaining or enforcing an MFN provision, demanding information about competing plans or those plans' customers, auditing plan providers with respect to fees charged to competing plans or other persons, communicating with plan providers about such fees, or taking any action directly or indirectly to force plan providers to refrain from participating in other plans or offering discount fees to competing plans or those plans customers. *See* Exhibit E at § IV. Unlike the proposed Final Judgment, the *Delta Dental* judgment does *not* allow the defendant to continue the same anti-competitive practices previously carried out through the MFN. In other words, there is no subsequent section, like the proposed Final Judgment's § V, which guts the injunctive provisions of the judgment. FAHC respectfully submits that the proposed Final Judgment should be modified to tailor its injunctive provisions to the injunctive provisions of the *Delta Dental* judgment, and to delete § V in its entirety.

In addition, the proposed Final Judgment should be modified to prohibit VSP's other anti-competitive practices. Specifically, VSP should be prohibited from tying membership on its panels to the use of vision products under the control of VSP, or from requiring its panel doctors to purchase or obtain any vision products exclusively from sources controlled by VSP.

The compliance measure requirement on page 7 of the Judgment which only requires VSP to send copies of the Final Judgment to ''former'' VSP providers whom VSP ''should reasonably know have resigned because of the MFN clause'' is too vague and ambiguous to be enforced. VSP knows which providers it sent letters to in seeking to enforce the terms of the MFN. Those are the people who need to know VSP's anti-competitive activities are prohibited. A copy of the Judgment should be sent to each of those providers who are still licensed by the states in which they practice. VSP can probably say they do not know why a provider resigned unless he specifically provided them with a reason. Besides, it only refers to providers who resigned from VSP, not former VSP providers who resigned from other panels because of VSP's illegal conduct. Few, if any, providers resigned from VSP as a result of VSP's efforts to enforce the MFN or VSP would not have been so enthusiastic in enforcing it.

III. Conclusion

VSP is the Microsoft of the pre-paid vision care industry. It enjoys the dominant position in the industry. It regularly employs anti-competitive practices to erect barriers to entry by its competitors. It continues to take all means necessary to deter licensed vision care providers from participating in competing plans. In these ways, VSP maintains its dominant market position at the expense of its competitors and vision care consumers, and in violation of this country's antitrust laws.

The proposed Final Judgment does virtually nothing to curb VSP's anti-competitive behavior. In fact, the proposed Final Judgment sanctions VSP's conduct by expressing permitting it. Any person with even a passing familiarity with antitrust law would be hard pressed to conceive of a less effective mechanism to stop VSP's anti-competitive practices.

Therefore, VSP opposes entry of the proposed Final Judgment for all the reasons set forth in this Comment, and requests that the proposed Final Judgment be modified as requested in § II(D). Anything less is not in the public interest.

Respectfully Submitted this 29th day of March, 1995.

Shimmel, Hill, Bishop & Gruender, P.C.

Daniel F. Gruender,

Michael V. Perry,

Glenn B. Hotchkiss,

3700 North 24th Street, Phoenix, Arizona 85016, Attorneys for First American Health Concepts, Inc.

Notice of Errata

In its Comment on the proposed Final Judgment in this matter, First American Health Concepts, Inc. (''FAHC'') concluded by stating ''VSP opposes entry of the proposed Final Judgment for all the reasons set forth in this Comment, and requests that the proposed Final Judgment be modified as requested in § II(D).'' Comment at 21. The above-quoted language should read *''FAHC* opposes entry of the proposed Final Judgment for all the reasons set forth in this Comment, and requests that the proposed Final Judgment be modified as requested in § II(D).''

[13] For purposes of examining the reasonableness of the VSP-imposed restraint on lenses, this broad definition of the relevant geographic market actually favors VSP. Despite this broad market definition, however, the restraint is still unreasonable.

[14] The figure provided is for the state of Nevada in 1993. Again, DOJ has not provided relevant data for the relevant market(s). This information is critical to the Court's public interest determination. *See Microsoft, supra.*

[15] Again, FAHC provides information to the best of its ability, given its status as a competitor of VSP. DOJ has the authority to compel VSP to disclose this information, and may have done so, but the Complaint, Impact Statement, and proposed Final Judgment contain no information concerning VSP's share of the relevant market(s).

[16] Case No. CIV 94–1793 PHX PGR.

Respectfully Submitted this 6th day of April, 1995.

Shimmel, Hill, Bishop & Gruender, P.C.

Daniel F. Gruender,

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[FR Doc. 96–5472 Filed 3–7–96; 8:45 am]

BILLING CODE 4410–01–M

Immigration and Naturalization Service

[INS No. 1741–95]

Immigration and Naturalization Service P–1 Nonimmigrant Advisory Committee

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of establishment of P–1 Nonimmigrant Advisory Committee.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C., Appendix II (1972), the Commissioner, Immigration and Naturalization Service (INS), with the approval of the Attorney General, is establishing a P–1 Nonimmigrant Advisory Committee for the purpose of examining the question of whether United States-based entertainment groups seeking to employ alien entertainers may file P1 nonimmigrant petitions. In addition, the Advisory Committee will provide input regarding the appropriate use of the P–1 nonimmigrant classification as it relates to the employment of non-United States-based circus personnel. The object of the Committee is to provide an organized public forum for discussion of the above issues which have arisen between officials of the Service and members of the public in general, and management and labor groups in the entertainment industry in particular.

The INS also intends to use the Advisory Committee in the future in order to discuss additional issues relating to the P–1 classification as well as other issues that may arise with respect to the entertainment industry.

It is anticipated that the members of the Committee will assist the Service in being more responsive to the needs and concerns of the entities affected by the P–1 nonimmigrant classification.

MEMBERSHIP: The Committee will be composed of approximately 10-15 representatives from the entertainment industry, immigration practitioners, and labor organizations. The INS has been contacted by a number of representatives from these groups who have expressed interest in joining the Committee and volunteered their services. In addition, the INS invites other individuals interested in becoming members of this committee on contact, by interested in becoming members of this committee to contact, by letter or fax, the INS officer designated as the contact person listed below within 60 days of publication of this notice with a statement of their qualifications for membership and reasons why they believe they should participate. The INS will then publish a second notice after it has selected all the committee members.

The Committee will function solely as an advisory body in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed in accordance with the provisions of the Act.

FOR FURTHER INFORMATION CONTACT: John W. Brown, Adjudications Officer, Immigration and Naturalization Service, 425 I Street NW., room 3214, Washington, DC 20536, Telephone (202) 514–3240, Fax (202 514–0198).

Dated: February 16, 1996.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 96–5503 Filed 3–7–96; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

The National Skill Standards Board (NSSB); Notice of Availability of Funds and Solicitation for Grant Applications

AGENCY: Office of the Assistant Secretary for Administration and Management, Labor.

ACTION: Notice of availability of funds and solicitation for grant application can be obtained by writing to: Lisa Harvey, U.S. Department of Labor, Office of Procurement, 200 Constitution Avenue, NW., Room N 5416, Washington, DC 20210. The National Skill Standards Board (NSSB) is soliciting proposals to be funded through Public Law 103–227. It is anticipated that five to 15 cooperative agreements will be awarded for a total not to exceed $1.5 million. Awards will range from $100,000 to $300,000. Eligibility to respond is limited, as described herein.

ELIGIBILE APPLICANTS: Applicants must be one of or a combination of two or more of the original 22 pilot projects funded as part of the national skill standards demonstration projects coordinated jointly by the U.S. Departments of Labor and Education.

CLOSING DATE: The closing date for receipt of proposals will be March 25, 1996, at 2:00 p.m. at the following address: Office of Procurement, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N5416, Washington, DC 20210.

It is anticipated that awards will be announced on or prior to May 1, 1996.

PERIOD OF PERFORMANCE: The period of performance will cover 12 months from the date of execution of the cooperative agreement.

Legislative Authority

In 1994 the Goals 200: Educate America legislation was signed, establishing in Title V the National Skill Standards Board. The Board is charged with stimulating the development and adoption of a voluntary, national system of skill standards and of assessment and certification of skill attainment.

Specifically the Board will Develop occupational clusters to provide the framework for standard setting efforts; be the catalyst for industry-led groups to set the standards; and endorse the qualifying standards presented to it for approval. The NSSB also serves as a clearinghouse of information relating to the development of skill standards and skills formation systems. The work of the Board is intended to ''serve as a cornerstone of the national strategy to enhance workforce skills''. Within the workforce development policy framework, national skill standards will link school-to-work initiatives, emerging reemployment strategies for displaced workers and state workforce development efforts to a common understanding. This shared understanding of skills needed for success will be imperative if the U.S. is to build a system that improves the skills, training and preparedness of the workforce, a system needed to insure economic competitiveness.

The Board is comprised of leaders from business, organized labor, education, training, state and federal government as well as other key stakeholder groups. The NSSB is mandated by the authorizing legislation to conduct workforce research relating to skill standards in support of its system development activities. The Board is interested in continuing the cooperative relationship with select pilot projects (or combinations thereof) drawing from the group of 22 funded previously through the cooperative efforts of the U.S. Departments of Labor and Education. The NSSB would like to build on what was required in the

original cooperative agreement to explore specific issues and challenges related to implementation and uses of skill standards. There is no interest in duplicating work done in the initial phase of research.

Purpose

The research will inform the development of a system of voluntary, national skill standards. Proposed activities will include, but not be limited to, standards-based assessment, certification, work-based implementation, the development of high performance work organizations and gaining industry-wide acceptance of national skill standards. Applicants must demonstrate that proposed activities will directly inform the Board's efforts to implement its mission and will be in keeping with the operating objectives defined in the complete solicitation package.

Signed at Washington, D.C. on March 5, 1996.

Lawrence J. Kuss,

Grant Officer.

[FR Doc. 96–5568 Filed 3–7–96; 8:45 am]

BILLING CODE 4510–23–M

Employment and Training Administration

[TA–W–31,671]

Boise Cascade, Timber & Wood Products Division La Grande, Oregon; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on December 4, 1995 in response to a worker petition which was filed on December 4, 1995 on behalf of workers at Boise Cascade, Timber & Wood Products Division, Yakima, Washington.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of February, 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–5543 Filed 3–7–96; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than March 18, 1996.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than March 18, 1996.

The petitions filed in this case are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C., this 26th day of February, 1996.

Russell Kile,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

Appendix

PETITIONS INSTITUTED ON FEBRUARY 26, 1996

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
31,936 .	Boise Cascade (U)	Vancouver, WA	02/12/96	Specialty paper products.
31,937 .	Capital-Mercury Shirt (Comp)	Melbourne, AR	02/02/96	Men's shirts.
31,938 .	Capital-Mercury Shirt (Comp)	Des Arc, AR	02/02/96	Men's shirts.
31,939 .	Capital-Mercury Shirt (Comp)	Walnut Ridge, AR	02/02/96	Men's shirts.
31,940 .	Alphabet (Comp)	Nappanee, IN	02/07/96	Wire harnesses.
31,941 .	Andover Togs, Inc. (Comp)	Pisgah, AL	01/26/96	Chidlren's sportswear.
31,942 .	Carter-Wallace, Inc. (USWA)	Trenton, NJ	02/07/96	Condoms.
31,943 .	Doran Textiles, Inc. (Wkrs)	Shelby, NC	01/18/96	Yarn.
31,944 .	Eaton Corp. (BBF)	Marion, OH	01/01/96	Truck axles.
31,945 .	FMC/Crosby Valve & Gage (Wkrs)	Wrentham, MA	01/18/96	Pressure and safety relief valves.
31,946 .	J.J. Lingerie Co. (Wkrs)	Glens Falls, NY	02/06/96	Lingerie.
31,947 .	Masland Industries (Wkrs)	Lewistown, PA	02/07/96	Carpets for automobiles.
31,948 .	Molycorp, Inc. (U)	Washington, PA	01/02/96	Molybdenum Oxide.
31,949 .	P & K Dress (UNITE)	Little Falls, NY	11/29/95	Ladies' dresses.
31,950 .	Raintree Buckles (Wkrs)	North Hollywood, CA	02/06/96	Buckles, metal gift items.
31,951 .	Riedell Shoes, Inc. (UFCW)	Red Wing, MN	02/06/96	Skates.
31,952 .	St. Mary's Sewing Ind. (Wkrs)	Edcouch, TX	01/29/96	Sewing of apparel.

PETITIONS INSTITUTED ON FEBRUARY 26, 1996—Continued

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
31,953 .	Shape, Inc. (Wkrs)	Biddeford, ME	01/24/96	Audio cassettes & some computers.
31,954 .	Shape—Global Division (Wkrs)	Sandford, ME	01/24/96	Video cassettes.
31,955 .	Spectrum Apparel (Wkrs)	Douglas, GA	02/06/96	Ladies coats.
31,956 .	Storage Tek (Wkrs)	Lousville, CO	02/01/96	Printed circuit boards.
31,957 .	Textron Lycoming (UAW)	Williamsport, PA	02/08/96	Switches.
31,958 .	TRW/AEG (OCAW)	Union Springs, NY	02/01/96	Aircraft parts.
31,959 .	TRW/TED (OCAW)	Auburn, NY	02/01/96	Aircraft parts.

[FR Doc. 96–5542 Filed 3–7–96; 8:45 am]

BILLING CODE 4510–30–M

Diamond Offshore Drilling, Incorporated A/K/A Diamond Offshore Management Company, Houston, Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 7, 1995, applicable to all workers of Diamond Offshore Drilling, Incorporated, Houston, Texas and other locations in various States. The notice was published in the Federal Register on November 24, 1995 (60 FR 58103). The certification was amended January 18, 1996 to include workers of the subject firm located in the State of Texas who had their unemployment insurance (UI) taxes paid to Diamond Offshore Management Company.

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The Department is again amending the certification to include workers of the subject firm operating in various locations in the states of Alabama, Florida, Louisiana, and Mississippi whose UI taxes were paid to Diamond Offshore Management Company. The intent of the Department's certification is to include all workers of the subject firm adversely affected by increased imports.

The amended notice applicable to TA–W–31,504 is hereby issued as follows:

''All workers of Diamond Offshore Drilling Incorporated, a/k/a Diamond Offshore Management Company, Houston, Texas (TA–W–31,504) with other locations in the following states: Texas (TA–W–31,504A), Alabama (TA–W–31,504B), Florida (TA–W–31,504C), Louisiana (TA–W–31,504D), and Mississippi (TA–W–31,504E) who became totally or partially separated from employment on or after September 10, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, DC this 26th day of February 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–5544 Filed 3–7–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,949]

P & K Dress Corporation, Little Falls, New York; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on December 11, 1995 in response to a worker at P & K Dress Corporation, Little Falls, New York.

An active certification covering the petitioning group of workers remains in effect (TA–W–31,710). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 28th day of February, 1996.

Russell T. Kile,

Acting Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 96–5545 Filed 3–7–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,814]

Shorty's Electric Motor Service, The Dalles, Oregon; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on January 29, 1996 in response to a worker petition which was filed on behalf of workers at Shorty's Electric Motor Service, The Dalles, Oregon.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, D.C., this 26th day of February 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

FR Doc. 96–5547 Filed 3–7–96; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00701]

Matsushita Electric Corporation of America Matsushita Logistics Company; Fort Worth, Texas, Notice of Revised Determination on Reconsideration

On January 22, 1996, the Department issued a negative determination for workers of Matsushita Electric Corporation of America, Matsushita Logistics Company, Ft. Worth, Texas, to apply for NAFTA-Transitional Adjustment Assistance (NAFTA-TAA). The notice was published in the Federal Register on February 6, 1996 (FR 61 FR 4487).

By letter of February 6, 1996, the petitioners requested administrative reconsideration of the Department's findings.

Findings on reconsideration show that the employees of the subject firm perform sales and warehousing services of electronic products for the parent company, Matsushita Electric Corporation of America. Investigations show sales and employment at the Fort Worth location declined during the time period of the investigation. Workers at the Fort Worth location may be certified only if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to the subject firm by ownership, or a firm related by control. A NAFTA certification was issued for a producing facility of the parent company that imports electronic products from Mexico.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of

articles like or directly competitive with electronic products contributed importantly to the declines in sales or production and to the total or partial separation of workers at Matsushita Electric Corporation of America, Matsushita Logistics Company, Fort Worth, Texas. In accordance with the provisions of the Act, I make the following certification:

''All workers of Matsushita Electric Corporation of America, Matsushita Logistics Company, Fort Worth, Texas who became totally or partially separated from employment on or after November 21, 1994 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.''

Signed at Washington, D.C., this 23rd day of February 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–5548 Filed 3–7–96; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 96–025]

NASA Advisory Council, Technology and Commercialization Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Technology and Commercialization Advisory Committee.

DATES: Thursday, March 28, 1996, 8:30 a.m. to 5:00 p.m.; and Friday, March 29, 1996, 8:30 a.m. to 2:00 p.m.

ADDRESSES: National Aeronautics and Space Administration, Room MIC–6, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Matthew M. Crouch, Code XM, National Aeronautics and Space Administration, Washington, DC 20546 (202/358–1500).

SUPPLEMENTARY INFORMATION: The meeting will be closed to the public on Thursday, March 28, 1:00 p.m. to 2:00 p.m., in accordance with U.S.C. 522b(c)(4), to discuss proprietary information on technology development of the reusable launch vehicle partner companies.

The remainder of the meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Office of Space Access and Technology Update and Comments
—Reusable Launch Vehicle Briefings
—Space Technology Enterprise Strategic Plan/Metrics

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: March 4, 1996.

Leslie Nolan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 96–5579 Filed 3–7–96; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: Office of Records Administration, National Archives and Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATES: Request for copies must be received in writing on or before April 22, 1996. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, College Park, MD 20740. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of Agriculture, Agricultural Research Service (N1–310–92–2). Facilitative records created as part of a personnel demonstration project.

2. Department of Housing and Urban Development (N1–207–96–3). Reduction in retention period for Interstate Land Sales Registration Records.

3. Department of Labor (N1–174–96–2). Working papers for semiannual reports submitted to Congress by the Inspector General.

4. Department of State, Bureau of Inter-American Affairs (N1–59–96–7). Daily activity reports maintained by the geographic offices. Bureau-wide report designated as permanent.

5. National Park Service, Historic American Building Survey (N1–515–95–1). Comprehensive records schedule.

6. Office of the Comptroller of the Currency (N1–101–94–1). Changes in retention period for bank examination working papers.

7. Patent and Trademark Office (N1–241–95–1). Financial, budget, personnel, and other administrative and housekeeping records.

8. Postal Rate Commission (N1–458–96–2). Informal dockets and duplicate copies of rate case dockets.

9. Surface Transportation Board (N1–134–96–1). Confidential rail contracts, including summaries, and government rate tender files.

10. U.S. Nuclear Waste Technical Review Board (N1–220–96–5). Unidentified photographs, videotape and duplicate copies of correspondence.

11. Department of State, Bureau of Administration (N1–59–96–2). Records relating to the information management training program.

Dated: February 27, 1996.

James W. Moore,

Assistant Archivist for Records Administration.

[FR Doc. 96–5470 Filed 3–7–96; 8:45 am]

BILLING CODE 7515–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–498]

Houston Lighting and Power Company; City Public Service Board of San Antonio Central Power and Light Company; City of Austin, Texas; Notice of Consideration of Issuance of Amendment to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–76, issued to Houston Lighting & Power Company, et al., (the licensee) for operation of the South Texas Project, Unit 1, located in Matagorda County, Texas.

The proposed amendment would include the addition of Technical Specification (TS) 3.10.8 which would allow a one-time only extension of the standby diesel generator (SDG) allowed outage time for a cumulative 21 days on ''A'' train SDG. In addition, it would also allow a one-time only extension of the allowed outage time on ''A'' train essential cooling water loop for a cumulative 7 days. This one-time only change would become effective on April 10, 1996, and expire on May 15, 1996.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Standby Diesel Generators are not accident initiators, therefore the increase in Allowed Outage Times for this system does not increase the probability of an accident previously evaluated. The three train design of the South Texas Project ensures that even during the seven days the Essential Cooling Water loop is inoperable there are still two complete trains available to mitigate the consequences of any accident. If the Essential Cooling Water loop is not inoperable during the 21 days the Standby Diesel Generator is inoperable, the Standby Diesel Generator's Engineered Safety Features bus and equipment in the train will be operable. This ensures that all three redundant safety trains of the South Texas Project design are operable. In addition the Emergency Transformer will be available to supply the Engineered Safety Features bus normally supplied by the inoperable Standby Diesel Generator. These actions will ensure that the changes do not involve a significant increase in the consequences of previously evaluated accidents.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes affect only the magnitude of the Standby Diesel Generator and Essential Cooling Water Allowed Outage Times once per fuel cycle as identified by the marked-up Technical Specification. As indicated above, the proposed change does not involve the alteration of any equipment nor does it allow modes of operation beyond those currently allowed. Therefore, implementation of these proposed changes 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 changes result in no significant increase in core damage or large early release frequencies.

Three sets of PSA [probabilistic safety assessment] results have been presented to the NRC for the South Texas Project. One submitted in 1989 from the initial Level 1 PSA of internal and external events with a mean annual average CDF [core damage frequency] estimate of $1.7\times10(-4)$, a second one submitted in 1992 to meet the IPE requirements from the Level 2 PSA/IPE with a CDF estimate of $4.4\times10(-5)$, and an update of the PSA that was reported in the August 1993 Technical Specifications submittal with a variety of CDF estimates for different assumptions regarding the rolling maintenance profile and different combinations of modified Technical Specifications. The South Texas Project PSA was updated in March of 1995 to include the NRC approved Risk-Based Technical Specifications, Plant Specific Data and incorporate the Emergency Transformer into the model. This update resulted in a CDF estimate of $2.07\times10(-5)$. When the requested changes are modeled along with the compensatory actions, the resulting CDF estimate is $2.30\times10(-5)$. While this is slightly higher (approx. 11%) than the updated results, it is still significantly lower (approx. 46%) than the previous Risk-Based Evaluation of Technical Specification submitted in 1993. Therefore, it is concluded that there is no significant reduction in the margin of safety.

Based on the above evaluation, Houston Lighting & Power has concluded that these changes do not involve any 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.

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. 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 hearing and petitions for leave to intervene is discussed below.

By April 8, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–248–5100 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to William D. Beckner, Director, Project Directorate IV–1: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, N.W., Washington, D.C. 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 29, 1996, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Wharton County Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488.

Dated at Rockville, Maryland, this 4th day of March, 1996.

For the Nuclear Regulatory Commission.

George Kalman,

Senior Project Manager, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 96–5498 Filed 3–7–96; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–263]

Northern States Power Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–22 issued to the Northern States Power Company for operation of the Monticello Nuclear Generating Plant located in Wright County, Minnesota.

The proposed amendment would revise Technical Specification (TS) Section 4.7, ''Surveillance Requirements for Primary Containment Automatic Isolation Valves.'' Specifically, the proposed amendment would revise the replacement frequency of the seat seals for the drywell and suppression chamber purge and vent valves from every 5 years to every six operating cycles.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

An evaluation of the operational performance of the 18-inch purge and vent valves has concluded that a change in the seat seal replacement frequency specified in Monticello Technical Specification surveillance requirement 4.7.D.4 will have no adverse impact on the seat leakage performance of these primary containment isolation valves, no adverse impact on the testing performed in accordance with 10 CFR 50, Appendix J, and thus no adverse impact on the containment isolation function of these primary containment isolation valves. The material of which the T-shaped elastomer seat is comprised of has been found to withstand normal and accident thermal exposures for the design life of the plant based on a thermal aging analysis. Radiation effects will not have an adverse impact on the elastomer seat material. Therefore, this amendment will not cause a significant increase in the probability or consequences of an accident previously evaluated for the Monticello plant.

The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed change to the Technical Specifications for the Primary Containment Purge and Vent valves does not alter the function of these components or their interrelationships with other systems. Therefore, this amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed amendment will not involve a significant reduction in the margin of safety.

The operating experience of these valves has demonstrated that the testing performed in accordance with 10 CFR 50, Appendix J, provides a high level of confidence in the ability of these valves to perform their safety function with respect to valve leak tightness. The proposed criteria for seat seal replacement provides added assurance that these containment isolation valves will perform the required safety function of containment isolation. The proposed amendment 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.

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. 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 hearing and petitions for leave to intervene is discussed below.

By April 8, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request

and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John N. Hannon: 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 Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 1, 1996, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Dated at Rockville, Maryland, this 4th day of March 1996.

For the Nuclear Regulatory Commission.

Tae Kim,

Project Manager, Project Directorate III–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 96–5495 Filed 3–7–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket Number 40–0299]

Federal Register Notice of Amendment to Change Reclamation Milestone Dates in Source Material License SUA–648 Held by UMETCO Minerals Corporation for the Gas Hills, Wyoming Site

AGENCY: Nuclear Regulatory Commission.

ACTION: Amendment of Source Material License SUA–648 to change reclamation milestone dates.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission has amended Umetco Mineral Corporation's (Umetco's) Source Material License SUA–648 to change the reclamation milestone dates. This amendment was requested by Umetco by letters dated November 27, 1995, and January 4, 1996, and the receipt by NRC was noticed in the Federal Register on January 22, 1996.

The license amendment modifies License Condition 59 to change the completion dates for three site-reclamation milestones. The new dates approved by the NRC extend completion of (1) Placement of final radon barrier on the A–9 impoundment by three years, (2) placement of erosion protection on the A–9 impoundment by three years, and (3) projected completion of groundwater corrective actions by four years. Umetco attributes the delays to the following factors: (1) Umetco's management has ordered a complete site reassessment in order to assure that the longevity goals will be satisfied. There are materials on site that had not previously been addressed that may require stabilization in the A–9 impoundment prior to completion of the radon barrier. (2) Umetco has

discovered some off-site areas that may require some remediation. Umetco will need to characterize those areas to determine volumes of materials affected and where necessary to generate a plan for their disposal. If the current A–9 design capacity is exceeded, a design change may be required. Based on review of Umetco's submittal, the NRC staff concludes that the delays are attributable to factors beyond the control of Umetco, the proposed work is scheduled to be completed as expeditiously as practicable, and the added risk to the public health and safety is not significant.

An environmental assessment is not required since this action is categorically excluded under 10 CFR 51.22(c)(11), and an environmental report from the licensee is not required by 10 CFR 51.60(b)(2).

SUPPLEMENTARY INFORMATION: Umetco's license, including an amended License Condition 59, and the NRC staff's technical evaluation of the amendment request are being made available for public inspection at the Commission's Public Document Room at 2120 L Street, NW (Lower Level), Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Mohammad W. Haque, Uranium Recovery Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415–6640.

Dated at Rockville, Maryland, this 29th day of February 1996.

Daniel M. Gillen,

Acting Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 96–5497 Filed 3–7–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–440 and 50–346]

Perry Nuclear Power Plant, Unit 1; Davis-Besse Nuclear Power Station, Unit 1; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by Petition from the City of Cleveland, Ohio, for the ''Expedited Issuance of Notice of Violation, Enforcement of License Conditions, and Imposition of Appropriate Fines'' (Petition), dated January 23, 1996, the City of Cleveland (Petitioner) requests, *inter alia*, that the NRC, pursuant to 10 CFR 2.201, 2.202, 2.205 and 2.206, find that the Cleveland Electric Illuminating Company (CEI) is obligated to provide the wheeling and interconnection services as specified in the Petition and allegedly required by the Antitrust License Conditions that are a part of CEI's license for the Davis-Besse Nuclear Power Plant, Unit 1, and Perry Nuclear Power Plant, Unit 1. In addition, the Petitioner has filed a Motion for Partial Summary Judgment on this issue, and has also requested in the alternative that if partial summary judgment is denied, the Commission sever the matter from the remainder of the Petitioner's other requests contained in the Petition and initiate ''an expedited hearing procedure.''

More specifically, the Petitioner requests the following NRC actions on an expedited schedule: (1) That the NRC issue a Notice of Violation against CEI for its failure to comply fully with the obligations under the Antitrust License Conditions; (2) that the NRC require CEI to submit a timely reply admitting or denying that CEI is in violation of these obligations, setting forth the steps it is taking to ensure compliance with the Antitrust License Conditions, and providing other compliance information required by the NRC; (3) that the NRC direct CEI to comply immediately with the portions of the Antitrust License Conditions at issue, including requiring CEI to withdraw immediately from the Federal Energy Regulatory Commission portions of its filings in Docket No. ER93–471–000 that are inconsistent with the Antitrust License Conditions, to withdraw the $75.00/KW-month ''deviation charge'' from the rate schedules, and to withdraw that portion of the ''Agreement'' providing Toledo Edison ''highest priority'' treatment for its purchases of emergency power from CEI; (4) that the NRC impose the maximum appropriate fines for CEI's repeated violations of the Antitrust License Conditions; and (5) that the NRC direct CEI to provide firm wheeling service during 1996 in the amounts requested by the Petitioner in its August 11, 1995, letter to CEI and in accordance with CEI's obligation under Antitrust License Condition No. 3.

The Petition asserts the following as bases for the requests enumerated above: (1) That CEI violated Antitrust License Condition No. 3 by refusing to provide firm wheeling service to the Petitioner; (2) that CEI violated Antitrust License Condition Nos. 6 and 11 by entering into a contract to provide Toledo Edison Company with emergency power on a preferential basis; (3) that CEI violated Antitrust License Condition No. 2 by failing to offer the Petitioner a fourth interconnection point upon reasonable terms and conditions; and (4) that CEI violated Antitrust License Condition No. 2 by unreasonably burdening use of the existing interconnections through unilateral imposition of a $75.00/KW-month ''deviation charge.'' The Petitioner asserts that expedited action is by the Commission appropriate and necessary because of the ''ongoing, intensive, and unique door-to-door competition'' in which the Petitioner and CEI are engaged and that CEI stands to gain enormously, and the Petitioner to lose by equal measure, for each day that CEI refuses to comply with its license condition obligations. The Petitioner also expresses concern that expedited action by the Commission is required by reason of the Petitioner's 40 MW power purchase from Ohio Power Company to be supplied to the Medical Center Company scheduled to begin by September 1, 1996, which will require wheeling by CEI.

The Petition has been referred to the Office of Nuclear Reactor Regulation for action in accordance with 10 CFR § 2.206. The request for partial summary judgment, the consideration of which is not provided for under 10 CFR § 2.206, is accordingly not being considered, as described in a letter dated March 4, 1996. The request for an expedited Director's Decision that would implement the requested actions was also denied in that letter.

As provided by 10 CFR § 2.206, the NRC will take appropriate action on the Petitioner's requests, other than Motion for Partial Summary Judgment, within a reasonable time.

A copy of the Petition is available for inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC, and at the local public document rooms for: Perry Nuclear Power Plant—Perry Public Library, 3753 Main Street, Perry, Ohio; and Davis-Besse Nuclear Power Station—Government Documents Collection, William Carlson Library (Depository) University of Toledo, 2801 West Bancroft Avenue, Toledo, Ohio.

Dated at Rockville, Maryland this 4th day of March 1996.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 96–5496 Filed 3–7–96; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

[RI 95–4]

Proposed Collection; Comment Request for Reclearance of Information Collection

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, October 1, 1995), this notice announces that the Office of Personnel Management intends to submit to the Office of Management and Budget a request for reclearance of an information collection. RI 95–4, Marital Information Required of Refund Applicants, is used by OPM to pay refunds of retirement contributions. OPM must know about the applicant's marital status and whether any spouse and any former spouses have been informed of the proposed refund. All applicants for refund must respond.

Approximately 5,000 RI 95–4 forms are completed annually. Each form takes approximately 30 minutes to complete. The annual estimated burden is 2,500 hours.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@mail.opm.gov

DATES: Comments on this proposal should be received on or before May 7, 1996.

ADDRESSES: Send or deliver comments to—

Daniel A. Green, Chief, FERS Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW., Room 4429, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Management Services Division, (202) 606–0623.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 96–5479 Filed 3–7–96; 8:45 am]

BILLING CODE 6325–01–M

Agriculture Department; Alternative Personnel Management System; Demonstration Project

AGENCY: Office of Personnel Management.

ACTION: Notice of amendment of the Department of Agriculture demonstration project plan.

SUMMARY: This action provides for changes in the final project plan published March 9, 1990, to modify the list of experimental and comparison sites under the project. The project was originally conceived to test an alternative to the traditional recruiting and hiring system in an anticipated tight labor market as described in Workforce 2000 and Civil Service 2000. This change provides the opportunity to test these flexibilities in a downsizing environment with a more than adequate high-quality labor market even though there are occasional shortages of qualified candidates.

EFFECTIVE DATE: March 8, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Ann Jenkins, (202) 720–0515, at the Department of Agriculture; Joan Jorgenson, (202) 606–1315, at the Office of Personnel Management.

SUPPLEMENTARY INFORMATION: On March 9, 1990, the Office of Personnel Management published in the Federal Register (55 FR 9062) the final plan to demonstrate an alternative personnel management system at the Department of Agriculture under chapter 47 of title 5, U.S.C. The purpose of this demonstration project is to develop and evaluate a recruitment and selection program for new hires that is flexible and responsive to local recruitment needs and which will facilitate the attainment of a quality workforce reflective of society.

In support of this goal, the following project objectives have been identified:

(1) Increase the flexibility and responsiveness of the recruitment and hiring system.

(2) Increase the reliability of the decision to grant career tenure for employees in scientific positions. These objectives will be realized through the following interventions:

(a) Decentralize the decision to authorize direct hire in shortage categories.

(b) Implement an alternative candidate assessment method which uses categorical grouping instead of numeric score.

(c) Provide the option of awarding monetary incentives for recruitment purposes.

(d) Provide the option of reimbursing relocation travel and transportation expenses beyond those currently authorized for travel to first post of duty.

(e) Increase automation of examining process.

(f) Extend the 1-year probationary period to 3 years for employees in scientific positions. The demonstration covers up to 5,000 newly hired employees, at any given time, at over 140 locations within the Forest Service and Agricultural Research Service of the Department of Agriculture. Covered employees represent all occupational groups and grade levels (excluding the Senior Executive Service) at the project sites.

The list of approximately 210 experimental and comparison sites of the Agricultural Research Service and Forest Service are identified in the March 9, 1990, Federal Register (55 FR 9062). The comparison sites for both agencies will be included as experimental sites. With the addition of the sites, project participation will still not exceed the statutory limit of 5,000 employees at any given time. Anyone wishing more information may telephone the person listed under **FOR FURTHER INFORMATION CONTACT.**

Office of Personnel Management.

James B. King,

Director.

Project Plan Modification

The project plan which appeared in the Federal Register on March 9, 1990 (55 FR 9062) is hereby modified to include the comparison sites as experimental sites for the Agricultural Research Service and Forest Service.

Appendix B is changed to include all sites as experimental.

Agricultural Research Service

Experimental Sites

Aberdeen, ID
Akron, CO
Albany, CA
All Hawaiian Islands
Ames/Ankeny, IA
Athens, GA
Auburn, AL
Baton Rouge, LA
Beaumont, TX
Beckley, WV
Beltsville, MD
Boise, ID
Booneville, AR
Boston, MA
Bozeman, MT
Brawley, CA
Brookings, SD
Brooksville, FL
Brownwood, TX
Burns, OR
Bushland, TX
Byron, GA
Canal Point, FL
Charleston, SC
Cheyenne, WY
Clay Center, NE
Clemson, SC
College Station, TX
Columbia, MO
Columbus, OH
Corvallis, OR
Coshocton, OH

Davis, CA
Dawson, GA
Dubois, ID
Durant, OK
East Grand Forks, MN
East Lansing, MI
El Reno, OK
Fargo, ND
Fayettville, AR
Florence, SC
Frederick, MD
Fresno, CA
Fort Collins, CO
Ft. Lauderdale, FL
Gainesville, FL
Geneva, NY
Grand Forks, ND
Greenbelt, MD
Griffin, GA
Houma, LA
Houston, TX
Ithaca, NY
Jackson, TN
Kearneysville, WV
Kerrville, TX
Kimberly, ID
Lane, OK
Laramie, WY
Las Cruces, NM
Lincoln, NE
Logan, UT
Lubbock, TX
Madison, WI
Mandan, ND
Manhattan, KS
Mayaquez, PR
Miami, FL
Miles City, MT
Mississippi State, MS
Morris, MN
Newark, DE
New Orlenas, LA
Orient Point, NY
Orlando, FL
Orono, ME
Oxford, MS
Pendleton, OR
Peoria, IL
Phoenix, AZ
Pine Bluff, AR
Poplarville, MS
Pincess Anne, MD
Prosser, WA
Pullman, WA
Raleigh, NC
Reno, NV
Riverside, CA
Salinas, CA
San Francisco, CA
Shafter, CA
Sidney, MT
St. Paul, MN
St. Croix, VI
Stillwater, OK
Stoneville, MS
Stuttgart, AR
Temple, TX
Tifton, GA
Tucson, AZ
Tuxtla, MX
University Park, PA
Urbana, IL
Washington, DC
Watkinsville, GA
Wenatchee, WA
Weslaco, TX
West Lafayette, IN
Winter Haven, FL
Woodward, OK
Wooster, OH
Wyndmoor, PA
Yakima, WA

Forest Service

Experimental Sites

Region 1:
- Bitterroot NF
- Clearwater NF
- Custer NF
- Flathead NF
- Gallatin NF (serves Beaverhead, Deerlodge, Lewis & Clark)
- Helena NF
- Idaho Panhandle NF
- Kootenai NF
- Lolo NF
- Nez Perce NF
- Regional Office (includes MTDC)

Region 2:
- Arapho-Roosevelt NF
- Bighorn NF
- Grand Mesa, Uncompahgre and Gunnison NF
- Nebraska NF
- Rio Grande NF (includes San Juan NF)
- Routt NF (includes Medicine Bow NF)
- Pike-San Isabel NF
- Shoshone NF
- White River NF
- Regional Office

Region 3:
- Apache/Sitgreave NF
- Carson NF
- Cibola NF
- Coconino NF
- Coronado NF
- Gila NF
- Kaibab NF
- Lincoln NF
- Prescott NF
- Santa Fe NF
- Tonto NF
- Regional Office

Region 4:
- Ashley NF (includes Manti-La Sal NF)
- Boise NF
- Dixie NF
- Fishlake NF
- Payette NF
- Sawtooth NF
- Targhee NF (includes Salmon NF which shares administrative services with Bridger-Teton, Caribou, Challis)
- Toiyabe NF (includes Humboldt NF)
- Uinta NF
- Washatch Cache NF (includes the Geometronics Service Center)
- Regional Office and Intermountain Research Station

Region 5:
- Angeles NF
- Cleveland NF
- Eldorado NF
- Inyo NF
- Klamath NF
- Lake Tahoe Basin Management Unit
- Lassen NF
- Los Padres NF
- Mendocino NF
- Modoc NF
- Plumas NF
- San Bernardino NF
- Sequoia NF
- Shata-Trinity NF
- Sierra NF
- Six Rivers NF
- Stanislaus NF
- Tahoe NF
- Regional Office, San Francisco, CA

Region 6:
- Colville NF
- Deschutes NF (includes Ochoco NF, Malheur NF, PNW Bend Lab)
- Fremont NF
- Gifford-Pinchot NF
- Mt Baker-Snoqualmie NF (includes PNW Seattle Lab)
- Mt. Hood NF (includes CRGNSA)
- Okanogan NF
- Olympic NF(includes PNW Olympia Lab)
- Rogue River NF
- Siuslaw NF (includes Corvallis Lab)
- Umatilla NF
- Umpqua NF
- Wallowa-Whitman NF (includes LaGrande Lab)
- Wenatchee NF (includes Wenatchee Lab)
- Willamette NF
- Winema NF
- Regional Office (includes PNW headquarters and Portland Lab)

Region 8:
- National forests in Alabama
- Caribbean NF (includes International Institute of Tropical Forestry)
- Chattahoochee & Oconee NF
- Cherokee NF
- Daniel Boone NF
- National Forest in Florida
- Francis Marion & Sumter NF's
- George Washington and Jefferson NF's
- Kisatchie NF
- National Forests in Mississippi
- Ouachita NF
- Ozark-St. Francis NF
- National Forest in Texas
- Regional Office

Region 9:
- Alleghany NF
- Chequamegon NF
- Chippewa NF
- Green Mountain and Finger Lakes NF

Hiawatha NF
Hoosier NF
Huron-Manistee NF
Mark Twain NF
Monogahela NF
Nicolet NF
Ottawa NF
Shawnee NF
Superior NF
Wayne NF
White Mountain NF
Regional Office
Region 10:
Chugach NF
Tongass NF: Chatham Area, Ketchikan Area, and Stikine Area
Regional Office
Washington Office
Research Units:
Forest Products Lab
Intermountain Station/R–4 Regional Office
North Central Station
Northeast Station/Area
Pacific Northwest Station Headquarters/R–6 Regional Office
Pacific Southwest Station
Rocky Mountain Station (includes Arapahoe and Roosevelt NF)
Southern Research Station (includes National Forests in North Carolina)

Evaluation Plan

Purpose

The purpose of the evaluation is to comply with the requirement that the demonstration project be evaluated in terms of the impact of project results against stated objectives as well as to determine whether or not permanent changes in law and/or regulation should be considered or proposed. The original evaluation plan was published in the Federal Register notice dated March 9, 1990 (55 FR 9062). This evaluation plan has been modified to evaluate the demonstration project during the extension period. Since the original plan was rigorous in nature over the 5-year period of the demonstration project, the Department of Agriculture and the Office of Personnel Management agreed that the evaluation plan under the extension period take a more focused and streamlined approach. Table 1 shows the model which will be used to complete the analysis.

Methodology

The evaluation will be conducted by the National Agricultural Statistics Service (NASS). NASS will evaluate the measures from the data sources cited in Table 1. Longitudinal comparisons of measures within the Agricultural Research Service and Forest Service will be made as well as comparisons to other Department of Agriculture agencies and Governmentwide measures where applicable. One of the key interventions to be evaluated is the application of automation to the examining process. This application is currently in the developmental phase and may include both internal and external automated systems.

TABLE 1.—EXPECTED EFFECTS, MEASURES, AND DATA SOURCES

Constraint	Measures	Data sources
Fair representation of protected groups will not be adversely affected.	Hiring rates of veterans by type vs. non-veterans.	Central Personnel Data File (CPDF).
	Hiring rates by gender, race, and national origin and disability.	CPDF.
	Relative frequency of requests to pass over veterans.	ARS/FS Headquarters.
	# veterans through this process compared to hiring through VRA and other noncompetitive processes.	Personnel Office. CPDF.

Objective 1: Increase the flexibility and responsiveness of the recruitment and hiring system.
Interventions:
(a) Decentralize the decision to authorize direct hiring in shortage categories.
(b) Implement an alternative candidate assessment method using categorical grouping instead of numeric score.
(c) Provide the option of awarding monetary incentives for recruiting purposes.
(d) Provide the option of reimbursing relocation travel and transportation expenses, beyond those currently authorized for travel to first post of duty.
(e) Increase automation of examining process.

Hypotheses	Measures	Data sources
A. Managers will perceive the new system as more responsive to local recruitment needs.	Managers' perceptions	Survey/Focus Groups.
B. Managers will be more satisfied with the new recruitment and hiring system than with traditional system.	Managers' attitudes	Survey/Focus Groups.
C. Under the experimental employee intake process, managers will receive certificates more quickly than under the traditional system.	Elapsed time from closing of announcement to issuance of certificate.	Built into automation system.
D. Increased automation improves managers' (and applicants') satisfaction.	Managers' attitudes	Survey/Focus Groups.

Objective 2: Increase the reliability of the decision to grant career tenure for employees in scientific positions.
Interventions:
(f) Extend the 1-year probationary period to 3 years for employees in scientific positions.

Hypothesis	Measures	Data sources
A. Managers will have more confidence in career tenure decisions with an extended probationary period.	Managers' attitudes	Survey/Focus Groups.

Overall Project Expectations		
Hypothesis	Measures	Data sources
A. Supervisory responsibility and accountability for the integrity as well as the success of the recruitment and hiring program will increase.	Managers' perceptions	Survey/Focus Groups.
B. Total operating costs for recruitment and hiring will not increase.	Administrative costs for recruitment and hiring	Budget Data.

[FR Doc. 96–5477 Filed 3–7–96; 8:45 am]
BILLING CODE 6325–01–M

The National Partnership Council; Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

TIME AND DATE: 1:00 p.m., March 13, 1996.

PLACE: OPM Conference Center, Room 1350, Theodore Roosevelt Building, 1900 E Street, NW., Washington, DC 20415–0001. The conference center is located on the first floor.

STATUS: This meeting will be open to the public. Seating will be available on a first-come, first-served basis. Individuals with special access needs wishing to attend should contact OPM at the number shown below to obtain appropriate accommodations.

MATTERS TO BE CONSIDERED: The NPC will discuss its strategic action plan for 1996.

CONTACT PERSON FOR MORE INFORMATION: Douglas K. Walker, National Partnership Council, Executive Secretariat, Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Room 5315, Washington, DC 20415–0001, (202) 606–1000.

SUPPLEMENTARY INFORMATION: We invite interested persons and organizations to submit written comments. Mail or deliver your comments to Mr. Douglas K. Walker at the address shown above. Written comments should be received by March 8 in order to be considered at the March 13 meeting.

Office of Personnel Management.

James B. King,

Director.

[FR Doc. 96–5474 Filed 3–7–96; 8:45 am]
BILLING CODE 6325–01–M

Privacy Act of 1974; Publication of a Proposed New Routine Use

AGENCY: Office of Personnel Management (OPM).

ACTION: Notice of a proposed new routine use.

SUMMARY: This notice proposes to add one routine use to the OPM/Internal-5, Pay, Leave, and Travel Records.

DATES: This proposed routine use will be effective without further notice April 17, 1996, unless comments received dictate otherwise.

ADDRESSES: Send written comments to Office of Personnel Management, Attn.: Mr. Robert Huley, Office of Information Technology, 1900 E Street NW., Room 5415, Washington, DC 20415–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Huley at (202) 418–3210.

SUPPLEMENTARY INFORMATION: OPM is creating a new routine use ''1'' to deal exclusively and specifically with the release of home addresses of bargaining unit employees to recognized labor organizations. The release of updated home addresses of all bargaining unit employees from an accurate system of records is necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining under 5 U.S.C. 7114(b)(4).

The confusion and turmoil resulting from the recent Government shutdowns emphasize the importance of permitting agencies to release to recognized labor organizations, which are legally obligated to represent the interests of all employees in the bargaining unit they represent, the accurate home addresses of unit employees. The period of time during which many employees were not at their places of employment, and indeed, were barred from working, demonstrated the lack of efficacy of relying upon bulletin boards, desk drops, and other means of communication.

OPM has determined that the most current home addresses of OPM employees are contained in the payroll system of records. Because this system is updated for changes annually by OPM employees and is automated, it is the most efficient as well as the most accurate mechanism for releasing this information. Accordingly, OPM will implement the policy by utilizing its internal payroll system of records.

OPM has determined that with regard to the other systems of records containing home addresses (e.g., OPM/GOVT–1, General Personnel Records system), the home addresses within those systems of records are frequently out of date. Retrieval of home addresses of employees from the OPM/GOVT–1 system of records or any other system of records administered by OPM would yield a great deal of inaccurate information. Therefore, the release of the home addresses from these systems would not serve the purpose of the disclosure, namely, the furnishing of correct and useful information. Moreover, the use of these systems of records, which are not wholly automated, would require an inordinate amount of time to locate information that was not even requested, namely, inaccurate home addresses, and would not result in the retrieval of accurate home addresses, no matter how much time and effort were expended. Accordingly, home addresses should be released from an accurate internal system and will not be released from OPM/GOVT–1 or any other system administered by OPM.

We are proposing a routine use for OPM's Pay, Leave and Travel System covering its own employees, OPM/Internal-5. This will permit OPM to release home addresses of all of its bargaining unit members to recognized labor unions from this system of records, which includes its payroll records. The payroll records contain accurate home addresses that may easily be collected.

The Office of Personnel Management's system of records known as OPM/Internal-5 last published in its entirety at 58 FR 19161 (April 12, 1993) with changes published at 60 FR 63078 (December 8, 1995) is amended as follows:

OPM/Internal-5

Routine uses of records maintained in the system, including categories of users, and the purposes of such uses:

* * * * *

1. To disclose of labor organizations recognized under 5 U.S.C. Chapter 71 the home addresses or designated

mailing addresses of bargaining unit members.

Office of Personnel Management.

James B. King,

Director.

[FR Doc. 96–5475 Filed 3–7–96; 8:45 am]

BILLING CODE 6315–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Rel. No. 21801; International Series Release No. 941; 812–10022]

Nations Fund Portfolios, Inc., et al.; Notice of Application

March 4, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption Under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Nations Fund Portfolios, Inc. (''Nations Fund Portfolios''), Nations Fund, Inc. (''Nations Fund''), NationsBanc Advisors, Inc. (''NationsBanc Advisors''); and Nations Gartmore Investment Management (''Nations Gartmore'').

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act of an exemption from section 15(a) of the Act.

SUMMARY OF APPLICATION: National Westminster Bank plc (''NatWest'') has agreed to acquire control of Gartmore plc (''Gartmore''), the parent of Nations Gartmore, the sub-adviser to applicant investment companies (the ''Funds''). The change of control of Gartmore will result in the assignment, and thus the termination, of the existing sub-advisory contract between the Funds and Nations Gartmore. The order would permit the implementation, without shareholder approval, of new sub-advisory contracts for a period of up to 120 days following the change in control of Gartmore (but in no event later than September 30, 1996). The order also would permit Nations Gartmore to receive from the Funds fees earned under the new sub-advisory contracts following approval by the Funds' shareholders.

FILING DATE: The application was filed on March 4, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 22, 1996 and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, c/o Wilmer, Cutler & Pickering, 2445 M Street, N.W., Washington, D.C. 20037, Attention: Jeremy N. Rubenstein and c/o Morrison & Foerster, 2000 Pennsylvania Avenue, N.W., Washington, D.C. 20006, Attention: Marco E. Adelfio.

FOR FURTHER INFORMATION CONTACT: Sarah A. Buescher, Staff Attorney, at (202) 942–0573, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Nations Fund Portfolios and Nations Fund are open-end, management investment companies registered under the Act. Nations Emerging Markets Fund, Nations Pacific Growth Fund and Nations Global Government Income Fund are series of Nations Fund Portfolio; and Nations International Equity Fund is a series of Nations Fund (the series are referred to collectively as the ''Funds''). Each Fund has retained NationsBanc Advisors to act as its investment adviser. NationsBanc Advisors, in turn, has engaged Nations Gartmore to provide the day-to-day management of each Fund's portfolio pursuant to a sub-advisory agreement among NationsBanc Advisors, Nations Gartmore, and the Funds (the ''Existing Sub-Advisory Agreements'').

2. Nations Gartmore is structured as an equally-owned general partnership between NB Partners, a subsidiary of NationsBank, N.A. (''NationsBank'') and Gartmore U.S. Limited (''Gartmore U.S. Ltd.''), a wholly-owned subsidiary of Gartmore, a U.K. company.

3. NatWest has agreed to acquire control of Gartmore from Compagnie de Suez and affiliated entities (collectively, ''Compagnie de Suez'') through a two-part transaction involving (i) the direct purchase from Compagnie de Suez of its indirect subsidiary Indosuez UK Asset Management Limited (''IUKAM''), which holds 75% of Gartmore's outstanding voting shares (the ''Direct Purchase''); and (ii) a tender offer for the remaining portion of Gartmore's shares held by public shareholders (the ''Tender Offer'').

4. The first part of the acquisition was agreed to in an Agreement for Purchase of Shares dated as of February 26, 1996, between Compagnie de Suex and NatWest (''Direct Purchase Agreement''). Settlement of the transactions provided for under the Direct Purchase Agreement is subject to the satisfaction or waiver of several conditions. Applicants expect that a change in control of Nations Gartmore may occur as early as the end of March. The latest date that all conditions to the Direct Purchase Agreement are required to be satisfied or waived is April 30, 1996.

5. The consummation of the Direct Purchase, which must occur before the consummation of the Tender Offer, will result in a change of control of Gartmore from Compagnie de Suez to NatWest. The change of control of Gartmore will constitute an assignment of the existing sub-advisory agreements within the meaning of section 2(a)(4) of the Act.

6. Applicants seek an exemption to permit the implementation, without formal shareholder approval, of new sub-advisory agreements among the Funds, NationsBanc Advisors, and Nations Gartmore. The requested exemption would cover an interim period of not more than 120 days (the ''Interim Period'') beginning on the day the Direct Purchase is consummated and continuing through the date new sub-advisory agreements are approved or disapproved by the Funds' shareholders (but in no event later than September 30, 1996). During the Interim Period, that portion of NationsBanc Advisors' advisory fees paid by NationsBanc Advisors to Nations Gartmore for sub-advisory services would be paid into escrow.

7. The sub-advisory agreements among Nations Gartmore, NationsBanc Advisors, and each Fund to be entered into upon consummation of the Direct Purchase (collectively, the ''New Sub-Advisory Agreements'') are identical to the Existing Sub-Advisory Agreements, except for their effective date and escrow provisions. For each Fund, the fee levels for Sub-advisory services will remain the same as in the Existing Sub-Advisory Agreement. Each Fund Proposes to implement its New sub-Advisory Agreement during the Interim

Period, subject to the conditions contained in the application.

8. In accordance with section 15(c) of the Act, [1] the boards of directors will meet on a date prior to the consummation of the Direct Purchase, and they will receive all information that in the directors' view is reasonably necessary to evaluate the New Sub-Advisory Agreements and to determine whether the agreements would be in the best interests of the respective Funds and their shareholders. Although the specific date of the board meetings has not been finalized, applicants represent that they are taking all actions necessary to hold the meetings in March 1996.

9. Nations Fund Portfolios and Nations Fund intend to mail the necessary proxy materials to Fund shareholders as soon as practicable, and, in any event, in sufficient time to allow for a shareholder vote to approve the New Sub-Advisory Agreements within 120 days from the assignment of the Existing Sub-Advisory Agreements (but in no event later than September 30, 1996).

10. Applicants propose to enter into an escrow arrangement with an unaffiliated financial institution as escrow agent. The arrangement would provide that: (a) that portion of NationsBanc Advisors' fees payable by NationsBanc Advisors to Nations Gartmore during the Interim Period under the New Sub-Advisory Agreements would be paid into an interest-bearing escrow account maintained by the escrow agent; (b) the amounts in the escrow account (including interest earned on such paid fees) would be paid to Nations Gartmore only upon approval of Fund shareholders of the New Sub-Advisory Agreements or, in the absence of such approval, to the respective Fund; and (c) the escrow agent would release the moneys only upon receipt of a certificate from an officer of Nations Fund Portfolios and/or Nations Fund stating that the moneys are to be delivered to Nations Gartmore and that the New Sub-Advisory Agreement has received the requisite Fund shareholder vote or, if the moneys are to be delivered to the Funds, that the Interim Period has ended, and the New Sub-Advisory Agreement has not received the requisite Fund shareholder vote. Before any certificate is sent, the Boards of Directors of Nations Fund Portfolios and/or Nations Fund would be notified.

Applicants' Legal Analysis

1. Applicants request an order pursuant to section 6(c), exempting them from section 15(a) of the Act to the extent necessary (i) to permit the implementation during the Interim Period, without shareholder approval, of the New Sub-Advisory Agreements and (ii) to permit Nations Gartmore to receive from NationsBanc Advisors all fees earned under each New Sub-Advisory Agreement (which would be the same as all fees that would have been earned under each Existing Sub-Advisory Agreement) implemented during the Interim Period if and to the extent the New Sub-Advisory Agreement is approved by the shareholders of a Fund. The proposed timing of the consummation of the Direct Purchase and Tender Offer may not present an opportunity to secure prior approval of the New Sub-Advisory Agreements by Fund shareholders.

2. Section 15(a) of the Act prohibits an investment adviser from providing investment advisory services to an investment company except under a written contract that has been approved by a majority of the voting securities of the investment company. Section 15(a) further requires that the written contract provide for automatic termination in the event of this assignment. Section 2(a)(4) of the Act defines ''assignment'' to include any direct or indirect transfer of a contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor.

3. Upon consummation of the Direct Purchase, Compagnie de Suez will transfer ownership of IUKAM, which holds 75% of the outstanding voting shares of Gartmore, to NatWest; and if sufficient acceptances are received under the Tender Offer, NatWest intends to acquire all of Gartmore's outstanding shares. The Direct Purchase will result in an ''assignment'' within the meaning of section 2(a)(4) of the Existing Sub-Advisory Agreements, terminating each Existing Agreement according to its terms.

4. Rule 15a–4 provides, in relevant part, that if an investment adviser's investment advisory contract with an investment company is terminated by assignment, the adviser may continue to act as such for 120 days at the previous compensation rate if a new contract is approved by the board of directors of the investment company and if neither the investment adviser nor a controlling person thereof directly or indirectly receives money or other benefit in connection with the assignment. Applicants cannot rely on rule 15a–4 because of the benefits to Compagnie de Suez, Gartmore U.S. Ltd.'s ultimate parent, arising from the Direct Purchase and Tender Offer.

5. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard.

6. Nations Gartmore believes that the requested relief is necessary, as it would permit continuity of investment management to each Fund during the period following the consummation of the Direct Purchase and Tender Offer so that services to the Funds would not be disrupted.

7. Applicants represent that the best interests of the Funds' shareholders would be served if Nations Gartmore receives fees for services during the Interim Period as provided herein. These fees are an important part of Nations Gartmore's total revenue and are important to maintaining its ability to provide services to the Funds. In addition, the fees to be paid during the Interim Period are at the same rate as the fees currently payable by the Funds under the Existing Agreements.

Applicants' Conditions

Applicants agree as conditions to the issuance of the exemptive order requested by this application that:

1. The New Sub-Advisory Agreements will have the same terms and conditions as the Existing Sub-Advisory Agreements, except for their effective dates and escrow provisions.

2. That portion of NationsBanc Advisors' fee paid to Nations Gartmore by NationsBank Advisors during the Interim Period will be maintained in an interest-bearing escrow account, and amounts in the account (including interest earned on such paid fees) will be paid (a) to Nations Gartmore in accordance with the New Sub-Advisory Agreement, after the requisite approvals are obtained, or (b) to the respective Fund, in the absence of such approvals.

3. The Funds will hold meetings of shareholders to vote on approval of the New Sub-Advisory Agreements on or before the earlier of the 120th day following the termination of the Existing Sub-Advisory Agreements or September 30, 1996.

[1] Section 15(c) provides, in relevant part, that it shall be unlawful for any registered investment company to enter into an investment advisory contract unless the terms of such contract have been approved by the vote of a majority of directors, who are not parties to such contract or interested persons of any such party, cast in person at a meeting called for the purpose of voting on such approval.

4. Nations Gartmore will bear the costs of preparing and filing this application. The Funds will not bear the costs relating to the solicitation of shareholder approval of the Funds' shareholders necessitated by the consummation of the Direct Purchase and Tender Offer.

5. Nations Gartmore will take all appropriate steps so that the scope and quality of sub-advisory services provided to the Funds during the Interim Period will be at least equivalent, in the judgment of the respective Boards of Directors, including a majority of the non-interested Boards of Directors members, to the scope and quality of services previously provided. If personnel providing material services during the Interim Period change materially, Nations Gartmore will apprise and consult with the Board of Directors of the affected Fund or Funds to assure that they, including a majority of the non-interested Board members, are satisfied that the services provided will not be diminished in scope or quality.

6. The Board of Directors of each Fund, including a majority of non-interested Directors, will have approved the New Sub-Advisory Agreements in accordance with the requirements of section 15(c) of the Act prior to termination of the Existing Sub-Advisory Agreements.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–5550 Filed 3–7–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21800; File No. 812–9922]

Zurich Life Insurance Company of America, et al.; Notice of Application

March 4, 1996.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the ''1940 Act'').

APPLICANTS: Zurich Life Insurance Company of America (''Zurich Life''), Kemper Investors Life Insurance Company (''KILICO''), Federal Kemper Life Assurance Company (''FKLA''), Zurich Life Variable Annuity Separate Account (the ''Account''), and Investors Brokerage Services, Inc. (''IBS'').

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act for exemptions from Sections 26(a)(2)(C) and 27(c)(2) thereof.

SUMMARY OF APPLICATION: Applicants request an order permitting Zurich Life, KILICO and FKLA to deduct mortality and expense risk charges from the assets of certain separate accounts that fund certain individual deferred variable annuity contracts.

FILING DATE: The application was filed on December 28, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on March 29, 1996, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reasons for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, Frank J. Julian, Esq., Kemper Investors Life Insurance Company, KLIC Legal T–1, 1 Kemper Drive, Long Grove, Illinois, 60049.

FOR FURTHER INFORMATION CONTACT: Joseph G. Mari, Senior Special Counsel, or Patrice M. Pitts, Special Counsel, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission.

Applicants' Representations

1. Zurich Life, KILICO, and FKLA (collectively referred to as the ''Companies'') are stock life insurance companies organized under the laws of Illinois. Zurich Life is a wholly-owned subsidiary of Zurich Insurance Company; KILICO is wholly-owned subsidiary of Kemper Financial Corporation (''Kemper''); and FKLA is a wholly-owned subsidiary of Kemper. Zurich Life entered into a definitive agreement to become the majority owner of Kemper, including Kemper's direct and indirect subsidiaries, KILICO and FKLA. Zurich Life is the depositor of the Account.

2. The Account, established by Zurich Life under Illinois law as an insurance company separate account to fund certain variable annuity contracts (the ''Account Contracts''), is registered under the 1940 Act as a unit investment trust. Applicants request that the relief sought herein extend to variable annuity contracts that are materially similar to the Account Contracts (''Future Contracts'') (the Account Contracts and the Future Contracts collectively referred to as the ''Contracts'') and that are offered by the Account.

3. The Companies may establish one or more separate accounts in the future (''Other Accounts'') (Other Accounts and the Account are referred to collectively as the ''Separate Accounts'') to support Future Contracts that are offered through any other broker-dealer that (i) may serve in the future as principal underwriter in respect of certain variable annuity contracts offered by the Companies, (ii) is registered under the Securities Exchange Act of 1934 as a broker-dealer and which is or will be a member of the National Association of Securities Dealers, Inc. (the ''NASD''), and (iii) is controlling, controlled by, or under common control with Zurich Life or any other affiliated insurance company (Other Principal Underwriters''). Applicants request that the relief sought herein extend to the Other Accounts.

4. The Account is comprised of 14 sub-accounts each of which invests in the corresponding portfolio or series of a management investment company registered under the 1940 Act. Zurich Life may create new sub-accounts of the Account.

5. IBS, a registered broker-dealer and a member of the NASD, is the principal underwriter of the Account Contracts.

6. The Account Contracts provide retirement payments or other long-term benefits for individuals who qualify for federal income tax advantages available under Sections 401, 403(b), 408 and 457 of the Internal Revenue Code of 1986, as amended (''qualified Account Contracts''), and for individuals desiring such benefits who do not qualify for such tax advantages (''non-qualified Account Contracts''). The Account Contracts will be offered on a flexible payment basis.

7. Applicants state that the minimum initial purchase payment is $50 for a qualified Account Contract and $2,500 for a non-qualified Account Contract. The minimum additional purchase payment for a non-qualified Account Contract is $500. However, when purchase payments are made through a systematic investing program and the annual contribution is not less than $600, the minimum payment is $50.

8. Certain charges and fees are assessed under the Account Contracts. Where applicable, the dollar amount of state premium taxes previously paid or payable upon annuitization by Zurich

Life may be charged against Contract Value (the amount that the Account Contract provides for investment at any time) if not previously assessed, when and if the Account Contract is annuitized. Premium taxes range up to 3.5%.

9. No front-end sales charge is imposed when purchase payments are applied under the Account Contracts. However, a contingent deferred sales charge (''CDSC'') will be used to cover expenses relating to the sale of the Account Contracts. The maximum CDSC is 6% of the amount withdrawn during the first Contract year. The percentage scales downward by one percent each year, so that there is no charge against accumulation units withdrawn or annuitized in the seventh and later contribution years. Contract owners will be permitted to withdraw up to 10% of the Contract Value determined at the time the withdrawal is requested in any Contract year without the assessment of any sales charge. If the Contract owner withdraws an amount in excess of the 10% amount, the excess withdrawn is subject to a CDSC. In no event, will the CDSC under the Account Contracts be greater than 7.25% of purchase payments.

10. Applicants submit that proceeds from the CDSC may not cover the expected cost of distributing the Account Contracts and that any shortfall will be recovered from Zurich Life's general assets, which may include revenue from the mortality and expense risk charge deducted from the Account.

11. The administrative charges to be assessed with respect to the Account Contracts will be (i) an annual records maintenance charge of $36 per Contract year, which is deducted from the Contract Value upon surrender of the Account Contract, and which is not assessed during the annuity period, and (ii) an asset-related administration charge at an annual rate of .10%. These charges may be reduced by Zurich Life but may not be increased for outstanding Account Contracts.

12. Zurich Life and the Account represent that they do not expect that the total revenues from the administrative cost portion of the asset-based charge will be greater than the expected administrative expenses, in conformity with the requirements of Rule 26a–1(b) under the 1940 Act. Applicants represents that they are relying on Rules 26a–1 and 6c–8 under the 1940 Act in connection with the imposition of the records maintenance charge under the Account Contract.

13. Applicants propose to deduct a daily charge for mortality and expense risks from the assets of the Account. With respect to the Account Contracts, Zurich Life will assess the Account with a daily charge for mortality and expense risks at an aggregate annual rate of 1.20%. Approximately .85% of the annual charge is allocated to the mortality risks and .35% is allocated to the expense risks.

14. Applicants represent that Zurich Life will assume a mortality risk by its contractual obligation to pay a death benefit to the beneficiary if the owner, as defined in the Account Contract, dies prior to the annuity date. Applicants assert that the Account Contracts provide a guaranteed death benefit that is the greater of: (a) the Contract Value at the time of death; or (b) the total net amount of purchase payments, reduced by any withdrawals.

15. Applicants also represent that Zurich Life assumes a mortality risk by its contractual obligation to continue to make annuity payments for the life of the annuitant, as defined in the Account Contract, under annuity options involving life contingencies. This assures each annuitant that neither the annuitant's own longevity nor an improvement in life expectancy generally will have an adverse effect on the annuity payments received under an Account Contract. This relieves the annuitant from the risk of outliving the amounts accumulated for retirement. At the same time, Applicants represent that Zurich Life assumes the risk that annuitants as a group will live a longer time than Zurich Life predicts, which would require Zurich Life to pay out more in annuity income than planned.

16. In addition to mortality risks, Applicants assert that Zurich Life assumes an expense risk under the Account Contracts because the administrative charges under the Contracts may be insufficient to cover actual administrative expenses.

17. Applicants represent that if the mortality and expense risk charges assessed against Account assets are insufficient to cover the expenses and costs assumed, the loss will be borne by Zurich Life. If the amount deducted for mortality and expense risk charges proves more than sufficient, the excess will be profit to Zurich Life. Zurich Life anticipates earning a profit from the mortality and expense risk charge.

Applicants' Legal Analysis

1. Applicants request that the Commission, pursuant to Section 6(c) of the 1940 Act, grant exemptions from Sections 26(a)(2)(C) and 27(c)(2) thereof to the extent necessary to permit the deduction of a mortality and expense risk charge from the assets of the Separate Accounts which fund the Contracts.

2. Section 6(c) of the 1940 Act, in relevant part, provides that the Commission may issue an order exempting any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the 1940 Act as may be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. Sections 26(a)(C) and 27(c)(2) of the 1940 Act prohibit a registered unit investment trust and any depositor thereof or principal underwriter therefore, from selling periodic payment plan certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified trustee or custodian and held under an agreement that provides that no payment to the depositor or principal underwriter shall be allowed except as a fee, not exceeding such reasonable amount as the Commission may prescribe, for bookkeeping and other administrative services.

4. Applicants assert that the requested exemptions meet the standards of Section 6(c) of the 1940 Act, and that the terms of the relief requested with respect to the Account Contracts or Future Contracts funded by a Separate Account and distributed by IBS or any Other Principal Underwriter are consistent with the standards set forth in Section 76(c) of the 1940 Act. Applicants state that without the requested future relief, they would have to request and obtain exemptive relief in connection with Account Contracts or Future Contracts to the extent required. Applicants submit that any such additional requests for exemption would present no issues under the 1940 Act that have not already been addressed in this application.

5. Applicants submit that the requested exemptive relief is appropriate in the public interest because it would promote competitiveness in the variable annuity contract market by eliminating the need for Zurich Life and its appropriate affiliates to file redundant exemptive applications, thereby reducing administrative expenses and maximizing the efficient use of resources. The delay and expense involved in having to seek exemptive relief repeatedly would impair the ability of Zurich Life and its appropriate affiliates to take advantage of business opportunities as they arise. If Zurich Life and its appropriate affiliates were required to seek exemptive relief

repeatedly with respect to the issues addressed in this Application, investors would not receive any benefit or additional protection thereby. Indeed, they might be disadvantaged as a result of increased overhead expenses incurred by Zurich Life and its appropriate affiliates. Applicants further submit that, for the same reasons, the requested relief is consistent with the purposes of the 1940 Act and the protection of investors.

6. Applicants represent that the mortality and expense risk charge of 1.20% is and will be within the range of industry practice for comparable annuity products. Applicants state that this determination is, and for Future Contracts will be, based on their analysis of publicly available information about similar industry practices, taking into consideration such factors as current charge levels and benefits provided, the existence of expense charge guarantees, and guaranteed annuity rates. Zurich Life, KILICO and FKLA undertake to maintain at their home offices, and make available to the Commission upon request, memoranda setting forth in appropriate detail the products analyzed, the methodology, and the results of the analysis relied upon, in making the foregoing determination.

7. The CDSC may be insufficient to cover all costs relating to the distribution of the Account Contracts. In that event, if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be offset by distribution expenses not reimbursed by the CDSC. Notwithstanding the foregoing, Applicants have concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Separate Accounts and Contract owners. Zurich Life, KILICO and FKLA undertake to maintain at their principal offices, and make available upon request to the Commission and its staff, memoranda setting forth the basis for such conclusion.

8. Zurich Life, KILICO and FKLA also represent that the Separate Accounts will invest only in an underlying fund that undertakes, in the event it should adopt any plan pursuant to Rule 12b–1 of the 1940 Act to finance distribution expenses, to have such plan formulated and approved by a board of directors, a majority of the members of which are not ''interested persons'' of such fund within the meaning of Section 2(a)(19) of the 1940 Act.

Conclusion

Applicants submit, for the reasons stated herein, that the requested exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act—to permit the deduction of a mortality and expense risk charge from Separate Account assets funding the Contracts—meet the standards set out in Section 6(c) of the 1940 Act. Accordingly, Applicants assert that the requested exemptions are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–5552 Filed 3–7–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36916; File No. SR–PSE–96–06]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Stock Exchange Incorporated Relating to Distributing Interim Reports to Both Registered and Beneficial Shareholders

March 4, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. § 78s(b)(1), notice is hereby given that on February 22, 1996, the Pacific Stock Exchange Incorporated (''PSE'' 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. On March 1, 1996, the Exchange submitted Amendment No. 1 to the proposed rule change.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its rules to state that corporations that distribute interim reports to shareholders should distribute such reports to both registered and beneficial shareholders. The text of the proposed rule change is available at the Exchange and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's Corporate Governance and Disclosure Policies currently provide for the disclosure to shareholders of quarterly reports and interim reports.[2] The Exchange is proposing to adopt new Commentary .03 to Rule 3.3(t) to provide that any listed company that distributes interim financial reports should distribute such reports to both registered and beneficial shareholders. The commentary would further state that the financial reports that are subject to this rule are those that are voluntarily distributed by the company as part of its shareholder relations activities, and not the quarterly financial reports required to be filed with the Commission pursuant to Section 13(a) and Section 15(d) of the Act. Although the distribution of interim reports will continue to be voluntary, if a corporation chooses to distribute interim reports to shareholders, it should distribute them to both registered and beneficial shareholders.

The purpose of the proposed rule change is to ensure equal treatment of record and beneficial shareholders in the distribution of interim financial reports. The proposal is consistent with a similar rule of the New York Stock

[1] *See* letter from Michael D. Pierson, PSE, to Jennifer Choi, Division of Market Regulations, SEC, dated February 29, 1996. In Amendment No. 1, the Exchange replaces the term ''shall'' with ''should'' in the text of Commentary .03 to PSE Rule 3.3(t). This amendment makes the PSE's proposal consistent with those of the New York Stock Exchange and the American Stock Exchange. *See* Securities Exchange Act Release No. 35373 (Feb. 14, 1995), 60 FR 9709 (Feb. 21, 1995); Securities Exchange Act Release No. 36541 (Nov. 30, 1995), 60 FR 62921 (Dec. 7, 1995). In Amendment No. 1, the Exchange also makes a couple of grammatical changes to Commentary .01 and Commentary .02 to PSE Rule 3.3(t).

[2] *See* PSE Rule 3.3(t), Commentaries .01 and .02.

Exchange, which based its rule change on the findings of various industry groups including the American Society of Corporate Secretaries and the Securities Industry Association.[3]

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–PSE–96–06 and should be submitted by March 29, 1996.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6(b).[4] The Commission believes the proposal is consistent with the section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and national market system, and in general, to protect investors and the public.

Although the Commission does not require public companies to distribute interim reports to shareholders, the Commission believes that it is appropriate for the Exchange to encourage its listed companies to provided equal treatment of record and beneficial shareholders in the distribution of reports.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. The Commission believes that accelerated approval is appropriate given the prior approval of similar proposals by the NYSE and the Amex[5] and because the accelerated approval will allow the Exchange to encourage equal distribution of interim reports to record and beneficial shareholders as soon as practicable.

Based on the above, the Commission finds that there is good cause, consistent with section 6(b)(5) of the Act, to accelerate approval of the amended proposed rule change.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (SR–PSE–96–06) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–5551 Filed 3–7–96; 8:45 am]

BILLING CODE 8010–01–M

[3] *See* Securities Exchange Act Release No. 35373 (Feb. 14, 1995), 60 FR 9709 (Feb. 21, 1995).

[4] 15 U.S.C. § 78(b).

[5] *See supra* note 1.

[6] 15 U.S.C. § 78s(b)(2).

[7] 17 CFR 299.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending March 1, 1996

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–96–1113.
Date filed: February 28, 1996.
Parties: Members of the International Air Transport Association.
Subject:
COMP Telex Reso 033f
Local Currency Cargo Rate Changes—Hungary
Intended effective date: upon government approvals

Docket Number: OST–96–1114.
Date filed: February 28, 1996.
Parties: Members of the International Air Transport Association.
Subject:
PAC/Reso/391 dated January 29, 1996
Agency Mail Vote A092
Reso 814—Egypt
Intended effective date: May 1, 1996

Paulette V. Twine,

Chief,Documentary Services Division.

[FR Doc. 96–5502 Filed 3–7–96; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending March 1, 1996

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–96–1121.
Date filed: February 29, 1996.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 28, 1996.
Description: Application of Trans World Airlines, Inc., pursuant to 49 U.S.C. Section 41101, and Subpart Q of the Regulations, applies for a certificate

of public convenience and necessity to engage in foreign air transportation of persons, property and mail between St. Louis, on the one hand, and Tokyo and Osaka, Japan, on the other hand.

Docket Number: OST–96–1122.

Date filed: February 29, 1996.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 28, 1996.

Description: Application of Czech Airlines (CSA), applies pursuant to Section 41302 and Subpart Q of the Regulations, an amendment of its foreign air carrier permit, for authority so as to conform CSA's authority to and with the terms of the amended bilateral Air Transport Agreement concluded between the United States and the Czech Republic on December 8, 1995 and currently pending formal adoption in accordance with the procedures of the two countries.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 96–5491 Filed 3–7–96; 8:45 am]

BILLING CODE 4910–62–P

Federal Transit Administration

Draft Environmental Impact Statement: Salt Lake County, Utah

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of intent.

SUMMARY: The FTA is issuing this notice to advise the public that a draft environmental impact statement (DEIS) will be prepared for a proposed transportation project in Salt Lake County, Utah.

FOR FURTHER INFORMATION CONTACT: Don Cover, U.S. Department of Transportation, Federal Transit Administration, 216 Sixteenth St., Suite 650, Denver, Colorado 80202, Telephone (303) 844–3242; or Mick Crandall, Wasatch Front Regional Council, Suite 200, 420 West 1500 South, Bountiful, Utah 84010, Telephone (801) 292–4469.

SUPPLEMENTARY INFORMATION: FTA, in cooperation with the Federal Highway Administration (FHWA), the Federal Aviation Administration (FAA), the Utah Department of Transportation (UDOT), the Utah Transit Authority (UTA), and the Wasatch Front Regional Council (WFRC) will prepare a major investment study/draft environmental impact statement for transportation improvements in the corridor from the University of Utah through Salt Lake City to the Salt Lake City International Airport in Salt Lake County, Utah.

The Salt Lake Area Long Range Transportation Plan adopted on October 26, 1995, identifies the corridor from the University of Utah to the Salt Lake City International Airport as having the potential need for major transit investment(s). A University Corridor Transit Study completed in 1993 found that light rail transit or other major transit investments would be feasible in the corridor from the University to downtown Salt Lake City. In addition, a Long Range Transit Plan currently being developed for the Wasatch Front Region identifies the University to Airport corridor as one of the future anchor corridors for major transit investment in the region. For these reasons, the Wasatch Front Regional Council along with Salt Lake City, the Utah Transit Authority, and the Utah Department of Transportation desire to prepare a major investment study/draft environmental impact statement for the corridor from the University to the Airport.

This study will consider no-build, transportation system management, and build alternatives. A multimodal evaluation of transportation improvements in the corridor will be focus of the study, with both transit and highway improvements such as traffic management strategies being considered. Among the transit alternatives to be studied are light rail transit and express bus service on high-occupancy vehicle lanes.

This Notice of Intent will be distributed to federal, state, and local agencies and jurisdictions to advise them of the MIS/DEIS process and to request comments and suggestions. An ongoing public involvement process will be developed to provide additional opportunities for the public to participate in this planning/environmental process.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the MIS/DEIS should be directed to the FTA and/or the WFRC at the addresses provided above.

Issued on: March 1, 1996.

Louis F. Mraz, Jr.,

Regional Administrator, Federal Transit Administration, Region VIII, Denver, Colorado.

[FR Doc. 96–5490 Filed 3–7–96; 8:45 am]

BILLING CODE 4910–57–M

Maritime Administration

War Risk Insurance; Notice of Renewal

Authority of the Secretary of Transportation (Secretary) to provide insurance and reinsurance under Title XII of the Merchant Marine Act of 1936, as amended (46 App. U.S.C. 1281–1293), was extended until June 30, 2000, by Pub. L. 104–106 (110 Stat. 186, February 10, 1996).

All shipowners who had vessels entered in the Maritime Administration's standby war risk program when the Secretary's authority expired on June 30, 1995, need not reapply. Those vessels were automatically re-entered into the program when the authority was extended, and the American War Risk Agency will send written confirmation of re-entry. However, if any condition a shipowner attested to in the original application has changed, the shipowner (or the insurance broker representing the shipowner) should so advise the American War Risk Agency to assure that the vessels are still eligible for the program.

A shipowner who currently does not have vessels entered in the program but wishes to participate, may obtain an application from the American War Risk Agency, 14 Wall Street, New York, NY 10005 telephone (212) 233–5978.

For further information contact: Edmond J. Fitzgerald, Director, Office of Subsidy and Insurance, Maritime Administration, Washington, DC 20590 or telephone (202) 366–2400.

By Order of the Maritime Administrator.

Dated: March 4, 1996.

Joel C. Richard,

Secretary.

[FR Doc. 96–5557 Filed 3–7–96; 8:45 am]

BILLING CODE 4910–81–P

National Highway Traffic Safety Administration

[Docket No. 95–77; Notice 2]

Cantab Motors, Ltd.; Grant of Application for Decision of Inconsequential Noncompliance

Cantab Motors, Ltd. (Cantab) of Purcellville, Virginia, determined that some of its vehicles fail to comply with the automatic restraint system requirements of 49 CFR 571.208, Federal Motor Vehicle Safety Standard (FMVSS) No. 208, ''Occupant Crash Protection,'' and filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Reports.'' Cantab also applied to be exempted from the notification and remedy

requirements of 49 U.S.C. Chapter 301—''Motor Vehicle Safety'' on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published on September 18, 1995, and an opportunity afforded for comment (60 FR 48195). This notice grants the application.

Paragraph S4.1.4 of FMVSS No. 208 requires that vehicles manufactured on or after September 1, 1989, be equipped with a restraint system at each front outboard designated seating position that meets the standard's frontal crash protection requirements by means that require no action by vehicle occupants. This type of system is referred to as an automatic restraint system.

The agency granted an exemption for Cantab to manufacture vehicles without automatic restraints between May 16, 1990 and May 1, 1993. Cantab imported and manufactured nine vehicles without automatic restraint systems during this time period. However, after the exemption had expired, Cantab imported and manufactured nine more vehicles without automatic restraint systems. Of these nine vehicles, seven entered the U.S. during 1994 and two in 1995. These vehicles all meet the requirements of Standard No. 208 prior to the implementation of automatic restraint requirements. Cantab subsequently applied for and was granted a new exemption from the automatic restraint requirements for this type of vehicle (60 FR 47422).

Cantab supported its application for inconsequential noncompliance with the following.

[Cantab] submits that, during the entire time period subsequent to its initial grant of exemption in May of 1990, it has imported and manufactured a total of eighteen cars. Nine of these were imported during the period of exemption, nine subsequent to its lapsing and prior to [Cantab's] submission of a second application for exemption. Each of these eighteen cars was identically constructed to meet all applicable FMVSS, including those of FMVSS 208 prior to implementation of the automatic restraint requirements. During this time, [Cantab] has made substantial progress in the development of a dual air bag system and expects to have it installed and operative within a year.

[Cantab] has previously suggested to NHTSA in its [May 10, 1995] petition for exemption, the unusual nature of its vehicles—cars driven by enthusiasts for pleasure, rather than daily for business commuting or on long trips, by people who own two or more other passenger cars for such purposes.

[Cantab] respectfully suggests that its nine noncomplying cars, representing a minuscule proportion of the total number of motor vehicles sold and operated in the U.S. during the period of 1994–1995, operated as noted above, constructed with well-proven safety systems, would not materially affect overall motor vehicle safety, and that their operation would be in the public interest and would be consistent with the objectives of the National Traffic and Motor Vehicle Safety Act.

No comments were received on the application.

As noted, the agency has granted Cantab's application for temporary exemption, on grounds that immediate compliance would cause it substantial economic hardship. An additional finding was that the exemption would be consistent with the public interest and motor vehicle safety. This finding was reached in part on the limited number of vehicles that will be covered by the exemption during its life. Given the fact that there are far fewer vehicles covered by the application under consideration, and that the noncompliance apparently cannot be remedied by repair, the agency wishes to reach a decision that is consistent with that reached in granting the application for temporary exemption. Given the fact that there are nine vehicles involved here, and that they comply with the requirements of FMVSS No. 208 that were once in effect, Cantab's noncompliance may be deemed inconsequential to safety.

In consideration of the foregoing, it is hereby found that the applicant has met its burden of persuasion that the noncompliance herein described is inconsequential to safety. Accordingly, its application is granted, and the applicant is exempted from providing the notification of the noncompliance that is required by 49 U.S.C. 30118, and from remedying the noncompliance, as required by 49 U.S.C. 30120.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: March 5, 1996.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 96–5566 Filed 3–7–96; 8:45 am]

BILLING CODE 4910–59–P

Research and Special Programs Administration

[Notice No. 96–5]

Hazardous Materials Transportation; Registration and Fee Assessment Program

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of filing requirements.

SUMMARY: The Hazardous Materials Registration Program will enter registration year 1996–97 on July 1, 1996. Persons who transport or offer for transportation certain hazardous materials are required to annually file a registration statement and pay a fee to the Department of Transportation. Persons who registered for the 1995–96 registration year will be mailed a registration statement form and informational brochure in April.

FOR FURTHER INFORMATION CONTACT: David W. Donaldson, Office of Hazardous Materials Planning and Analysis (202–366–4109), Hazardous Materials Safety, 400 Seventh Street S.W., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: This notice is intended to notify persons who transport or offer for transportation certain hazardous materials of an annual requirement to register with the Department of Transportation. Each person, as defined by the Federal hazardous materials transportation law (49 U.S.C. 5101 *et seq.*), who engages in any of the specified activities relating to the transportation of hazardous materials is required to register annually with the Department of Transportation and pay a fee. The regulations implementing this program are in Title 49, Code of Federal Regulations, Sections 107.601–107.620.

Proceeds from the fee are used to fund grants to State, local, and Indian tribal governments for emergency response training and planning. Grants were awarded to all states, two territories, and 12 Native American tribes during FY 1995. By law, 75 percent of the Federal grant monies awarded to the States is further distributed to local emergency response and planning agencies. The FY 1994 funds helped to provide (1) training for 126,000 emergency response personnel, (2) approximately 300 commodity flow studies and hazard analyses, (3) 1,200 emergency response plans updated or written for the first time, (4) assistance to 2,200 local emergency planning committees, and (5) 850 emergency exercises.

The persons affected by these regulations are those who offer or transport in commerce any of the following materials:

A. Any highway route-controlled quantity of a Class 7 (radioactive) material;

B. More than 25 kilograms (55 pounds) of a Division 1.1, 1.2, or 1.3 (explosive) material in a motor vehicle, rail car, or freight container;

C. More than one liter (1.06 quarts) per package of a material extremely toxic by inhalation (that is, a ''material

poisonous by inhalation'' that meets the criteria for ''hazard zone A'');

D. A hazardous material in a bulk packaging having a capacity equal to or greater than 13,248 liters (3,500 gallons) for liquids or gases or more than 13.24 cubic meters (468 cubic feet) for solids; or

E. A shipment, in other than a bulk packaging, of 2,268 kilograms (5,000 pounds) gross weight or more of a class of hazardous materials for which placarding of a vehicle, rail car, or freight container is required for that class.

The 1995–96 registration year ends on June 30, 1996. The 1996–97 registration year will begin on July 1, 1996, and end on June 30, 1997. Any person who engages in any of the specified activities during the 1996–97 registration year must file a registration statement and pay the associated fee of $300.00 before July 1, 1996, or before engaging in any of the activities, whichever is later. All persons who registered for the 1995–96 registration year will be mailed a registration statement form and an informational brochure in April 1996. Other persons wishing to obtain the form and any other information relating to this program should contact the program number given above.

The registration statement has not been revised for the 1996–97 registration year. In a final rule published under Docket HM–208B (May 23, 1995; 60 FR 27231) two minor changes in the registration requirements were made, effective beginning with the 1996–97 registration year: (1) foreign offerors are permanently excepted from the registration requirement if the country in which they are domiciled does not impose registration or a fee upon U.S. companies for offering hazardous materials into that country, and (2) the definition of ''materials extremely toxic by inhalation'' has been expanded to include all materials poisonous by inhalation that meet the criteria for hazard zone A.

Registrants should file a registration statement and pay the associated fee well before July 1, 1996, in order to ensure that a 1996–97 certificate of registration has been obtained by that date to comply with the recordkeeping requirements. These include the requirement that the registration number be made available on board each truck and truck tractor (not including trailers and semi-trailers) and each vessel used to transport hazardous materials subject to the registration requirements. A certificate of registration is generally mailed within three weeks of RSPA's receipt of a registration statement.

Persons who engage in any of the specified activities during a registration year are required to register for that year. Persons who engaged in these activities during registration year 1992–93 (September 16, 1992, through June 30, 1993), 1993–94 (July 1, 1993, through June 30, 1994), 1994–95 (July 1, 1994, through June 30, 1995), or 1995–96 (July 1, 1995, through June 30, 1996) and have not filed a registration statement and paid the associated fee of $300.00 for each year for which registration is required should contact RSPA to obtain the required form (DOT F 5800.2). A copy of the form that will be distributed for the 1996–97 registration year may be used to register for previous years. Persons who fail to register for any registration year in which they engaged in such activities are subject to civil penalties for each day a covered activity is performed. The legal obligation to register for a year in which any specified activity was conducted does not end with the registration year. Registration after the completion of a registration year may also involve the imposition of a late fee and interest in addition to a civil penalty.

During the 1994–95 and 1995–96 registration years, RSPA participated with the Public Utilities Commission of Ohio (PUCO) in a pilot test of an alternate procedure for filing the Federal registration statement for motor carriers who were also subject to the State of Ohio's registration program through the PUCO. That test has been completed and will not be continued during the 1995–96 registration year while the results are evaluated. All persons required to register with RSPA should do so by submitting the registration statement with payment directly to the U.S. Department of Transportation, Hazardous Materials Registration, P.O. Box 740188, Atlanta, Georgia 30374–0188.

Issued in Washington, DC on March 5, 1996.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 96–5565 Filed 3–7–96; 8:45 am]

BILLING CODE 4910–60–P

Surface Transportation Board [1]

[Finance Docket No. 32864]

Dakota, Minnesota & Eastern Railroad Corporation—Acquisition and Operation—Colony Segment of the Union Pacific Railroad Company, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice of filing of application and request for comments.

SUMMARY: Pursuant to 49 U.S.C. 10902 and section 327 of Public Law No. 104–88, the Dakota, Minnesota & Eastern Railroad Company (DME) has filed an application to acquire and operate an approximately 203-mile rail line currently owned by Union Pacific Railroad Company, Inc. (UP) located in Wyoming, South Dakota, and Nebraska, commonly referred to as the Colony Line. The Colony Line runs in a north-south direction from Colony, WY, to Crawford, NE, the majority of which is located in South Dakota. The Board invites comments on this application by interested parties.

DATES: Written comments must be filed with the Board no later than March 18, 1996.

ADDRESSES: An original and 10 copies of all comments must refer to STB Finance Docket No. 32864 and must be sent to: Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, one copy of all documents must be sent to applicant's representative: Kevin V. Schieffer, Schieffer, Cutler & Donahoe, P.C., Suite 300, Falls Center, 431 North Phillips Avenue, Sioux Falls, SD 57102.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: In the application, filed February 22, 1996, DME claims that there will be no material adverse impact on competition from this transaction since DME is merely replacing UP as the originating carrier on the Colony Line. Also, because DME is merely taking over an existing operation with no impact on environmental resources, the applicant is exempt from environmental reporting requirements pursuant to 49 CFR 1105.6(c)(2).

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to the Board's jurisdiction pursuant to 49 U.S.C. 10902.

DME states that the number of full-time UP employees on the Colony Line is 41 and anticipates that, following this transaction, the number of full-time employees on the Colony Line will rise to 50. Section 327 of the ICCTA, concerning Class II railroads receiving Federal assistance, provides that: ''The Surface Transportation Board shall impose no labor protection conditions in approving an application under [49 U.S.C. § 10902], when the application involves a carrier which (1) is headquartered in a State, and operates in at least one State, with a population of less than 1,000,000 persons as determined by the 1990 census; and (2) has, as of January 1, 1996, been a recipient of repayable Federal Railroad Administration assistance in excess of $5,000,000.'' DME claims that it meets the requirements of section 327 and that no labor protection conditions should be imposed.

DME seeks expedited review of this application due to various financial obligations it has entered into which take effect on May 1, 1996. DME has served copies of this application on State officials, officials of communities located on the Colony Line, the shippers and receivers that use the Colony Line, connecting railroads, representatives of affected employees, and newspapers serving the Colony Line area. In light of the extensive service on the parties likely to have an interest in this proceeding, and in light of DME's justification for expedited action, the Board is requesting that comments be filed by March 18, 1996.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: March 5, 1996.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams,

Secretary.

[FR Doc. 96–5516 Filed 3–7–96; 8:45 am]

BILLING CODE 4915–00–P

[Finance Docket No. 32826]

Huron and Eastern Railway Company, Inc.—Acquisition—CSX Transportation, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: The Board, under 49 U.S.C. 10505, exempts the Huron and Eastern Railway Company, Inc. from the prior approval requirements of 49 U.S.C. 11343–45, subject to standard labor protection, to acquire from CSX Transportation, Inc., 2.09 miles of rail line between milepost 2.0 and milepost 4.09 near Saginaw, MI.

DATES: This exemption is effective on April 7, 1996. Petitions to stay must be filed by March 25, 1996. Petitions to reopen must be filed by April 2, 1996.

ADDRESSES: Send pleadings referring to Finance Docket No. 32826 to: (1) Office of the Secretary, Surface Transportation Board, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423; and (2) Robert L. Calhoun, Sullivan & Worcester, Suite 1000, 1025 Connecticut Avenue, N.W., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call or pick up in person from: D.C. News and Data, Inc., Room 2229, 1201 Constitution Avenue, N.W., Washington, DC 20423. Telephone: (202) 289–4357. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: February 26, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96–5514 Filed 3–7–96; 8:45 am]

BILLING CODE 4915–00–P

[Finance Docket No. 32866]

Rail Link, Incorporated—Continuance in Control Exemption—Talleyrand Terminal Railroad Company, Inc.

Rail Link, Incorporated (Rail Link), has filed a verified notice under 49 CFR 1180.2(d)(2) to continue in control of the Talleyrand Terminal Railroad Company, Inc. (TTRC) upon TTRC becoming a Class III rail carrier. The transaction was to have been consummated on or after February 14, 1996.

TTRC, a noncarrier, has concurrently filed a notice of exemption in STB Finance Docket No. 32865, *Talleyrand Terminal Railroad Company, Inc.—Operation Exemption—Lines of Municipal Docks Railway,* in which TTRC seeks to operate approximately 10-miles of rail line owned by Municipal Docks Railway in Duval County, FL.

Rail Link also controls two nonconnecting Class III rail carriers: (1) the Commonwealth Railway, Incorporated and the Carolina Coastal Railway, Inc. (CCR).[2]

The transaction is exempt from the prior approval requirements of 49 U.S.C. 11323 because Rail Link states that: (1) the railroads will not connect with each other or with any railroad in their corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or with any railroad in their corporate family; and (3) the transaction does not involve a Class I carrier.

As a condition to this exemption, any employees adversely affected by the transaction will be protected under *New York Doc. Ry.—Control—Brooklyn Eastern Dist.,* 360 I.C.C. 60 (1979).

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to reopen will not stay the exemption's effectiveness. An original and 10 copies of all pleadings, referring to STB Finance Docket No. 32866, must be filed with the Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, NW., Washington, DC 20423. In addition, a copy of each pleading must be served on Robert A. Wimbish, Rea, Cross & Auchincloss, Suite 420, 1920 N Street, NW., Washington, DC 20036.

Decided: March 1, 1996.

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[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (the Act), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the Act provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the Act. This notice relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10502 and 10902. Therefore, this notice applies the law in effect prior to the Act, and citations are to the former sections of the statute, unless otherwise indicated.

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 11323.

[2] *See Rail Link Corporated—Continuance in Control Exemption—Commonwealth Railway Incorporated,* Finance Docket No. 31531 (ICC served Sept. 15, 1989).

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–5518 Filed 3–7–96; 8:45 am]

BILLING CODE 4915–00–P

[STB Finance Docket No. 32865]

Talleyrand Terminal Railroad Company, Inc.—Operation Exemption—Lines of Municipal Docks Railway

Talleyrand Terminal Railroad Company, Inc. (TTRC) has filed a notice of exemption to operate approximately 10-miles of rail line owned by Municipal Docks Railway (MDR)[2] from F&J Junction (between Norfolk Southern Railway milepost 5–C and CSX Transportation milepost 632.08) in an easterly direction to MDR milepost 10.33, within the Talleyrand Marine Terminal in Duval County, FL. The transaction was to have been consummated on or after February 14, 1996.

This proceeding is related to *Rail Link, Incorporated—Continuance in Control Exemption—Talleyrand Terminal Railroad Company, Inc.*, STB Finance Docket No. 32866, wherein Rail Link, Incorporated (Rail Link) has concurrently filed a verified notice to continue to control TTRC.[3]

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) [formerly section 10505(d)] may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Any comments must be filed with: Surface Transportation Board, 1201 Constitution Avenue, NW., Washington, DC 20423. In addition, a copy of any pleading must be served on applicant's representative: Robert A. Wimbish, Rea, Cross & Auchincloss, Suite 420, 1920 N Street, NW., Washington, DC 20036.

Decided: March 1, 1996.

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10901.

[2] TTRC entered into an agreement with Jacksonville Port Authority (JPA) for the operation of certain rail lines located in and near the Port of Jacksonville, FL. JPA owns the subject trackage through the MDR, a common carrier division of JPA.

[3] Rail Link also controls two class III railroads: (1) the Commonwealth Railway, Incorporated; and (2) the Carolina Coastal Railway, Inc.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–5512 Filed 3–7–96; 8:45 am]

BILLING CODE 4915–00–P

[Docket No. AB–167 (Sub-No. 1154)]

Consolidated Rail Corporation—Abandonment—in Berrien County, MI

The Board has issued a decision authorizing Consolidated Rail Corporation to abandon two connecting sections of rail line—the 2.1-mile Niles Industrial Track and the 0.9-mile French Paper Lead Track, a total distance of approximately 3.0 miles, in Niles, Berrien County, MI, subject to environmental and labor protective conditions. The Board will issue an abandonment certificate within 15 days after this publication, to become effective no later than 45 days after this publication, unless the Board finds that: (1) a financially responsible person has offered financial assistance (through subsidy or purchase) to enable rail service to continue; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Board and the applicant no later than 10 days from the publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: ''Office of Proceedings, AB–OFA''. Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Decided: March 4, 1996.

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (the Act), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the Act provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the Act. This notice relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10903. Therefore, this notice applies the law in effect prior to the Act, and citations are to the former sections of the statute, unless otherwise indicated.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96–5517 Filed 3–7–96; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Customs Service

Receipt of Domestic Interested Party Petition Concerning Tariff Classification of Sanitary Ware

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

ACTION: Notice of receipt of domestic interested party petition; solicitation of comments.

SUMMARY: Customs has received a petition submitted on behalf of a domestic interested party concerning the tariff classification of ceramic sanitary ware made in Mexico. The subject sanitary ware is provided for under heading 6910, Harmonized Tariff Schedule of the United States (HTSUS), as ceramic sinks, washbasins, washbasin pedestals, baths, bidets, water closet bowls, flush tanks, urinals and similar sanitary fixtures. Petitioner believes sanitary ware is classifiable under subheading 6910.10, HTSUS, which provides for such articles of porcelain or china, and challenges Customs classification under subheading 6910.90, which provides for sanitary ware, other than that of porcelain, china or china ware. Petitioner claims that tariff enumerated methodologies for determining whether a particular ceramic is porcelain, china or china ware are flawed. In addition, Petitioner claims that Customs implementation of the methodologies is flawed. The document invites comments regarding the correctness of Customs classification as well as the methodologies used. Before taking any action on the petition, consideration will be given to any written comments received in response to this notice.

DATES: Comments must be received on or before May 7, 1996.

ADDRESSES: Comments (preferably in triplicate) may be submitted to the U.S. Customs Service, Office of Regulations and Rulings, Regulations Branch, Franklin Court, 1301 Constitution Avenue, N.W., Washington, D.C. 20229. Comments may be viewed at the Office of Regulations and Rulings, Franklin Court, 1099 14th Street, N.W., Suite 4000, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mary Beth McLoughlin, Tariff Classification and Appeals Division, (202) 482–7030.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), and Part 175, Customs Regulations (19 CFR Part 175), Customs has received a petition submitted on behalf of a domestic interested party concerning the tariff classification of ceramic sanitary ware made in Mexico. Chapter 69, HTSUS, provides for ceramic products. Heading 6910, HTSUS, of Chapter 69, provides:

6910 Ceramic sinks, washbasins, washbasin pedestals, baths, bidets, water closet bowls, flush tanks, urinals and similar sanitary fixtures:
6910.10.00 Of porcelain or china—6.9%, 5.7% (MX)
05 Water closet bowls, flushometer type
10 Water closet bowls with tanks, in one piece.
15 Flush tanks
20 Other water closet bowls
30 Sinks and lavatories
50 Other
6910.90.00 Other—6.9% Free (MX)

The subject sanitary ware is classifiable under heading 6910. Petitioner believes sanitary ware is classifiable under subheading 6910.10, HTSUS, which provides for such articles of porcelain or china, and challenges Customs classification under subheading 6910.90, which provides for sanitary ware, other than that of porcelain, china or china ware. Petitioner claims that tariff enumerated methodologies for determining whether a particular ceramic is porcelain, china or china ware are flawed. In addition, Petitioner claims that Customs' implementation of the methodologies is flawed.

According to petitioner, prior to the January 1994 implementation of the North American Free Trade Agreement (NAFTA), Mexican produced vitreous china sanitary ware was classified under subheading 6910.10 with a 7.2% rate of duty. Under NAFTA, duty rates for subheading 6910.10 are incrementally reduced to free over a 10-year period. Petitioner asserts that early in 1994, Customs reclassified Mexican produced vitreous china sanitary ware as sanitary ware made of material other than porcelain or china under subheading 6910.90. Under NAFTA, duty rates for subheading 6910.90 were reduced to free at NAFTA's implementation. Petitioner challenges Customs reclassification of Mexican ceramic sanitary ware, claiming significant amounts of ceramic sanitary ware, in particular water closet bowls, are made of china.

Customs Position

The classification of merchandise under the HTSUS is governed by the General Rules of Interpretation (GRIs). GRI 1, HTSUS, states, in pertinent part, that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes. Additional U.S. Note 5(a) to Chapter 69 states: For the purposes of headings 6909 through 6914:

(a) The terms *''porcelain''* *''china''* and *''chinaware''* embrace ceramic ware (other than stoneware), whether or not glazed or decorated, having a fired white body (unless artificially colored) which will not absorb more than 0.5 percent of its weight of water and is translucent in thicknesses of several millimeters.

The tariff definition of porcelain, china and chinaware provides physical characteristics which, under certain circumstances, indicate that an article is porcelain, china and chinaware. Those characteristics include the article's degree of whiteness (unless the article is artificially colored) and degree of vitrification. An article's vitrification is manifested by both the water absorption and translucency specifications stated in the tariff definition for porcelain, china and chinaware.

Porcelain consists essentially of kaolinic clays and smaller amounts of quartz and/or feldspar. Because the clay and additives are extremely pure, the finished porcelain body is close to a true white color, unless colored. Whiteness, as a porcelain, china and chinaware characteristic, was addressed in U.S. vs. Twin Wintons, 535 F.2d 636 (CCPA 1976) rev'd. 395 F.Supp 1397 (1975) [Twin Wintons]. The court found, based on the evidence presented, that whiteness is principally a subjective function of the potter's intent manifested through ingredient control, and therefore not a determinative characteristic in and of itself of an article's porcelain, china and chinaware nature. However, subsequent to the decision in Twin Wintons, Customs has used the Munsell Color System scientific method to measure the ''whiteness'' of ceramic ware when determining whether an article is made of porcelain, china and chinaware.

The Munsell Color System is a universally accepted system used to characterize color in terms of hue, chroma and value (lightness) using a combination number/lettering system. The Munsell system is illustrated by a collection of 1500 color chips in the Munsell Book of Color. It requires that an object be viewed under a Macbeth lamp which produces an artificial light of known wave length simulating northern sky daylight. The color viewed is then compared with standardized color chips produced and sold by Munsell. The chips are of varying degrees of whiteness. Customs understands that ceramic sanitary ware having a Munsell color of N 8.5 or lighter (in a neutral color shade having a chroma of 0 to 0.5) will be, for the purpose of testing sanitary ware, considered white.

The amount of water a particular article absorbs is a manifestation of its vitrification. As the degree of vitrification increases during the firing process, the amount of water the finished product will be able to absorb will decrease by the same degree and vice versa. The method for the measurement of water absorption as provided for in Chapter 69, Additional U.S. Note 5(d), is the American Standard Testing Method designated C373 (except that test specimens may have a minimum weight of 10 g, and may have one large surface glazed). Samples absorbing 0.5% and less of their weight in water are sufficiently vitrified to meet both the tariff and industry definitions of porcelain, china and chinaware.

Translucency is the final specification provided by the tariff. Translucency, as in the case of water absorption, is a specification which manifests the characteristic ''vitrification''. As the degree of vitrification increases, the subject article's translucency increases. With respect to Chapter 69, Customs believes translucency is present as a specification to define the degree of vitrification and not as a porcelain, china and chinaware characteristic in and of itself. Therefore, Customs believes that bodies, whatever their form (e.g.: sanitary ware, vase, etc.), composed of the same base materials and vitrified during firing for the same amount of time will exhibit essentially the same amount of translucency.

In Twin Wintons, the examination of the subject article, a decanter, consisted of the judges darkening a room, placing a 7 watt penlight into the decanter and then visually examining the decanter to determine whether light shone through. The court tested the product for translucency without adjustment to a specific thickness. In addition, the court stated that there was no evidence that any part of the decanter was ''very thin''. Customs believes that this statement indicates the court's belief that the thickness of the decanter was within or above the ''thickness of

several millimeters'' requirement of the tariff porcelain, china and chinaware definition.

The measurable translucency of an article is directly affected by its thickness. Because translucent objects only partially transmit light, translucent materials become opaque at certain thicknesses. While the various articles of headings 6909 through 6914 may have virtually identical bodies, their thickness varies. Therefore, Customs believes the direction of Additional U.S. Note 5(a), ''translucent at thicknesses of several millimeters'', requires all ceramic articles it encompasses to be tested at a universal thickness. This thickness may or may not be the actual thickness of the product.

In the absence of a quantitative thickness, the Customs Laboratory performed an exhaustive search of industry standards. That search produced what Customs understands to be the only available industry standard indicating a thickness for testing translucency: the British Standard 5416 for porcelain chinaware. The standard requires an average water absorption of less than 0.2% by weight; however, depending on sample size (number samples tested), a small number of samples may show a water absorption rate of greater than 0.4%. If water absorption is met, translucency is tested by taking a 2 mm thick piece of the article and determining if 75% of the light directed incident upon it from a light source capable of emitting white light of color temperature of 3400 K (a special photometric lamp) is viewable. As the water absorption specification is provided in the porcelain, china and chinaware tariff definition, Customs believes that the sample thickness requirement of the test should be applied to determine whether a piece of ceramic sanitary ware will meet the translucency requirement of the porcelain, china and chinaware tariff definition.

Petitioner's Position

In contrast, petitioner states that while Additional U.S. Note 5(a) may accurately determine whether ceramic dinnerware or decorative articles are made of porcelain, china and chinaware, the specifications provided in the note are troublesome when applied to ceramic sanitary ware. Instead, petitioner suggests that the specifications for sanitary ware provided by the American National Standards Institute (ANSI) code should be applied to determine whether a ceramic sanitary ware article is made of china.

The ANSI has been adopted by the plumbing industry. It provides standards which govern the material composition and characteristics of ceramic sanitary ware. The ANSI code divides ceramic sanitary ware into 2 categories: ''Vitreous China Plumbing Fixtures'' and ''Non-Vitreous Ceramic Plumbing Fixtures''. Under the ANSI code, the difference between vitreous and non-vitreous ceramic products is determined by the water absorption value of the products. Vitreous china fixtures have an absorption value of .5% or less, while non-vitreous ceramics have an absorption value of .6% and above. According to petitioner, water closet bowls, as a condition for use and sale in the U.S., must meet the ANSI vitreous china standard.

Petitioner believes that ceramic sanitary ware meeting the ANSI vitreous china standard ought to be classified under subheading 6910.10 and ceramic sanitary ware which meets the non-vitreous china standard ought to be classified under subheading 6910.90.00, HTSUS.

Comments

Pursuant to section 175.21(a), Customs Regulations (19 CFR 175.21(a)), before making a determination on this matter, Customs invites written comments from interested parties on this issue. The petition of the domestic interested party, as well as all comments received in response to this notice, will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), section 1.4, Treasury Department Regulations (31 CFR 1.4), and section 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, U.S. Customs Service, Office of Regulations and Rulings, Franklin Court, 1099 14th Street, N.W., Suite 4000, Washington, D.C.

Authority

This notice is published in accordance with section 175.21(a), Customs Regulations [19 CFR 175.21(a)].

George J. Weise,

Commissioner of Customs.

Approved: February 7, 1996.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 96–5682 Filed 3–6–96; 8:45 am]

BILLING CODE 4820–02–P

Office of Foreign Assets Control

List of Specially Designated Narcotics Traffickers; Additional Designations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice of blocking.

SUMMARY: The Treasury Department is adding the names of 138 additional individuals and 60 entities and revising information for 8 individuals on the list of blocked persons contained in the notices published on November 29, 1995, and October 24, 1995, who have been determined to play a significant role in international narcotics trafficking centered in Colombia or have been determined to be owned or controlled by, or to act for or on behalf of, other blocked persons on the list.

EFFECTIVE DATE: March 5, 1996, or upon prior actual notice.

FOR FURTHER INFORMATION: Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Ave., N.W., Washington, DC 20220; Tel.: (202) 622–2420.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document is available as an electronic file on *The Federal Bulletin Board* the day of publication in the Federal Register. By modem, dial 202/512–1387 and type ''/GO FAC,'' or call 202/512–1530 for disks or paper copies. This file is available for downloading without charge in WordPerfect, ASCII, and Adobe Acrobat™ readable (*.PDF) formats. The document is also accessible for downloading without charge in ASCII format from Treasury's Electronic Library (''TEL'') in the ''Business, Trade and Labor Mall'' of the FedWorld bulletin board. By modem dial 703/321–3339, and select the appropriate self–expanding file in TEL. For Internet access, use one of the following protocols: Telnet = fedworld.gov (192.239.93.3); World Wide Web (Home Page) = http://www.fedworld.gov; FTP = ftp.fedworld.gov (192.239.92.205).

Background

On October 21, 1995, President Clinton signed Executive Order 12978, ''Blocking Assets and Prohibiting Transactions with Significant Narcotics Traffickers'' (the ''Order'').

The Order blocks all property subject to U.S. jurisdiction in which there is any interest of four principal figures in the Cali drug cartel who are listed in the annex to the Order. In addition, the Order blocks the property and interests in property of foreign persons

determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, (a) to play a significant role in international narcotics trafficking centered in Colombia, or (b) to materially assist in or provide financial or technological support for, or goods or services in support of, persons designated in or pursuant to the Order. In addition, the Order blocks all property and interests in property subject to U.S. jurisdiction of persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, persons designated in or pursuant to the Order (collectively ''Specially Designated Narcotics Traffickers'' or ''SDNTs''). On October 24, 1995, 76 additional names were published in the Federal Register that were determined to met one or more of these criteria (60 FR 54582, October 24, 1995). On November 29, 1995, 4 additional names were published in the Federal Register (60 FR 61288, November 29, 1995).

The Order further prohibits any transaction or dealing by a United States person or within the United States in property or interests in property of SDNTs, and any transaction that evades or avoids, has the purpose of evading or avoiding, or attempts to violate, the prohibitions contained in the Order.

This notice adds the names of 138 additional individuals and 60 entities designated pursuant to the criteria contained in the Order. The notice also contains additional information concerning eight individuals previously designated.

Designations of foreign persons blocked pursuant to the Order are effective upon the date of determination by the Director of the Office of Foreign Assets Control, acting under authority delegated by the Secretary of the Treasury. Public notice of blocking is effective upon the date of filing with the Federal Register, or upon prior actual notice.

Additional Entities:

AGRICOLA HUMYAMI LTDA., Apartado Aéreo 30352, Cali, Colombia.

AGROPECUARIA BETANIA LTDA., Calle 70N No. 14–31, Cali, Colombia; Carrera 61 No. 11–58, Cali, Colombia.

AGROPECUARIA Y REFORESTADORA HERREBE LTDA., Avenida 2N No. 7N–55 of. 501, Cali, Colombia.

ALFA PHARMA S.A., Diagonal 17 No. 28A–80, Bogotá, Colombia.

AMPARO RODRIGUEZ DE GIL Y CIA. S. EN C., Avenida 4N No. 5N–20, Cali, Colombia.

ANDINA DE CONSTRUCCIONES S.A., Cali, Colombia.

ASESORIAS COSMOS LTDA., Carrera 40 No. 6–50 apt. 13–01, Cali, Colombia.

ASPOIR DEL PACIFICO Y CIA. LTDA., Cali, Colombia.

BLANCO PHARMA S.A., (A.K.A. LABORATORIOS BLANCO PHARMA S.A.), Carrera 99 y 100 No. 46A–10, Bodega 4, Bogotá, Colombia.

COLOR 89.5 FM STEREO, Calle 15N No. 6N–34 piso 15, Edificio Alcazar, Cali, Colombia; Calle 19N No. 2N–29, Cali, Colombia.

COMERCIALIZADORA DE CARNES DEL PACIFICO LTDA., Calle 25 No. 8–54, Cali, Colombia.

COMERCIALIZADORA OROBANCA, (A.K.A. SOCIR S.A.), Calle 36A No. 3GN–07 of. 302, Edificio El Parque, Cali, Colombia; Calle 22N No. 5A–75 of. 702, Edificio Via Veneto, Cali, Colombia.

COMPAX LTDA., (A.K.A. INVERSIONES Y DISTRIBUCIONES COMPAX LTDA.), Calle 10 No. 4–47 piso 19, Cali, Colombia.

CONCRETOS CALI S.A., Calle 7 No. 82–65, Cali, Colombia.

CONSTRUCTORA DIMISA LTDA., Calle 70N No. 14–31, Cali, Colombia.

CONSTRUCTORA GOPEVA LTDA., Avenida 3A No. 51–15, Cali, Colombia.

CONSTRUCTORA TREMI LTDA., Carrera 1A Oeste No. 68–75, Cali Colombia.

CONSTRUEXITO S.A., (A.K.A. CONE S.A.), Avenida 2N No. 7N–55 of. 501, Cali, Colombia.

CREACIONES DEPORTIVAS WILLINGTON LTDA., Cosmocentro, Local 130, Cali, Colombia; Calle 5 No. 25–65, Cali, Colombia.

DEPÓSITO POPULAR DE DROGAS S.A., Carrera 6 No. 24–77, Cali, Colombia.

DERECHO INTEGRAL Y CIA. LTDA., Calle 22N No. 5A–75 piso 5, Cali, Colombia.

DISTRIBUIDORA MYRAMIREZ S.A., Calle 33BN No. 2BN–49 apt. 503A, Cali, Colombia; Carrera 69A No. 49A–49, Bogotá, Colombia.

EXPORT CAFE LTDA., Carrera 7 No. 11–22 of. 413, Cali, Colombia.

FARALLONES STEREO 91.5 FM, Calle 15N No. 6N–34 piso 15, Edificio Alcazar, Cali, Colombia.

FARMATODO S.A., Diagonal 17 No. 28A–39, Bogotá, Colombia; Diagonal 17 No. 28A–80, Bogotá, Colombia.

HAYDEE DE MUÑOZ Y CIA. S. EN C., Avenida 6N No. 23DN–16, Cali, Colombia; Avenida 4N No. 5N–20, Cali, Colombia.

INDUSTRIA AVÍCOLA PALMASECA S.A., Carrera 61 No. 11–58, Cali, Colombia; Carretera Central via Aeropuerto Palmaseca, Colombia.

INMOBILIARIA BOLIVAR S.A., (A.K.A. ADMINISTRACIÓN INMOBILIARIA BOLIVAR S.A.), Calle 17N No. 6N–28, Cali, Colombia.

INMOBILIARIA U.M.V. S.A., Carrera 83 No. 6–50, Edificio Alqueria, Torre C, of. 302, Cali, Colombia.

INVERSIONES BETANIA LTDA., Avenida 2N No. 7N–55 of. 501, Cali, Colombia; Carrera 53 No. 13–55 apt. 102B, Cali, Colombia.

INVERSIONES CAMINO REAL S.A., Calle 10 No. 4–47 piso 19, Cali, Colombia.

INVERSIONES EL PEÑÓN S.A., Avenida 2N, Cali, Colombia.

INVERSIONES GEELE LTDA., Calle 17A No. 28A–23, Bogotá, Colombia.

INVERSIONES GÉMINIS S.A., Carrera 40 No. 6–24 of. 402B, Cali, Colombia.

INVERSIONES HERREBE LTDA., Avenida 2N No. 7N–55 of. 501, Cali, Colombia; Carrera 25 No. 4–65, Cali, Colombia.

INVERSIONES INVERVALLE S.A., (A.K.A. INVERVALLE), Avenida 2N No. 7N–55 of. 501, Cali, Colombia; Calle 70N No. 14–31, Cali, Colombia.

INVERSIONES LA SEXTA LTDA., Calle 10 No. 4–47 piso 19, Cali, Colombia.

INVERSIONES MOMPAX LTDA., (A.K.A. MOMPAX LTDA.), Calle 10 No. 4–47 piso 19, Cali, Colombia.

INVERSIONES RODRIGUEZ ARBELAEZ Y CIA. S. EN C., Avenida 4N No. 5N–20, Cali, Colombia; Avenida 6N No. 23D–16 of. 402, Cali, Colombia.

INVERSIONES RODRIGUEZ MORENO Y CIA. S. EN C., Calle 10 No. 4–47, Cali, Colombia.

INVERSIONES RODRIGUEZ RAMIREZ Y CIA. S.C.S.S., Calle 10 No. 4–47 piso 19, Cali, Colombia.

INVERSIONES Y CONSTRUCCIONES VALLE S.A., (A.K.A. INCOVALLE), Avenida 2N No. 7N–55 of. 501, Cali, Colombia.

LABORATORIOS GENERICOS VETERINARIOS DE COLOMBIA S.A, Carrera 71 No. 57–07, Bogotá, Colombia.

MARIELA DE RODRIGUEZ Y CIA. S. EN C., Cali, Colombia.

MAXITIENDAS TODO EN UNO, Avenida Guadalupe con Avenida Simon Bolivar, Cali, Colombia.

M. RODRIGUEZ O. Y CIA. S. EN C.S., Cali, Colombia.

MUÑOZ Y RODRIGUEZ Y CIA. LTDA., Avenida 6N No. 23DN–26, Cali, Colombia.

PENTA PHARMA DE COLOMBIA S.A., Calle 17A No. 28A–23, Bogotá, Colombia; Calle 17A No. 28A–43, Bogotá, Colombia.

PLASTICOS CONDOR LTDA., Carrera 13 No. 16–62, Cali, Colombia.

RADIO UNIDAS FM S.A., Calle 15N No. 6N–34 piso 15, Edificio Alcazar, Cali, Colombia; Calle 19N No. 2N–29 piso 10 Sur, Cali, Colombia.

REVISTA DEL AMERICA LTDA., Calle 23AN No. 5AN–19, Cali, Colombia.

RIONAP COMERCIO Y REPRESENTACIONES S.A., Quito, Ecuador.

SERVICIOS INMOBILIARIOS LTDA., Carrera 65 No. 13–82, Cali, Colombia; Avenida 2N No. 7N–55 of. 605, Cali, Colombia.

SERVICIOS SOCIALES LTDA., Barranquilla, Colombia.

SOCOVALLE LTDA., (A.K.A. SOCIEDAD CONSTRUCTORA Y ADMINISTRADORA DEL VALLE LTDA.), Avenida 2N No. 7N–55 of. 601–602, Cali, Colombia.

TOBOGON, Avenida Guadalupe con Avenida Simon Bolivar, Cali, Colombia.

VALLE COMUNICACIONES LTDA., (A.K.A. VALLECOM), Carrera 60 No. 2A–107, Cali, Colombia.

VALORES MOBILIARIOS DE OCCIDENTE S.A., Bogotá, Colombia.

VIAJES MERCURIO LTDA., Carrera 3 No. 10–02 Local 113, Cali, Colombia.

W. HERRERA Y CIA. S. EN C., Avenida 2N 7N–55 of. 501, Cali, Colombia.

Additional Individuals:

ACEVEDO P., FRANCISCO LUIS, Cédula No. 71660070 (Colombia); Carrera 1 No. 18–52 Cali, Colombia; c/o INVERSIONES INVERVALLE S.A., Cali, Colombia.

AGUILERA QUIJANO, HAROLD, Cédula No. 16594227 (Colombia); c/o ASESORIAS COSMOS LTDA., Cali, Colombia.

ALVAREZ GAVIRIA, JAIME ANTONIO, Cédula No. 10060853 (Colombia); c/o EXPORT CAFE LTDA., Cali, Colombia.

AMAYA OROZCO, LUIS ALBERTO, Cédula No. 4882167 (Colombia); Calle 18N No. 9–46, Cali, Colombia; c/o COMERCIALIZADORA DE CARNES DEL PACIFICO LTDA., Cali, Colombia.

AMEZQUITA MENESES, SALUSTIO, Cédula No. 14943885 (Colombia); c/o INMOBILIARIA U.M.V. S.A., Cali, Colombia.

ANDRADE QUINTERO, ANCIZAR, Cédula No. 16672464 (Colombia); c/o INMOBILIARIA BOLIVAR LTDA., Cali, Colombia; c/o INMOBILIARIA U.M.V. S.A., Cali, Colombia; c/o SERVICIOS INMOBILIARIAS LTDA., Cali, Colombia.

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ARBELAEZ ALZATE, RAFAEL, c/o SERVICIOS INMOBILIARIOS LTDA., Cali, Colombia.

ARBELAEZ GALLON, GLADYS, Cédula No. 31858038 (Colombia); c/o SERVICIOS INMOBILIARIOS LTDA., Cali, Colombia.

ARBOLEDA, JULIO, Cédula No. 16205508 (Colombia); c/o INVERSIONES BETANIA LTDA., Cali, Colombia; c/o INVERSIONES EL PEÑON S.A., Cali, Colombia.

ARBOLEDA A., PEDRO NICHOLAS (NICOLAS), Cédula No. 16602372 (Colombia); c/o DEPOSITO POPULAR DE DROGAS S.A., Cali, Colombia; c/o DISTRIBUIDORA DE DROGAS CONDOR LTDA., Bogotá, Colombia.

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ARJONA ALVARADO, RAFAEL, Cédula No. 19442698 (Colombia); c/o ALPHA PHARMA S.A., Bogotá, Colombia; c/o FARMATODO S.A., Bogotá, Colombia; c/o LABORATORIOS BLAIMAR, Bogotá, Colombia.

AVENDAÑO GUTIERREZ, FRANCISCO EDUARDO, Cédula No. 16645182 (Colombia); Carrera 8 No. 66–21 apt. 204, Bogotá, Colombia; Transversal 1A No. 69–54 apt. 502, Bogotá, Colombia; c/o LABORATORIOS GENERICOS VETERINARIOS, Bogotá, Colombia.

AVILA DE MONDRAGON, ANA DOLORES, Cédula No. 29183223 (Colombia); c/o COMPAX LTDA., Cali, Colombia.

BAEZA MOLINA, CARLOS ALBERTO, Cédula No. 16621765 (Colombia); c/o DERECHO INTEGRAL Y CIA. LTDA., Cali, Colombia; c/o INVERSIONES MIGUEL RODRIGUEZ E HIJO, Cali, Colombia.

BECHARA SIMANCA, SALIM, DOB: 26 July 1950; Cédula No. 19163957 (Colombia); c/o SOCOVALLE, Cali, Colombia.

BENITEZ CASTELLANOS, CESAR TULIO, c/o DROGAS LA REBAJA, Cali, Colombia; c/o RIONAP COMERCIOS Y REPRESENTACIONES S.A., Quito, Ecuador.

BUITRAGO, SULAY, (A.K.A. HERRERA BUITRAGO, SULAY), c/o AGROPECUARIA Y REFORESTADORA HERREBE LTDA., Cali, Colombia; c/o CONSTRUEXITO S.A., Cali, Colombia; c/o INDUSTRIA AVÍCOLA PALMASECA S.A., Cali, Colombia; c/o INVERSIONES HERREBE LTDA., Cali, Colombia.

BUITRAGO DE HERRERA, LUZ MERY, Cédula No. 29641219 (Colombia); c/o AGROPECUARIA BETANIA LTDA., Cali, Colombia; c/o AGROPECUARIA Y REFORESTADORA HERREBE LTDA., Cali, Colombia; c/o CONSTRUEXITO S.A., Cali, Colombia; c/o INVERSIONES BETANIA LTDA., Cali, Colombia; c/o INVERSIONES GEMINIS S.A., Cali, Colombia; c/o INVERSIONES HERREBE LTDA., Cali, Colombia; c/o INVERSIONES INVERVALLE S.A., Cali, Colombia; c/o SOCOVALLE, Cali, Colombia.

BUITRAGO MARIN, ADIELA, Cédula No. 31137617 (Colombia); c/o CONSTRUEXITO S.A., Cali, Colombia; c/o INDUSTRIA AVÍCOLA PALMASECA S.A., Cali, Colombia.

BUITRAGO MARIN, NUBIA, Cédula No. 31132922 (Colombia); c/o INMOBILIARIA U.M.V. S.A., Cali, Colombia.

CARMONA, JUAN MANUEL, c/o INVERSIONES ARA LTDA., Cali, Colombia; c/o INVERSIONES RODRIGUEZ ARBELAEZ, Cali, Colombia; c/o INVERSIONES RODRIGUEZ MORENO, Cali, Colombia.

CARRILLO SILVA, ARMANDO, Cédula No. 16242828 (Colombia); c/o DROGAS LA REBAJA, Cali, Colombia; c/o INVERSIONES CAMINO REAL S.A., Cali, Colombia.

CASQUETE VARGAS, ORLANDO, Cédula No. 19270159 (Colombia); c/o ALFA PHARMA S.A., Bogotá, Colombia; c/o LABORATORIOS GENERICOS VETERINARIOS, Bogotá, Colombia; c/o LABORATORIOS KRESSFOR, Bogotá, Colombia; c/o PENTA PHARMA DE COLOMBIA S.A., Bogotá, Colombia.

CASTAÑO ARANGO, FERNANDO, Cédula No. 14953602 (Colombia); c/o INDUSTRIA AVÍCOLA PALMASECA S.A., Cali, Colombia.

CHANG BARRERO, PEDRO ANTONIO, Cédula No. 14960909 (Colombia); c/o DISTRIBUIDORA MIGIL LTDA., Cali, Colombia; c/o RADIO UNIDAS FM S.A., Cali, Colombia.

CORTEZ, OLIVERIO ABRIL, Cédula No. 3002003 (Colombia); c/o CONSTRUCTORA DIMISA LTDA., Cali, Colombia; c/o INVERSIONES GEMINIS S.A., Cali, Colombia.

CUARTES MORALES, JUAN CARLOS, Cédula No. 16757375 (Colombia); c/o INVERSIONES Y CONSTRUCCIONES VALLE S.A., Cali, Colombia.

DAZA RIVERA, PABLO EMILIO, Cédula No. 4904545 (Colombia); c/o BLANCO PHARMA S.A., Bogotá, Colombia; c/o COLOR 89.5 FM STEREO, Cali, Colombia; c/o DROGAS LA REBAJA, Cali, Colombia; c/o LABORATORIOS KRESSFOR, Bogotá, Colombia; c/o RIONAP COMERCIO Y REPRESENTACIONES S.A., Quito, Ecuador.

DELGADO, JORGE ARMANDO, Cédula No. 19354318 (Colombia); c/o ALFA PHARMA S.A., Bogotá, Colombia; c/o DISTRIBUIDORA MYRAMIREZ S.A., Bogotá, Colombia; c/o FARMATODO S.A., Bogotá, Colombia.

DIAZ SANCHEZ, ALBERTO, DOB: January 1956; Cédula No. 16259623 (Colombia); Carrera 66 No. 5–23, Cali, Colombia; c/o CONCRETOS CALI S.A., Cali, Colombia; c/o CONSTRUCTORA DIMISA LTDA., Cali, Colombia; c/o INMOBILIARIA U.M.V. S.A., Cali, Colombia.

DOMINGUEZ GARIBELLO, FREDDY ORLANDO, Cédula No. 16659634 (Colombia); c/o INDUSTRIA AVÍCOLA PALMASECA S.A., Cali, Colombia.

ECHEVERRY TRUJILLO, MARTHA LUCIA, Cédula No. 31151067 (Colombia); c/o REVISTA DEL AMERICA LTDA., Cali, Colombia.

ECHEVERRY TRUJILLO, OSCAR ALBERTO, Avenida 4N No. 17–23 piso 1, Cali, Colombia; Calle 43N No. 4–05, Cali, Colombia; c/o COLOR 89.5 FM STEREO, Cali, Colombia.

ESCOBAR BUITRAGO, WALTER, c/o INMOBILIARIA BOLIVAR LTDA., Cali, Colombia.

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GALINDO HERRERA, DIANA PAOLA, c/o AGROPECUARIA Y REFORESTADORA HERREBE LTDA., Cali, Colombia; c/o CONSTRUEXITO S.A., Cali, Colombia; c/o INDUSTRIA AVÍCOLA PALMASECA S.A., Cali, Colombia; c/o INVERSIONES HERREBE LTDA., Cali, Colombia.

GALINDO HERRERA, DIEGO ALEXANDER, c/o AGROPECUARIA Y REFORESTADORA HERREBE LTDA., Cali, Colombia; c/o CONSTRUEXITO S.A., Cali, Colombia; c/o INDUSTRIA AVÍCOLA PALMASECA S.A., Cali, Colombia; c/o INVERSIONES HERREBE LTDA., Cali, Colombia.

GALLEGO BERRIO, ELIZABETH, Cédula No. 34529671 (Colombia); c/o CONCRETOS CALI S.A., Cali, Colombia.

GALLEGO SOSSA, ROSA ESPERANZA, Cédula No. 43059188 (Colombia): Calle 24AN No. 42BN–61, Cali, Colombia; c/o CONCRETOS CALI S.A., Cali, Colombia; c/o CONSTRUCTORA DIMISA LTDA., Cali, Colombia.

GARCES VARGAS, ELMO, Cédula No. 16581793 (Colombia); c/o INVERSIONES BETANIA LTDA., Cali, Colombia; c/o INVERSIONES EL PEÑÓN S.A., Cali, Colombia; c/o SOCOVALLE, Cali, Colombia.

GARCIA MONTILLA, EDGAR ALBERTO, (A.K.A. GARCIA MANTILLA, EDGAR ALBERTO; A.K.A. GARCIA MONTELLA, EDGAR ALBERTO; A.K.A. GARCIA MOGAR, EDGAR); DOB: 28 November 1946; Passports AC365457 (Colombia), PE008603 (Colombia), PO564495 (Colombia), AA294885 (Colombia); Cédula No. 14936775 (Colombia); c/o REVISTA DEL AMERICA LTDA., Cali, Colombia.

GARZÓN HERNANDEZ, RODRIGO, c/o DROGAS LA REBAJA, Cali, Colombia.

GARZÓN RESTREPO, JUAN LEONARDO, DOB: 14 January 1962; Cédula No. 16663709 (Colombia); Carrera 7P No. 76–90, Cali, Diagonal 53 No. 38A–20 apt. 103, Bogotá c/o BLANCO PHARMA S.A., Bogotá, Colombia; c/o DISTRIBUIDORA MYRAMIREZ S.A., Cali, Colombia; c/o DROGAS LA REBAJA, Cali, Colombia; c/o FARMATODO S.A., Bogotá, Colombia; c/o LABORATORIOS GENERICOS VETERINARIOS, Bogotá, Colombia; c/o LABORATORIOS KRESSFOR, Bogotá, Colombia; c/o PENTA PHARMA DE COLOMBIA S.A., Bogotá, Colombia; c/o VALORES MOBILIARIOS DE OCCIDENTE S.A., Bogotá, Colombia.

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GIRALDO SARRIA, OCTAVIO, c/o INMOBILIARIA U.M.V. S.A., Cali, Colombia.

GIRALDO SARRIA, ROSA AMELIA, c/o INMOBILIARIA U.M.V. S.A., Cali, Colombia.

GOMEZ, JULIO HUMBERTO, Cédula No. 19091811 (Colombia); c/o LABORATORIOS GENERICOS VETERINARIOS, Bogotá, Colombia.

GOMEZ BELTRAN, JORGE, Cédula No. 19091811 (Colombia); c/o LABORATORIOS GENERICOS VETERINARIOS, Bogotá, Colombia.

GOMEZ BERRIO, OLMES (HOLMES) DE JESÚS, Cédula No. 73105133 (Colombia); Carrera 1 No. 18–52, Cali, Colombia; c/o INVERSIONES INVERVALLE S.A., Cali, Colombia; c/o INVERSIONES Y CONSTRUCCIONES VALLE S.A., Cali, Colombia.

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GOMEZ J., LUIS FERNANDO, Cédula No. 16716914 (Colombia); c/o INMOBILIARIA U.M.V. S.A., Cali, Colombia.

GOMEZ LOPEZ, DIEGO FERNANDO, c/o CONSTRUCTORA DIMISA LTDA., Cali, Colombia.

GOMEZ MORA, RICARDO, Cédula No. 3249673 (Colombia); c/o INVERSIONES GEELE LTDA., Bogotá, Colombia; c/o LABORATORIOS GENERICOS VETERINARIOS, Bogotá, Colombia.

GONZALEZ ROBLEDO, JULIO CESAR, Cédula No. 2905977 (Colombia); c/o LABORATORIOS GENERICOS VETERINARIOS, Bogotá, Colombia.

GUTIERREZ ARDILA, EDUARDO, DOB: 8 August 1958; Cédula No. 16642433 (Colombia); c/o EXPORT CAFE LTDA., Cali, Colombia.

HENAO LOPEZ, ALBERTO, (A.K.A. HENAO, ALBERTO LOPEZ), Cédula No. 2630951 (Colombia); c/o ALFA PHARMA S.A., Bogotá, Colombia.

HENAO DE SANCHEZ, HORTENSIA, Cédula No. 29013554 (Colombia); c/o ALFA PHARMA S.A., Bogotá, Colombia.

HENAO VDA. DE BOTERO, MARIA YOLANDA, Cédula No. 29070489 (Colombia); c/o ALFA PHARMA S.A., Bogotá, Colombia.

HERNANDEZ C., HECTOR FABIO, Cédula No. 16615804 (Colombia); c/o INVERSIONES BETANIA LTDA., Cali, Colombia; c/o INVERSIONES EL PEÑÓN S.A., Cali, Colombia.

HERRERA BUITRAGO, ALVARO, DOB: 10 October 1955; Cédula No. 16258303 (Colombia); Avenida 6N No. 25–14, Cali, Colombia; c/o INDUSTRIA AVÍCOLA PALMASECA S.A., Cali, Colombia.

HERRERA BUITRAGO, STELLA, DOB: 7 October (Year unknown); Cédula No. 31143871 (Colombia); Avenida 1B Oeste No. 1–44 apt. 602, Medeira Building, Cali, Colombia; c/o AGROPECUARIA Y REFORESTADORA HERREBE LTDA., Cali, Colombia; c/o CONCRETOS CALI S.A., Cali, Colombia; c/o CONSTRUCTORA DIMISA LTDA., Cali, Colombia; c/o INDUSTRIA AVÍCOLA PALMASECA S.A., Cali, Colombia; c/o INVERSIONES GÉMINIS S.A., Cali, Colombia; c/o INVERSIONES HERREBE LTDA., Cali, Colombia; c/o SOCOVALLE LTDA., Cali, Colombia.

HERRERA INFANTE, ALBERTO, Cédula No. 16637518 (Colombia); c/o CONSTRUCTORA DIMISA LTDA., Cali, Colombia; c/o INDUSTRIA AVÍCOLA PALMASECA S.A., Cali, Colombia.

HERRERA RAMIREZ, GISELLE, c/o AGROPECUARIA Y REFORESTADORA HERREBE LTDA., Cali, Colombia; c/o INDUSTRIA AVÍCOLA PALMASECA S.A., Cali, Colombia; c/o INVERSIONES HERREBE LTDA., Cali, Colombia.

HERRERA RAMIREZ, LINDA NICOLLE, c/o INDUSTRIA AVÍCOLA PALMASECA S.A., Cali, Colombia.

HERRERA TOBON, MARIA CECILIA, Cédula No. 31397821 (Colombia); c/o LABORATORIOS GENERICOS VETERINARIOS, Bogotá, Colombia.

IBANEZ LOPEZ, RAUL ALBERTO, Cédula No. 16640123 (Colombia); c/o INMOBILIARIA U.M.V. S.A., Cali, Colombia.

IZQUIERDO QUINTERO, ROSALINO, Cédula No. 70111037 (Colombia); c/o INVERSIONES INVERVALLE S.A., Cali, Colombia.

JAIMES RIVERA, JOSÉ ISIDRO, Cédula No. 19090006 (Colombia); c/o CONCRETOS CALI S.A., Cali, Colombia; c/o CONSTRUCTORA DIMISA LTDA., Cali, Colombia; c/o INMOBILIARIA BOLIVAR S.A., Cali, Colombia; c/o INMOBILIARIA U.M.V. S.A., Cali, Colombia; c/o INVERSIONES BETANIA LTDA., Cali, Colombia; c/o INVERSIONES EL PEÑÓN S.A., Cali, Colombia; c/o INVERSIONES GÉMINIS S.A., Cali, Colombia; c/o SOCOVALLE LTDA., Cali, Colombia.

LARRANAGA CALVACHE, JUAN CARLOS, Cédula No. 12982064 (Colombia); c/o INMOBILIARIA BOLIVAR LTDA., Cali, Colombia.

LIBREROS DIEZ, ORLANDO, Cédula No. 16651068 (Colombia); c/o CONSTRUCTORA DIMISA LTDA., Cali, Colombia. c/o INDUSTRIA AVÍCOLA PALMASECA S.A., Cali, Colombia; c/o VALLE COMUNICACIONES LTDA., Cali, Colombia.

LINARES REYES, JOSÉ RICARDO, (A.K.A. LLENARES REYES, RICARDO JOSÉ), DOB: 8 March 1955; Passport PO466638 (Colombia); Cédula No. 14440139 (Colombia); KM 11, No. 58–57, Cali, Colombia; c/o CONSTRUEXITO S.A., Cali, Colombia; c/o INMOBILIARIA BOLIVAR S.A., Cali, Colombia; c/o INVERSIONES BETANIA LTDA., Cali, Colombia; c/o INVERSIONES EL PEÑÓN S.A., Cali, Colombia; c/o INVERSIONES HERREBE LTDA., Cali, Colombia; c/o INVERSIONES INVERVALLE S.A., Cali, Colombia; c/o INVERSIONES Y CONSTRUCCIONES VALLE S.A., Cali, Colombia; c/o VIAJES MERCURIO LTDA, Cali, Colombia.

LINDO HURTADO, EDGAR, c/o INMOBILIARIA U.M.V. S.A., Cali, Colombia.

LOPERA LONDOÑO, VICENTE DE JESÚS, Cédula No. 1393107 (Colombia); c/o INVERSIONES Y CONSTRUCCIONES VALLE S.A., Cali, Colombia.

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MONROY ARCILA, FRANCISCO JOSÉ, c/o CONSTRUCTORA DIMISA LTDA., Cali, Colombia.

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MORAN GUERRERO, MARIO FERNANDO, Cédula No. 12983857 (Colombia); c/o LABORATORIOS KRESSFOR, Bogotá, Colombia; c/o PENTA PHARMA DE COLOMBIA S.A., Bogotá, Colombia.

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MUÑOZ PAZ, JOAQUIN EMILIO, Cédula No. 16788012 (Colombia); Avenida 4AN No. 47–89, Cali, Colombia; c/o CONSTRUCTORA DIMISA LTDA., Cali, Colombia; c/o INMOBILIARIA U.M.V. S.A., Cali, Colombia; c/o INVERSIONES Y CONSTRUCCIONES VALLE S.A., Cali, Colombia.

ORTIZ PALACIOS, WILLINGTON A., Avenida 5AN No. 23D–68 piso 2, Cali, Colombia; Carrera 62 Bis No. 6A, Cali, Colombia; c/o CREACIONES DEPORTIVAS WILLINGTON LTDA., Cali, Colombia.

OSORIO CADAVID, MARIA VICTORIA, Cédula No. 31932294 (Colombia); c/o COLOR 89.5 FM STEREO, Cali, Colombia; c/o DERECHO INTEGRAL Y CIA. LTDA., Cali, Colombia.

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PAZ MAHECHA, GONZALO RODRIGO, Cédula No. 16590653 (Colombia); Calle 102 No. 48A–08, Bogotá, Colombia; Calle 13 No. 4–25 piso 6, Cali, Colombia; Calle 13A No. 66B–60 apt. 101A, Cali, Colombia; Calle 13A No. 66B–60 apt. 102A, Cali, Colombia; Calle 13A No. 66B–60 apt. 902A, Cali, Colombia; Carrera 4 No. 11–45 apt. 621, Cali, Colombia; Carrera 4 No. 11–45 apt. 624, Cali, Colombia; Carrera 4 No. 11–45 of. 802, Cali, Colombia; Carrera 4 No. 11–45 of. 809, Cali, Colombia; Transversal 98 No. 28A–46, Cali, Colombia; c/o COLOR 89.5 FM STEREO, Cali, Colombia.

PELAEZ DE HENAO, TERESA, Cédula No. 29013555 (Colombia); c/o ALFA PHARMA S.A., Bogotá, Colombia.

PEREZ GARCIA, CARLOS, Cédula No. 14920419 (Colombia); c/o ASESORIAS COSMOS LTDA., Cali, Colombia.

PEREZ VARELA, JAIME DIEGO, Cédula No. 2895666 (Colombia); c/o CONSTRUCTORA GOPEVA LTDA., Cali, Colombia.

PRADO CUERO, SALOMÓN, (A.K.A. ''CHALO''), DOB: 1 August 1948; Avenida 26 No. 42B–89 Bogotá, Colombia; Carrera 101B No. 11B–50 Cali, Colombia; c/o COLOR 89.5 FM STEREO, Cali, Colombia.

QUINTERO SALAZAR, LISÍMACO, c/o INMOBILIARIA U.M.V. S.A., Cali, Colombia.

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RAMIREZ CORTES, DELIA NHORA (NORA), DOB: 20 January 1959; Cédula No. 38943729 (Colombia); c/o AGROPECUARIA Y REFORESTADORA HERREBE LTDA., Cali, Colombia; c/o CONSTRUEXITO S.A., Cali, Colombia; c/o INDUSTRIA AVÍCOLA PALMASECA S.A., Cali, Colombia; c/o INMOBILIARIA BOLIVAR S.A., Cali, Colombia; c/o INVERSIONES GEMINIS S.A., Cali, Colombia; c/o INVERSIONES HERREBE LTDA., Cali, Colombia; c/o INVERSIONES INVERVALLE S.A., Cali, Colombia; c/o SOCOVALLE LTDA., Cali, Colombia; c/o VIAJES MERCURIO LTDA., Cali, Colombia.

RAMIREZ M., OSCAR, c/o INVERSIONES ARA LTDA., Cali, Colombia; c/o VALORES MOBILIARIOS DE OCCIDENTE S.A., Bogotá, Colombia; c/o RIONAP COMERCIO Y REPRESENTACIONES S.A., Quito, Ecuador.

RAMIREZ VALENCIANO, WILLIAM, Cédula No. 16694719 (Colombia); Calle 3C No. 72–64 10, Cali, Colombia; c/o CONCRETOS CALI S.A., Cali, Colombia; c/o CONSTRUCTORA DIMISA LTDA., Cali, Colombia; c/o INMOBILIARIA BOLIVAR S.A., Cali, Colombia; c/o INVERSIONES BETANIA LTDA., Cali, Colombia; c/o INVERSIONES EL PEÑÓN S.A., Cali, Colombia; c/o INVERSIONES GEMINIS S.A., Cali, Colombia.

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RIVERA MOSQUERA, MAURICIO JOSÉ, Cédula No. 16277224 (Colombia); c/o INVERSIONES GEMINIS S.A., Cali, Colombia.

RIZO MORENO, JORGE LUIS, Cédula No. 16646582 (Colombia); Transversal 11, Diagonal 23–30 apt. 304A, Cali, Colombia; c/o CONSTRUCTORA DIMISA LTDA., Cali, Colombia; c/o INDUSTRIA AVÍCOLA PALMASECA S.A., Cali, Colombia; c/o SERVICIOS INMOBILIARIOS LTDA., Cali, Colombia.

RODRIGUEZ, MANUEL, Cédula No. 17171485 (Colombia); c/o ALFA PHARMA S.A., Cali, Colombia; c/o LABORATORIOS KRESSFOR, Bogotá, Colombia.

RODRIGUEZ MORENO, JUAN PABLO, DOB: 30 July 1980; Carrera 65 647, Cali, Colombia; c/o INVERSIONES RODRIGUEZ MORENO, Cali, Colombia.

RODRIGUEZ MORENO, MIGUEL ANDRÉS, DOB: 14 July 1977; Passport No. AD253939 (Colombia); Cédula No. 94328841 (Colombia); Carrera 65 No. 6–47, Cali, Colombia; Carrera 66 No. 6–47, Cali, Colombia; c/o INVERSIONES RODRIGUEZ MORENO, Cali, Colombia.

RODRIGUEZ MORENO, STEPHANIE (STETHANINE), c/o INVERSIONES RODRIGUEZ MORENO, Cali, Colombia.

ROJAS MEJIA, HERNAN, DOB: 28 August 1948; Cédula No. 16242661 (Colombia); Calle 2A Oeste No. 24B–45 apt. 503A, Cali, Colombia; Calle 6A No. 9N–34, Cali, Colombia; c/o COLOR 89.5 FM STEREO, Cali, Colombia.

ROJAS ORTIS, ROSA, Cédula No. 26577444 (Colombia); c/o ALFA PHARMA S.A., Cali, Colombia.

ROSALES DIAZ, HECTOR EMILIO, Cédula No. 16588924 (Colombia); c/o INDUSTRIA AVÍCOLA PALMASECA S.A., Cali, Colombia; c/o INMOBILIARIA BOLIVAR S.A., Cali, Colombia; c/o INVERSIONES GEMINIS S.A., Cali, Colombia.

ROZO VARON, LUIS CARLOS, Cédula No. 5838525 (Colombia); c/o BLANCO PHARMA S.A., Bogotá, Colombia; c/o FARMATODO S.A., Bogotá, Colombia; c/o LABORATORIOS GENERICOS VETERINARIOS, Bogotá, Colombia; c/o LABORATORIOS KRESSFOR, Bogotá, Colombia.

RUEDA FAJARDO, HERBERTH GONZALO, Cédula No. 12126395 (Colombia); c/o LABORATORIOS GENERICOS VETERINARIOS, Bogotá, Colombia.

RUIZ HERNANDEZ, GREGORIO RAFAEL, DOB: 20 May 1963; Cédula No. 16823501 (Colombia); c/o COMERCIALIZADORA OROBANCA, Cali, Colombia.

SAAVEDRA RESTREPO, JESÚS MARIA, DOB: 10 July 1958; Cédula No. 16603482 (Colombia); Calle 5 No. 46–83 Local 119, Cali, Colombia; c/o CONCRETOS CALI S.A., Cali, Colombia; c/o CONSTRUCTORA DIMISA LTDA., Cali, Colombia; c/o INMOBILIARIA U.M.V. S.A., Cali, Colombia.

SALCEDO R., NHORA CLEMENCIA, Cédula No. 31273613 (Colombia); c/o INMOBILIARIA BOLIVAR S.A., Cali, Colombia.

SALCEDO RAMIREZ, JAIME, Cédula No. 16706222 (Colombia); c/o INMOBILIARIA U.M.V. S.A., Cali, Colombia.

SALDARRIAGA ACEVEDO, CARLOS OMAR, DOB: 16 Jan 1954; Cédula No. 14998632 (Colombia); Calle 9B No. 50–100 apt. 102, Cali, Colombia; c/o RADIO UNIDAS FM S.A., Cali, Colombia.

SANCHEZ DE VALENCIA, DORA GLADYS, DOB: 7 August 1955; Cédula No. 31273248 (Colombia); c/o INMOBILIARIA U.M.V. S.A., Cali, Colombia.

SARRIA HOLGUIN, RAMIRO (ROBERT), Avenida 6N No. 23D–16 of. L301, Cali, Colombia; Carrera 100 No. 11–60 of. 603, AA 20903, Cali, Colombia; c/o INVERSIONES ARA LTDA., Cali, Colombia; c/o INVERSIONES MIGUEL RODRIGUEZ E HIJO, Cali, Colombia; c/o INVERSIONES RODRIGUEZ ARBELAEZ, Cali, Colombia; c/o INVERSIONES RODRIGUEZ MORENO, Cali, Colombia.

SILVA PERDOMO, ALEJANDRO, Cédula No. 14983500 (Colombia); c/o CONSTRUVIDA S.A., Avenida 2N No. 7N–55 y No. 521, Cali, Colombia; c/o INDUSTRIA AVICOLA PALMASECA S.A., Cali, Colombia.

SOLAQUE SANCHEZ, ALFREDO, Cédula No. 79261845 (Colombia); c/o ALFA PHARMA S.A., Bogotá, Colombia; c/o LABORATORIOS BLAIMAR, Bogotá, Colombia; c/o LABORATORIOS KRESSFOR, Bogotá, Colombia; c/o PENTA PHARMA DE COLOMBIA S.A., Bogotá, Colombia.

TREJOS MARQUEZ, ARNULFO, Cédula No. 6090595 (Colombia); Carrera 4 No. 9–17 of. 308, AA 38028, Cali, Colombia; c/o CONSTRUCTORA TREMI LTDA., Cali, Colombia.

TRIANA TEJADA, LUIS HUMBERTO, Cédula No. 4916206 (Colombia); c/o COMERCIALIZADORA DE CARNES DEL PACIFICO LTDA., Cali, Colombia.

TRUJILLO CAICEDO, FRANCISCO JAVIER (PACHO); DOB: 23 November 1960; Cédula No. 16264395 (Colombia); Calle 8 Oeste No. 24C–75 apt. 1501, Cali, Colombia; Calle 13C No. 75–95 piso 2, Cali, Colombia; Carrera 76A No. 6–34 apt. 107, Cali, Colombia; c/o COLOR 89.5 FM STEREO, Cali, Colombia.

URIBE GONZALEZ, JOSÉ ABELARDO, Cédula No. 16647906 (Colombia); c/o INMOBILIARIA U.M.V. S.A., Cali, Colombia; c/o SERVICIOS INMOBILIARIAS LTDA., Cali, Colombia.

VALENCIA, REYNEL (REINEL), Cédula No. 16258610 (Colombia); c/o INMOBILIARIA U.M.V. S.A., Cali, Colombia.

VALENCIA ARIAS, JHON GAVY (JOHN GABY), Cédula No. 16741491 (Colombia); Avenida 7N No. 17A–46, Cali, Colombia; Carrera 76 No. 6–200 102, Cali, Colombia; c/o INVERSIONES BETANIA LTDA., Cali, Colombia; c/o INVERSIONES EL PEÑÓN S.A., Cali, Colombia.

VALENCIA ARIAS, LUIS FERNANDO, Cédula No. 71626881 (Colombia); c/o INVERSIONES BETANIA LTDA., Cali, Colombia; c/o INVERSIONES EL PEÑÓN S.A., Cali, Colombia; c/o INVERSIONES GÉMINIS S.A., Cali, Colombia.

VARGAS GARCIA, CARLOS ALBERTO, Quito, Ecuador; c/o DISTRIBUIDORA DE DROGAS CONDOR LTDA., Bogotá, Colombia; c/o RIONAP COMERCIO Y REPRESENTACIONES S.A., Quito, Ecuador.

VICTORIA, MERCEDES, c/o COLOR 89.5 FM STEREO, Cali, Colombia; c/o COMPAX LTDA., Cali, Colombia; c/o INVERSIONES GEELE LTDA., Bogotá, Colombia; c/o LABORATORIOS KRESSFOR, Bogotá, Colombia.

VICTORIA POTES, NESTOR RAUL, Cédula No. 16247701 (Colombia); Calle 70N No. 14–31, AA 26397, Cali, Colombia; c/o AGROPECUARIA BETANIA LTDA., Cali, Colombia; c/o INDUSTRIA AVICOLA PALMASECA S.A., Cali, Colombia; c/o INMOBILIARIA BOLIVAR S.A., Cali, Colombia.

VILLEGAS ARIAS, MARIA DEISY (DEICY), Cédula No. 31200371 (Colombia); Calle 66 No. 1A–6 51, Cali, Colombia; c/o CONSTRUEXITO S.A., Cali, Colombia; c/o CONCRETOS CALI S.A., Cali, Colombia; c/o SOCOVALLE LTDA., Cali, Colombia.

VILLEGAS BOLAÑOS, SILVER AMADO, Cédula No. 10480869 (Colombia); c/o CONCRETOS CALI S.A., Cali, Colombia; c/o INMOBILIARIA BOLIVAR S.A., Cali, Colombia.

ZÚÑIGA OSORIO, MARCO FIDEL, c/o LABORATORIOS BLANCO PHARMA, Bogotá, Colombia.

Corrected and Additional Name and Address Information:

AGUADO ORTIZ, LUIS JAMERSON, Cédula No. 2935839 (Colombia); c/o DISTRIBUIDORA MIGIL LTDA., Cali, Colombia.

DAZA QUIROGA, HUGO CARLOS, Cédula No. 19236485 (Colombia); c/o DISTRIBUIDORA DE DROGAS CONDOR, Bogotá, Colombia; c/o DISTRIBUIDORA MYRAMIREZ S.A., Bogotá, Colombia; c/o LABORATORIOS GENERICOS VETERINARIOS, Bogotá, Colombia.

GIL OSORIO, ALFONSO, DOB: 17 December 1946; alt. DOB: 17 December 1940; Passports 14949229 (Colombia), 14949279 (Colombia), 14949289 (Colombia), AC 342060 (Colombia); Cédula No. 14949279; c/o DISTRIBUIDORA DE DROGAS CONDOR LTDA., Bogotá, Colombia; c/o DISTRIBUIDORA DE DROGAS LA REBAJA S.A., Bogotá, Colombia; c/o DISTRIBUIDORA MIGIL LTDA., Cali, Colombia; c/o LABORATORIOS BLAIMAR DE COLOMBIA S.A., Bogotá, Colombia; c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogotá, Colombia.

GUTIERREZ (GUTIERRES) CERDAS, ALVARO, DOB: 9 May 1942; Cédula No. 14966562 (Colombia); c/o DISTRIBUIDORA DE DROGAS CONDOR LTDA., Bogotá, Colombia.

GUTIERREZ LOZANO, ANA MARIA, DOB: 1972; Cédula No. 39783954 (Colombia); c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogotá, Colombia.

RODRIGUEZ ARBELAEZ, MARIA FERNANDA, DOB: 28 November 1973; alternate DOB: 28 August 1973; Passport: AC568974 (Colombia); Cédula No. 66860965 (Colombia); c/o DISTRIBUIDORA DE DROGAS LA REBAJA S.A., Bogotá, Colombia.

RODRIGUEZ OREJUELA DE GIL, AMPARO, DOB: 13 March 1949; Passport: AC342062 (Colombia); Cédula No. 31218703 (Colombia); c/o DISTRIBUIDORA DE DROGAS CONDOR LTDA., Bogotá, Colombia; c/o DISTRIBUIDORA MIGIL LTDA., Cali, Colombia; c/o LABORATORIOS BLAIMAR DE COLOMBIA S.A., Bogotá, Colombia; c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogotá, Colombia.

ZABALETA SANDOVAL, NESTOR, DOB: 17 September 1925; Passports 1690693 (United States), 100330728 (United States), J24728201 (Country unknown); Cédula No. 2901313; Apartado Aéreo 91095, Bogotá, Colombia; c/o BLANCO PHARMA S.A., Bogotá, Colombia; c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogotá, Colombia.

Dated: March 4, 1996.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: March 4, 1996.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff & Law Enforcement).

[FR Doc. 96–5501 Filed 3–5–96; 11:24 am]

BILLING CODE 4810–25–F

Internal Revenue Service

[1.469–7(f)]

Proposed Collection; Comment Request

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(C)(2)(a)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, PS–39–89, Limitation on Passive Activity Losses and Credits—Treatment of Self-charged Items of Income and Expense. (Regulation § 1.469–7(f)).

DATES: Written comments should be received on or before May 7, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Limitation on Passive Activity Losses and Credits—Treatment of Self-charged Items of Income and Expense.

OMB Number: 1545–1244.

Regulation Project Number: PS–39–89 Notice of Proposed Rulemaking.

Abstract: Section 1.469–7(f)(1) of the regulations permits entities to elect to avoid application of the regulation in the event the passthrough entity chooses to not have the income from lending transactions with owners of interests in the entity recharacterized as passive activity gross income. The IRS will use this information to determine whether the entity has made a proper timely election and to determine that taxpayers are complying with the election in the taxable year of the election and subsequent taxable years.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: The estimated annual burden per respondent varies from 5 minutes to 15 minutes, depending on individual circumstances, with an estimated average of 6 minutes.

Estimated Total Annual Burden Hours: 100 hours.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Approved: February 28, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–5456 Filed 3–7–96; 8:45 am]

BILLING CODE 4830–01–U

[Notice 87–61]

Proposed Collection; Comment Request

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing announcement, Notice 87–61, Long- term Contracts; Methods of Accounting Under Tax Reform. (Code section 460).

DATES: Written comments should be received on or before May 7, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Long-term Contracts; Methods of Accounting Under Tax Reform.

OMB Number: 1545–1011.

Project Number: Notice 87–61.

Abstract: Code section 460 requires taxpayers to use one of two accounting methods in accounting for long-term contracts. The reporting requirements in this notice are necessary to permit taxpayers to change their methods of accounting for long-term contracts to comply with Code section 460.

Current Actions: There is no change to this existing notice.

Type of Review: Extension of OMB approval.

Affected Public: Businesses or other for-profit institutions.

Estimated Number of Respondents: 5,000.

Estimated Time Per Respondent: 5 hours.

Estimated Total Annual Burden Hours: 25,000 hours.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Approved: February 28, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–5457 Filed 3–7–96; 8:45 am]

BILLING CODE 4830–01–U

[1.42–2]

Proposed Collection; Comment Request

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–62–87, Low-Income Housing Credit for Federally-assisted Buildings. (Regulation § 1.42–2).

DATES: Written comments should be received on or before May 7, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Low-Income Housing Credit for Federally-assisted Buildings.

OMB Number: 1545–1005.

Regulation Project Number: PS–62–87 Final.

Abstract: The rule requires the taxpayer (low-income building owner) to seek a waiver in writing from the IRS concerning low-income buildings acquired during a special 10-year period in order to avert a claim against a Federal mortgage insurance fund.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Businesses or other for-profit institutions, individuals or households, non-profit institutions, Federal Government, and state, local and tribal government.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 3 hours.

Estimated Total Annual Burden Hours: 3,000 hours.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Approved: February 28, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–5458 Filed 3–7–96; 8:45 am]

BILLING CODE 4830–01–U

[FORM 8838]

Proposed Collection, Comment Request

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8838, Consent To Extend the Time To Assess Tax Under Section 367–Gain Recognition Agreement.

DATES: Written comments should be received on or before May 7, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Consent To Extend the Time To Assess Tax Under Section 367–Gain Recognition Agreement

OMB Number: 1545–1395.

Form Number: 8838.

Abstract: Form 8838 is used to extend the statute of limitations for U.S. persons who transfer stock or securities to a foreign corporation. The form is filed when the transferor makes a gain recognition agreement. This agreement allows the transferor to defer the payment of tax on the transfer. The IRS uses Form 8838 so that it may assess tax against the transferor after the expiration of the original statute of limitations.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of OMB approval.

Affected Public: Businesses, individuals or households.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 8 hrs., 14 min.

Estimated Total Annual Burden Hours: 8,240.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Approved: February 29, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–5459 Filed 3–7–96; 8:45 am]

BILLING CODE 4830–01–U

[Form 5074]

Proposed Collection; Comment Request

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

Currently, the IRS is soliciting comments concerning Form 5074, Allocation of Individual Income Tax to Guam or the Commonwealth of the Northern Mariana Islands (CNMI).

DATES: Written comments should be received on or before May 7, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Allocation of Individual Income Tax to Guam or the Commonwealth of the Northern Mariana Islands (CNMI).

OMB Number: 1545–0803.

Form Number: 5074.

Abstract: Form 5074 is used by U.S. citizens or residents as an attachment to Form 1040 when they have $50,000 or more in adjusted gross income from U.S. sources and $5,000 or more in gross income from Guam or the Commonwealth of the Northern Mariana Islands (CNMI). The data is used by IRS to allocate income tax due to Guam or the CNMI as required by 26 U.S.C. 7654.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of OMB approval.

Affected Public: Individuals or households.

Estimated Number of Respondents: 50.

Estimated Time per Respondent: 4 hrs., 2 min.

Estimated Total Annual Burden Hours: 202.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Approved: February 29, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–5461 Filed 3–7–96; 8:45 am]

BILLING CODE 4830–01–U

MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION

Sunshine Act Meeting; Notice of Meeting

The Board of Trustees of the Morris K. Udall Scholarship & Excellence in National Environmental Policy Foundation will hold a meeting beginning at 1:30 p.m. on Thursday, March 28, 1996, at the Hotel Park, 5151 East Grant Road, Tucson, Arizona 85712.

The matters to be considered will include: (1) Reports of on-going Foundation programs; (2) A review of the Budget; and (3) A report from the Udall Center for Studies and Public Policy. The meeting is open to the public.

CONTACT PERSON FOR MORE INFORMATION: Christopher L. Helms, Director, 803/811 East First Street, Tucson, Arizona 85719. Telephone: (520) 670–5523.

Dated this 4th day of March, 1996.

Christopher L. Helms.

[FR Doc. 96–5698 Filed 3–6–96; 12:00 pm]

BILLING CODE 9630–11–M

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Use Lease of Property at the Richard L. Roudebush Department of Veterans Affairs Medical Center in Indianapolis (Cold Spring Road Division), Indiana

AGENCY: Department of Veterans Affairs.

ACTION: Notice of designation.

SUMMARY: The Secretary of the Department of Veterans Affairs is designating the Richard L. Roudebush Department of Veterans Affairs Medical Center in Indianapolis (Cold Spring Road Division), Indiana for an Enhanced-Use Lease development. The Department intends to enter into a long-term lease of real property at the Division with the State of Indiana in return for construction services on the West Tenth Street Division campus of the VAMC and other ''in-kind'' consideration.

FOR FURTHER INFORMATION CONTACT:

Robert B. Eidson, Office of Asset and Enterprise Development (189), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC, 20420, (202) 565–4307.

SUPPLEMENTARY INFORMATION: 38 U.S.C. Sec 8161 *et seq.,* specifically provides that the Secretary may enter into an Enhanced-Use Lease, if the Secretary determines that at least part of the use of the property under the lease will be to provide appropriate space for an activity contributing to the mission of the Department; the lease will not be inconsistent with and will not adversely affect the mission of the Department; and the lease will enhance the property. This project meets these requirements.

Approved: March 1, 1996.

Jesse Brown,

Secretary.

[FR Doc. 96–5486 Filed 3–7–96; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 61, No. 47
Friday, March 8, 1996

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 9-96]

Foreign-Trade Zone 154 -- Baton Rouge, LouisianaApplication for Subzone StatusExxon Corporation(Oil Refinery/Petrochemical Complex)Baton Rouge, Louisiana Area

Correction

In notice document 96–3753 appearing on page 6623 in the issue of Wednesday, February 21, 1996 make the following correction:

On page 6623, in the second column, in the third complete paragraph, the comment dates were not inserted, the paragraph is corrected to read as follows:

''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 April 22, 1996. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to May 7, 1996).''

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

48 CFR Part 213

[Defense Acquisition Circular (DAC) 91-10]

Defense Federal Acquisition Regulation Supplement; Miscellaneous Amendments

Correction

In rule document 96–4480 beginning on page 7739 in the issue of Thursday, February 29, 1996, make the following corrections:

213.505-2 [Corrected]

On page 7742, in the second column, in amendment 12 to 213.505-2, the heading should have read ''213.505-2 [Amended]''; and in the first line ''213.502-2'' should read ''213.505-2''.

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER91–195–023, et al.]

Western Systems Power Pool, et al.; Electric Rate and Corporate Regulation Filings

Correction

In notice document 96–4489 beginning on page 7501 in the issue of Wednesday, February 28, 1996, make the following correction:

On page 7501, in the second column, in filing number 2, the fifth docket number should read ''[Docket No. ER95–1421–002]''.

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 63, 264, 265 and 266

[EPA/OSW-FR-95- ; SWH-FRL-5430-5]

CEMS Demonstration Announcement

Correction

In proposed rule document 96–4388 beginning on page 7232 in the issue of Tuesday, February 27, 1996, in the second column, under **DATES**, the second line should read ''April 9, 1996''.

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

42 CFR Parts 57 and 58

RIN 0906-AA38

Grants for Construction of Teaching Facilities, Educational Improvements, Scholarships, and Student Loans and Grants for Training of Public Health and Allied Health Personnel

Correction

In rule document 96–3054 beginning on page 6118 in the issue of Friday, February 16, 1996, make the following corrections:

§ 57.214 [Corrected]

1. On page 6123, in the second column, in amendment 10 to § 57.214, in the second line, ''74l(1)'' should read ''741(l)''.

Subpart D [Corrected]

2. On page 6130, in the third column, amendment 2 to Subpart D should be moved down below the Authority citation.

BILLING CODE 1505–01–D

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

41 CFR Part 60-741

RIN 1215-AA84

Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Individuals with Disabilities

Correction

In proposed rule document 96–3277 beginning on page 5902, in the issue of Wednesday, February 14, 1996, make the following corrections:

1. On page 5902, in the second column, under **SUPPLEMENTARY INFORMATION:**, under the heading entitled ''I. Background'', in the first paragraph, in the first line, ''502'' should read ''503''.

2. On page 5903, in the 1st column, in paragraph (A), in the 12th line, ''impeded'' should read ''impede''.

3. On the same page, in the third column, in the tenth line from the top, ''OFCC'' should read ''OFCCP''.

4. On the same page, in the same column, in the 2nd paragraph, in the 26th line, ''or'' should read ''at''.

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. 27902; Amdt. No. 25–86]
RIN 2120–AF27

Revised Discrete Gust Load Design Requirements

Correction

In rule document 96–2633 beginning on page 5218 in the issue of Friday, February 9, 1996, make the following correction:

§25.341 [Corrected]

On page 5221, in the second column, in §25.341(a)(6), the equation should read as follows:

$$F_g = 0.5\left(F_{gz} + F_{gm}\right)$$

Where:

$$F_{gz} = 1 - \frac{Z_{mo}}{250000};$$

$$F_{gm} = \sqrt{R_2 \mathrm{Tan}\left(\pi R_1 / 4\right)};$$

$$R_1 = \frac{\text{Maximum Landing Weight}}{\text{Maximum Take-off Weight}};$$

$$R_2 = \frac{\text{Maximum Zero Fuel Weight}}{\text{Maximum Take-off Weight}};$$

Z_{mo}=Maximum operating altitude defined in § 25.1527.

BILLING CODE 1505–01–D

Federal Register

Friday
March 8, 1996

Part II

Department of Housing and Urban Development

Office of the Secretary

Regulatory Reinvention; Consolidated Pet Ownership Requirements for the Elderly and Persons With Disabilities; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 5, 243, 842, and 942

[Docket No. FR–3942–F–01]

RIN 2501–AC07

Regulatory Reinvention; Consolidated Pet Ownership Requirements for the Elderly and Persons With Disabilities

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule consolidates HUD's pet ownership rules for its housing and public housing programs. Currently, these similar requirements are repeated in 24 CFR parts 243, 842, and 942. These parts implement section 227 of the Housing and Urban-Rural Recovery Act of 1983. Section 227 provides that no owner or manager of federally assisted housing for the elderly or persons with disabilities may prevent tenants of such housing from owning or keeping common household pets in their units. HUD's consolidation of its pet ownership rules will eliminate redundancy from title 24 and assist in HUD's effort to comply with President Clinton's regulatory reinvention initiative.

EFFECTIVE DATE: April 8, 1996.

FOR FURTHER INFORMATION CONTACT: For Housing: Barbara D. Hunter, Room 6182, telephone number (202) 708–3944; For Public and Indian Housing: Linda Campbell, Room 4206, telephone number (202) 708–0744; Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Hearing or speech-impaired individuals may call 1–800–877–8339 (Federal Information Relay Service TDD). (Except for the ''800'' number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Background

A. HUD's Implementation of Section 227 of the Housing and Urban-Rural Recovery Act of 1983

Section 227 of the Housing and Urban-Rural Recovery Act of 1983 (12 U.S.C. 1701r–1) provides that no owner or manager of federally assisted rental housing for the elderly or persons with disabilities[1] may, as a condition of tenancy or otherwise, prohibit or prevent tenants of such housing from owning or keeping common household pets in their units, or restrict or discriminate against persons in connection with admission to, or continued occupancy of, such housing because they own common household pets.

The statute directs HUD to issue regulations necessary to ensure compliance with these provisions and to ensure attaining the goal of providing decent, safe, and sanitary housing for the elderly or persons with disabilities. The statute also requires that these regulations establish guidelines under which owners and managers may prescribe reasonable rules for the keeping of pets by tenants and must consult with tenants in prescribing the rules.

On December 1, 1986 (51 FR 43270), HUD published a final rule creating three new parts in title 24 to implement section 227. Part 243 describes the pet ownership requirements for programs administered by the Assistant Secretary for Housing-Federal Housing Commissioner. Part 942 implements section 227 as it pertains to the public housing programs administered by the Assistant Secretary for Public and Indian Housing. Part 842, which concerns the pet ownership rules for programs assisted under chapter VIII of title 24, merely cross-references the requirements in 24 CFR part 243.

Parts 243 and 942 are identical in many significant respects, but there are differences. Part 942 provides Public Housing Agencies (PHAs) with substantial discretion in the issuance of pet ownership rules. In contrast, part 243 establishes certain limitations on the flexibility of project owners in the promulgation of pet rules. As explained in the preamble to the December 1, 1986 final rule, HUD's decision to establish a flexible standard for PHAs was based on the broad discretion contemplated for PHAs under the United States Housing Act of 1937 (42 U.S.C. 1437) (1937 Act) and the policy towards minimization of Federal control over public bodies created by local government:

> (O)ne of the major policies of the United States Housing Act of 1937 * * * is ''* * * to vest in local public housing agencies the maximum amount of responsibility in the administration of their housing programs * * *'' (section 2 of the 1937 Act, 42 U.S.C. 1437). Moreover PHAs are public bodies created by State, local, and tribal governments and traditionally have jurisdiction over a broad area. Giving these entities greater responsibility for the management of projects serves the goal of minimizing Federal control over matters of local concern that are within the competency of local governments. (51 FR 43270, 43271.)

The preamble to the December 1, 1986 rule also emphasized that HUD's decision to limit project owner discretion did not indicate a lack of confidence in the administrative abilities of project owners. Rather, the decision stemmed from the fact that absent Federal guidance, project owners were unlikely to receive any governmental guidance in the implementation of section 227:

> (I)n some instances, project owners' expertise will equal or surpass that of their PHA counterparts. (HUD) also note(s), however, that project owners, unlike PHAs, are unlikely to receive guidance in the management of their projects from nonmortgagee agencies of State or local government. (51 FR 43270, 43271.)

B. President Clinton's Regulatory Reinvention Initiative

On March 4, 1995, President Clinton announced his Regulatory Reinvention Initiative, which calls for immediate, comprehensive regulatory reform. The President directed all Federal departments and agencies to undertake an exhaustive review of their regulations. This initiative, which is part of the National Performance Review, calls for the elimination of redundant or obsolete regulatory requirements and the modification of others to increase flexibility and reduce burden.

On February 9, 1996 (61 FR 5198), HUD published a final rule creating a new 24 CFR part 5. HUD established part 5 to set forth those requirements which are applicable to one or more program regulations. Consolidation of these requirements in part 5 will eliminate redundancy in title 24 and assist in HUD's overall efforts to streamline the content of its regulations. Accordingly, this final rule removes parts 243, 842, and 943 from title 24 and consolidates HUD's pet ownership rules in a new subpart C to 24 CFR part 5.

Although HUD is consolidating its pet ownership requirements, it is not presently modifying its dual approach towards implementation of section 227. This final rule eliminates redundancy in the existing pet ownership requirements wherever possible, but it retains those provisions which are exclusively applicable to HUD's housing or public housing programs.

The provisions of part 5, subpart C, are organized under three headings. The provisions included under the first heading describe those pet ownership requirements which are applicable to both housing and public housing programs. The second group of

[1] Section 227 uses the term ''federally assisted rental housing for the elderly or handicapped.'' HUD prefers the use of the term ''persons with disabilities'' to the term ''handicapped.'' Accordingly, this final rule uses the term ''persons with disabilities.''

regulatory provisions set forth the requirements which are solely applicable to HUD's housing programs. The third group of requirements describes the pet rules for public housing programs.

Nothing contained in this regulation limits or impairs the right of a person with a disability under either the Fair Housing Act, section 504 of the Rehabilitation Act of 1973, or any other appropriate civil rights authority, to a reasonable accommodation of a pet policy, where it is established that an animal is necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling.

C. Appendices to Final Rule.

Section 5.306 of this final rule sets forth separate definitions of the term ''Project for the elderly or persons with disabilities'' for HUD's Housing and Public Housing programs. The definition applicable to the Housing programs states that projects must be assisted under certain HUD programs in order to qualify as projects for the elderly or persons with disabilities. Further, paragraph (d)(2) of § 5.318 limits the pet deposit charges that may be imposed by project owners assisted under certain HUD programs. In order to eliminate the necessity of amending these regulatory provisions as HUD programs are created, terminated, or amended, HUD has not listed the relevant programs in the regulation. Rather, §§ 5.306 and 5.318 state that HUD will identify these programs through notice.

Appendix A to this final rule identifies those Housing programs which insure or assist projects for the elderly or persons with disabilities. Appendix B to this final rule lists HUD's Housing programs which are affected by the maximum pet deposit provisions. Neither of these appendices will be codified in title 24 of the Code of Federal Regulations. HUD may update these appendices, as necessary, through notice.

II. Justification for Final Rulemaking

It is HUD's policy to publish rules for public comment before their issuance for effect in accordance with its own regulations on rulemaking found at 24 CFR part 10. However, part 10 provides that prior public procedure will be omitted if HUD determines that it is ''impracticable, unnecessary, or contrary to the public interest.'' (24 CFR 10.1.) HUD finds that in this case prior comment is unnecessary since this final rule does not affect or establish policy. This rule merely consolidates HUD's pet ownership requirements for its housing and public housing programs in 24 CFR part 5. Where consolidation is not possible, this rule retains those provisions which are exclusively applicable to HUD's housing or public housing programs. This final rule does not add or remove program requirements, but merely relocates them to a single part of HUD's regulations.

III. Other Matters

A. Environmental Impact

This rulemaking does not have an environmental impact. This rulemaking simply amends existing regulations by consolidating and streamlining provisions and does not alter the environmental effect of the regulations being amended. A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) at the time of development of regulations implementing Section 227 of the Housing and Urban-Rural Recovery Act of 1983 (12 U.S.C. 1701r–1). That Finding remains applicable to this rule, and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

B. 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 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. Specifically, this final rule merely consolidates the pet ownership requirements currently repeated in three separate parts of title 24. This rule effects no changes in the current relationships between the Federal government, the States and their political subdivisions in connection with these programs.

C. Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family,* has determined that this final rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. This final rule consolidates HUD's frequently repeated pet ownership requirements in 24 CFR part 5. No significant change in existing HUD policies or programs will result from promulgation of this rule as those policies and programs relate to family concerns.

D. Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely effectuates HUD's consolidation of its pet ownership rules and will not have any meaningful economic impact on any entity.

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 243

Aged, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Pets, Reporting and recordkeeping requirements.

24 CFR Part 842

Aged, Grant programs—housing and community development, Individuals with disabilities, Low and moderate income housing, Pets, Rent subsidies.

24 CFR Part 942

Aged, Grant programs—housing and community development, Individuals with disabilities, Pets, Public housing, Reporting and recordkeeping requirements.

Accordingly, and under the authority of 42 U.S.C. 3535(d), 24 CFR parts 5, 243, 842, and 942 are amended as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

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

Authority: 12 U.S.C. 1701r-1; 42 U.S.C. 3535(d).

2. A new subpart C is added to read as follows:

Subpart C—Pet Ownership for the Elderly or Persons With Disabilities

Sec.

Subpart C—Pet Ownership for the Elderly or Persons With Disabilities

General Requirements

§ 5.300 Purpose.

(a) This subpart implements section 227 of the Housing and Urban-Rural Recovery Act of 1983 (12 U.S.C. 1701r–1) as it pertains to projects for the elderly or persons with disabilities under:

(1) The housing programs administered by the Assistant Secretary for Housing-Federal Housing Commissioner;

(2) Projects assisted under the programs contained in chapter VIII of this title 24; and

(3) The public housing programs administered by the Assistant Secretary for Public and Indian Housing under title I of the United States Housing Act of 1937 (42 U.S.C. 1437, et seq.). This part does not apply to Indian housing administered under title II of that Act.

(b) [Reserved].

§ 5.303 Exclusion for animals that assist persons with disabilities.

(a) This subpart C does not apply to animals that are used to assist persons with disabilities. Project owners and PHAs may not apply or enforce any pet rules developed under this subpart against individuals with animals that are used to assist persons with disabilities. This exclusion applies to animals that reside in projects for the elderly or persons with disabilities, as well as to animals that visit these projects.

(1) A project owner may require resident animals to qualify for this exclusion. Project owners must grant this exclusion if:

(i) The tenant or prospective tenant certifies in writing that the tenant or a member of his or her family is a person with a disability;

(ii) The animal has been trained to assist persons with that specific disability; and

(iii) The animal actually assists the person with a disability.

(b) Nothing in this subpart C:

(1) Limits or impairs the rights of persons with disabilities;

(2) Authorizes project owners or PHAs to limit or impair the rights of persons with disabilities; or

(3) Affects any authority that project owners or PHAs may have to regulate animals that assist persons with disabilities, under Federal, State, or local law.

§ 5.306 Definitions.

Common household pet means:

(1) *For purposes of Housing programs:* A domesticated animal, such as a dog, cat, bird, rodent (including a rabbit), fish, or turtle, that is traditionally kept in the home for pleasure rather than for commercial purposes. Common household pet does not include reptiles (except turtles). If this definition conflicts with any applicable State or local law or regulation defining the pets that may be owned or kept in dwelling accommodations, the State or local law or regulation shall apply. This definition shall not include animals that are used to assist persons with disabilities.

(2) *For purposes of Public Housing programs:* PHAs may define the term ''common household pet'' under § 5.318.

Elderly or disabled family means:

(1) *For purposes of Housing programs:* An elderly person, a person with a disability, or an elderly or disabled family for purposes of the program under which a project for the elderly or persons with disabilities is assisted or has its mortgage insured.

(2) *For purposes of Public Housing programs:* (i) An elderly person, a person with a disability, or an elderly or disabled family as defined in § 5.403 in subpart A of this part.

Housing programs means:

(1) The housing programs administered by the Assistant Secretary for Housing-Federal Housing Commissioner; and

(2) The programs contained in chapter VIII of this title 24 that assist rental projects that meet the definition of project for the elderly or persons with disabilities in this subpart C.

Project for the elderly or persons with disabilities means:

(1) *For purposes of Housing programs:* (i) A specific rental or cooperative multifamily property that, unless currently owned by HUD, is subject to a first mortgage, and:

(A) That is assisted under statutory authority identified by HUD through notice;

(B) That was designated for occupancy by elderly or disabled families when funds for the project were reserved, or when the commitment to insure the mortgage was issued or, of not then so designated, that is designated for such occupancy in an effective amendment to the regulatory agreement covering the project, made pursuant to the project owner's request, and that is assisted or insured under one of the programs identified by HUD through notice; or

(C) For which preference in tenant selection is given for all units in the project to elderly or disabled families and that is owned by HUD or assisted under one of the programs identified by HUD through notice.

(ii) This term does not include health and care facilities that have mortgage insurance under the National Housing Act. This term also does not include any of the project owner's other property that does not meet the criteria contained in any one of paragraphs (1)(i)(A) through (C) of this definition, even if the property is adjacent to or under joint or common management with such specific property.

(2) *For purposes of Public Housing programs:* Any project assisted under title I of the United States Housing Act of 1937 (other than under section 8 or 17 of the Act), including any building within a mixed-use project, that was designated for occupancy by the elderly or persons with disabilities at its inception or, although not so designated, for which the PHA gives preference in tenant selection (with HUD approval) for all units in the project (or for a building within a mixed-use project) to elderly or disabled families. For purposes of this part, this term does not include projects assisted the Low-Rent Housing Homeownership Opportunity program or under title II of the United States Housing Act of 1937.

Project owner means an owner (including HUD, where HUD is the owner) or manager of a project for the

elderly or persons with disabilities, or an agent authorized to act for an owner or manager of such housing.

Public Housing Agency (PHA) is defined in § 5.100.

Public Housing programs means the public housing programs administered by the Assistant Secretary for Public and Indian Housing under title I of the United States Housing Act of 1937.

§ 5.309 Prohibition against discrimination.

Except as otherwise specifically authorized under this subpart no project owner or PHA that owns or manages a project for the elderly or persons with disabilities may:

(a) As a condition of tenancy or otherwise, prohibit or prevent any tenant of such housing from owning common household pets or having such pets living in the tenant's dwelling unit; or

(b) Restrict or discriminate against any person in connection with admission to, or continued occupancy of, such housing by reason of the person's ownership of common household pets or the presence of such pets in the person's dwelling unit.

§ 5.312 Notice to tenants.

(a) During the development of pet rules as described in §§ 5.353 or 5.380, the project owner or PHA shall serve written notice on all tenants of projects for the elderly or persons with disabilities in occupancy at the time of service, stating that:

(1) Tenants are permitted to own and keep common household pets in their dwelling units, in accordance with the pet rules (if any) promulgated under this subpart C;

(2) Animals that are used to assist persons with disabilities are excluded from the requirements of this subpart C, as provided in § 5.303;

(3) Tenants may, at any time, request a copy of any current pet rule developed under this subpart C (as well as any current proposed rule or proposed amendment to an existing rule); and

(4) Tenants may request that their leases be amended under § 5.321 to permit common household pets.

(b) The project owner or PHA shall provide to each applicant for tenancy when he or she is offered a dwelling unit in a project for the elderly or persons with disabilities, the written notice specified in paragraphs (a) (1), (2), and (3) of this section.

(c) If a PHA chooses not to promulgate pet rules, the notice shall be served within 60 days of the effective date of this part. PHAs shall serve notice under this section in accordance with their normal service of notice procedures.

§ 5.315 Content of pet rules: general requirements.

(a) *Housing programs.* The project owner shall prescribe reasonable rules to govern the keeping of common household pets. The pet rules must include the mandatory rules described in § 5.350 and may, unless otherwise noted in this subpart C, include other discretionary provisions as provided in § 5.318.

(b) *Public Housing programs.* (1) PHAs may choose not to promulgate rules governing the keeping of common household pets or may include rules as provided in § 5.318. PHAs may elect to include provisions based on those in § 5.350. If they so choose, the PHAs may modify the provisions in § 5.350 in any manner consistent with this subpart C.

(2) If PHAs choose to promulgate pet rules, tenants must be permitted to own and keep pets in their units in accordance with the terms and conditions of their leases, the provisions of this subpart C, and any applicable State or local law or regulation governing the owning or keeping of pets in dwelling accommodations.

(3) PHAs that choose not to promulgate pet rules, shall not impose, by lease modification or otherwise, any requirement that is inconsistent with the provisions of this subpart C.

(c) *Use of discretion.* (1) This subpart C does not define with specificity the limits of the project owners' or PHAs' discretion to promulgate pet rules. Where a project owner or PHA has discretion to prescribe pet rules under this subpart C, the pet rules should be:

(i) Reasonably related to furthering a legitimate interest of the project owner or PHA, such as the owner's or PHA's interest in providing a decent, safe, and sanitary living environment for existing and prospective tenants and in protecting and preserving the physical condition of the project and the owner's or PHA's financial interest in it; and

(ii) Drawn narrowly to achieve the owner's or PHA's legitimate interests, without imposing unnecessary burdens and restrictions on pet owners and prospective pet owners.

(2) Where a project owner or PHA has discretion to prescribe pet rules under this subpart C, the owner or PHA may vary the rules' content among projects and within individual projects, based on factors such as the size, type, location, and occupancy of the project or its units, provided that the applicable rules are reasonable and do not conflict with any applicable State or local law or regulation governing the owning or keeping of pets in dwelling accommodations.

(d) *Conflict with State or local law.* The pet rules adopted by the project owner or PHA shall not conflict with applicable State or local law or regulations. If such a conflict may exist, the State and local law or regulations shall apply.

§ 5.318 Discretionary pet rules.

Pet rules promulgated by project owners and PHAs may include, but are not limited to, consideration of the following factors:

(a) *Definitions of ''common household pet.''*—(1) *For Public Housing programs.* The pet rules established by a PHA may contain a reasonable definition of a common household pet.

(2) *For Housing programs.* Project owners wishing to define ''common household pet'' in their pet rules must use the Housing programs definition of the term in § 5.306.

(b) *Density of tenants and pets.* (1)(i) The pet rules established under this section may take into account tenant and pet density. The pet rules may place reasonable limitations on the number of common household pets that may be allowed in each dwelling unit. In the case of group homes, the pet rules may place reasonable limitations on the number of common household pets that may be allowed in each home.

(ii) *For Housing programs.* Under these rules, project owners may limit the number of four-legged, warm-blooded pets to one pet in each dwelling unit or group home.

(iii) Other than the limitations described in this paragraph (b)(1), the pet rules may not limit the total number of pets allowed in the project.

(2) As used in paragraph (b)(1) of this section, the term ''group home'' means:

(i) *For purposes of Housing programs.* A small, communal living arrangement designed specifically for individuals who are chronically mentally ill, developmentally disabled, or physically disabled who require a planned program of continual supportive services or supervision (other than continual nursing, medical or psychiatric care).

(ii) *For purposes of Public Housing programs.* A dwelling or dwelling unit for the exclusive residential use of elderly persons or persons with disabilities who are not capable of living completely independently and who require a planned program of continual supportive services or supervision (other than continual nursing, medical or psychiatric care).

(c) *Pet size and pet type.* The pet rules may place reasonable limitations on the size, weight, and type of common household pets allowed in the project.

(d) *Potential financial obligations of tenants* (1) *Pet deposits.* The pet rules may require tenants who own or keep pets in their units to pay a refundable pet deposit. In the case of project owners, this pet deposit shall be limited to those tenants who own or keep cats or dogs in their units. This deposit is in addition to any other financial obligation generally imposed on tenants of the project. The project owner or PHA may use the pet deposit only to pay reasonable expenses directly attributable to the presence of the pet in the project, including (but not limited to) the cost of repairs and replacements to, and fumigation of, the tenant's dwelling unit and, for project owners, the cost of animal care facilities under § 5.363. The project owner or PHA shall refund the unused portion of the pet deposit to the tenant within a reasonable time after the tenant moves from the project or no longer owns or keeps a pet (or a cat or dog in the case of project owners) in the dwelling unit.

(2) *Housing programs: Maximum pet deposit.* (i) Pet deposits for the following tenants shall not exceed an amount periodically fixed by HUD through notice.

(A) Tenants whose rents are subsidized (including tenants of a HUD-owned project, whose rents were subsidized before HUD acquired it) under one of the programs identified by HUD through notice.

(B) Tenants who live in a project assisted (including tenants who live in a HUD-owned project that was assisted before HUD acquired it) under one of the programs identified by HUD through notice.

(C) For all other tenants of projects for the elderly or persons with disabilities, the pet deposit shall not exceed one month's rent at the time the pet is brought onto the premises.

(ii) In establishing the maximum amount of pet deposit under paragraph (d)(2)(i) of this section, HUD will consider factors such as:

(A) Projected, estimated expenses directly attributable to the presence of pets in the project;

(B) The ability of project owners to offset such expenses by use of security deposits or HUD-reimbursable expenses; and

(C) The low income status of tenants of projects for the elderly or persons with disabilities.

(iii) For pet deposits subject to paragraph (d)(2)(i)(A) of this section, the pet rules shall provide for gradual accumulation of the deposit by the pet owner through an initial payment not to exceed $50 when the pet is brought onto the premises, and subsequent monthly payments not to exceed $10 per month until the amount of the deposit is reached.

(iv) For pet deposits subject to paragraphs (d)(2)(i)(B) and (C) of this section, the pet rules may provide for gradual accumulation of the deposit by the pet owner.

(v) The project owner may (subject to the HUD-prescribed limits) increase the amount of the pet deposit by amending the house pet rules in accordance with § 5.353.

(A) For pet deposits subject to paragraph (d)(2)(i)(A) of this section, the house pet rules shall provide for gradual accumulation of any such increase not to exceed $10 per month for all deposit amounts that are being accumulated.

(B) [Reserved].

(vi) Any pet deposit that is established within the parameters set forth by paragraph (d)(2) of this section shall be deemed reasonable for purposes of this subpart C.

(3) *Public Housing programs: Maximum pet deposit.* The maximum amount of pet deposit that may be charged by the PHA, on a per dwelling unit basis, shall not exceed the higher of the Total Tenant Payment (as defined in 24 CFR 913.102) or such reasonable fixed amount as the PHA may require. The pet rules may permit gradual accumulation of the pet deposit by the pet owner.

(4) *Housing programs: Waste removal charge.* The pet rules may permit the project owner to impose a separate waste removal charge of up to five dollars ($5) per occurrence on pet owners that fail to remove pet waste in accordance with the prescribed pet rules. Any pet waste removal charge that is within this five dollar ($5) limitation shall be deemed to be a reasonable amount for the purposes of this subpart C.

(5) The pet deposit (for Housing and Public Housing programs) and waste removal charge (for Housing programs) are not part of the rent payable by the tenant. Except as provided in paragraph (d) of this section for Housing programs and, paragraph (d) of this section and 24 CFR 966.4(b) for Public Housing programs, project owners or PHAs may not prescribe pet rules that impose additional financial obligations on pet owners that are designed to compensate the project owner or PHA for costs associated with the presence of pets in the project, including (but not limited to) requiring pet owners:

(i) To obtain liability or other insurance to cover damage caused by the pet;

(ii) To agree to be strictly liable for all damages caused by the pet where this liability is not otherwise imposed by State or local law, or

(iii) To indemnify the project owner for pet-related litigation and attorney's fees.

(e) *Standards of pet care.* The pet rules may prescribe standards of pet care and handling, but must be limited to those necessary to protect the condition of the tenant's unit and the general condition of the project premises, or to protect the health or safety of present tenants, project employees, and the public. The pet rules may not require pet owners to have any pet's vocal cords removed. Permitted rules may:

(1) Bar pets from specified common areas (such as lobbies, laundry rooms, and social rooms), unless the exclusion will deny a pet reasonable ingress and egress to the project or building.

(2) Require the pet owner to control noise and odor caused by a pet.

(3) Housing programs: Project owners may also:

(i) Require pet owners to have their dogs and cats spayed or neutered; and

(ii) Limit the length of time that a pet may be left unattended in a dwelling unit.

(f) *Pet licensing.* The pet rules may require pet owners to license their pets in accordance with applicable State and local laws and regulations. (Failure of the pet rules to contain this requirement does not relieve the pet owner of responsibility for complying with applicable State and local pet licensing requirements.)

(g) *Public Housing programs: Designated pet areas.* (1) PHAs may designate buildings, floors of buildings, or sections of buildings as no-pet areas where pets generally may not be permitted. Similarly, the pet rules may designate buildings, floors of buildings, or sections of buildings for residency generally by pet-owning tenants. The PHA may direct such initial tenant moves as may be necessary to establish pet and no-pet areas. The PHA may not refuse to admit (or delay admission of) an applicant for tenancy on the grounds that the applicant's admission would violate a pet or no-pet area. The PHA may adjust the pet and no-pet areas or may direct such additional moves as may be necessary (or both) to accommodate such applicants for tenancy or to meet the changing needs of existing tenants.

(2) Project owners may not designate pet areas in buildings in their pet rules.

(h) *Pets temporarily on the premises.* The pet rules may exclude from the project pets not owned by a tenant that are to be kept temporarily on the project premises. For the purposes of paragraph

(h) of this section, pets are to be kept ''temporarily'' if they are to be kept in the tenant's dwelling accommodations for a period of less than 14 consecutive days and nights. HUD, however, encourages project owners and PHAs to permit the use of a visiting pet program sponsored by a humane society, or other nonprofit organization.

§ 5.321 Lease provisions.

(a) *Lease provisions.* (1) PHAs which have established pet rules and project owners shall ensure that the leases for all tenants of projects for the elderly or persons with disabilities:

(i) State that tenants are permitted to keep common household pets in their dwelling units (subject to the provisions of this subpart and the pet rules);

(ii) Shall incorporate by reference the pet rules promulgated by the project owner or PHA;

(iii) Shall provide that the tenant agrees to comply with these rules; and

(iv) Shall state that violation of these rules may be grounds for removal of the pet or termination of the pet owner's tenancy (or both), in accordance with the provisions of this subpart and applicable regulations and State or local law.

(b) Where a PHA has not established pet rules, the leases of all tenants of such projects shall not contain any provisions prohibiting the owning or keeping of common household pets, and shall state that owning and keeping of such pets will be subject to the general obligations imposed on the PHA and tenants in the lease and any applicable State or local law or regulation governing the owning or keeping of pets in dwelling accommodations.

§ 5.324 Implementation of lease provisions.

The lease for each tenant of a project for the elderly or persons with disabilities who is admitted on or after the date on which this subpart C is implemented shall contain the lease provisions described in § 5.321 and, if applicable, § 5.360. The lease for each tenant who occupies a unit in such a project under lease on the date of implementation of this part shall be amended to include the provisions described in § 5.321 and, if applicable, § 5.360:

(a) For Housing programs:

(1) Upon renewal of the lease and in accordance with any applicable regulation; and

(2) When a Housing program tenant registers a common household pet under § 5.350

(b) For Public Housing programs:

(1) Upon annual reexamination of tenant income in accordance with any applicable regulation; and

(2) When a Public Housing program tenant wishes to own or keep a common household pet in his or her unit.

§ 5.327 Nuisance or threat to health or safety.

Nothing in this subpart C prohibits a project owner, PHA, or an appropriate community authority from requiring the removal of any pet from a project, if the pet's conduct or condition is duly determined to constitute, under the provisions of State or local law, a nuisance or a threat to the health or safety of other occupants of the project or of other persons in the community where the project is located.

Pet Ownership Requirements for Housing Programs

§ 5.350 Mandatory pet rules for Housing programs.

Mandatory rules. The project owner must prescribe the following pet rules:

(a) *Inoculations.* The pet rules shall require pet owners to have their pets inoculated in accordance with State and local laws.

(b) *Sanitary standards.* (1) The pet rules shall prescribe sanitary standards to govern the disposal of pet waste. These rules may:

(i) Designate areas on the project premises for pet exercise and the deposit of pet waste;

(ii) Forbid pet owners from exercising their pets or permitting their pets to deposit waste on the project premises outside the designated areas;

(iii) Require pet owners to remove and properly dispose of all removable pet waste; and

(iv) Require pet owners to remove pets from the premises to permit the pet to exercise or deposit waste, if no area in the project is designated for such purposes.

(2) In the case of cats and other pets using litter boxes, the pet rules may require the pet owner to change the litter (but not more than twice each week), may require pet owners to separate pet waste from litter (but not more than once each day), and may prescribe methods for the disposal of pet waste and used litter.

(c) *Pet restraint.* The pet rules shall require that all cats and dogs be appropriately and effectively restrained and under the control of a responsible individual while on the common areas of the project.

(d) *Registration.* (1) The pet rules shall require pet owners to register their pets with the project owner. The pet owner must register the pet before it is brought onto the project premises, and must update the registration at least annually. The project owner may coordinate the annual update with the annual reexamination of tenant income, if applicable. The registration must include:

(i) A certificate signed by a licensed veterinarian or a State or local authority empowered to inoculate animals (or designated agent of such an authority) stating that the pet has received all inoculations required by applicable State and local law;

(ii) Information sufficient to identify the pet and to demonstrate that it is a common household pet; and

(iii) The name, address, and phone number of one or more responsible parties who will care for the pet if the pet owner dies, is incapacitated, or is otherwise unable to care for the pet.

(2) The project owner may require the pet owner to provide additional information necessary to ensure compliance with any discretionary rules prescribed under § 5.318, and shall require the pet owner to sign a statement indicating that he or she has read the pet rules and agrees to comply with them.

(3) The pet rules shall permit the project owner to refuse to register a pet if:

(i) The pet is not a common household pet;

(ii) The keeping of the pet would violate any applicable house pet rule;

(iii) The pet owner fails to provide complete pet registration information or fails annually to update the pet registration; or

(iv) The project owner reasonably determines, based on the pet owner's habits and practices, that the pet owner will be unable to keep the pet in compliance with the pet rules and other lease obligations. The pet's temperament may be considered as a factor in determining the prospective pet owner's ability to comply with the pet rules and other lease obligations.

(4) The project owner may not refuse to register a pet based on a determination that the pet owner is financially unable to care for the pet or that the pet is inappropriate, based on the therapeutic value to the pet owner or the interests of the property or existing tenants.

(5) The pet rules shall require the project owner to notify the pet owner if the project owner refuses to register a pet. The notice shall state the basis for the project owner's action and shall be served on the pet owner in accordance with the requirements of § 5.353(f)(1)(i) or (ii). The notice of refusal to register

a pet may be combined with a notice of pet violation as required in § 5.356.

§ 5.353 Housing programs: Procedure for development of pet rules.

(a) *General.* Project owners shall use the procedures specified in this section to promulgate the pet rules referred to in §§ 5.318 and 5.350.

(b) *Development and notice of proposed pet rules.* Project owners shall develop proposed rules to govern the owning or keeping of common household pets in projects for the elderly or persons with disabilities. Notice of the proposed pet rules shall be served on each tenant of the project as provided in paragraph (f) of this section. The notice shall:

(1) Include the text of the proposed rules;

(2) State that tenants or tenant representatives may submit written comments on the rules; and

(3) State that all comments must be submitted to the project owner no later than 30 days from the effective date of the notice of the proposed rules.

(4) The notice may also announce the date, time, and place for a meeting to discuss the proposed rules (as provided in paragraph (c) of this section).

(c) *Tenant consultation.* Tenants or tenant representatives may submit written comments on the proposed pet rules to the project owner by the date specified in the notice of proposed rules. In addition, the owner may schedule one or more meetings with tenants during the comment period to discuss the proposed rules. Tenants and tenant representatives may make oral comments on the proposed rules at these meetings. The project owner must consider comments made at these meetings only if they are summarized, reduced to writing, and submitted to the project owner before the end of the comment period.

(d) *Development and notice of final pet rules.* The project owner shall develop the final rules after reviewing tenants' written comments and written summaries of any owner-tenant meetings. The project owner may meet with tenants and tenant representatives to attempt to resolve issues raised by the comments. Subject to this subpart C, the content of the final pet rules, however, is within the sole discretion of the project owner. The project owner shall serve on each tenant of the project, a notice of the final pet rules as provided in paragraph (f) of this section. The notice must include the text of the final pet rules and must specify the effective date of the final pet rules.

(e) *Amendment of pet rules.* The project owner may amend the pet rules at any time by following the procedure for the development of pet rules specified in paragraphs (b) through (d) of this section.

(f) *Service of notice.* (1) The project owner must serve the notice required under this section by:

(i) Sending a letter by first class mail, properly stamped and addressed to the tenant at the dwelling unit, with a proper return address; or

(ii) Serving a copy of the notice on any adult answering the door at the tenant's leased dwelling unit, or if no adult responds, by placing the notice under or through the door, if possible, or else by attaching the notice to the door; or

(iii) For service of notice to tenants of a high-rise building, posting the notice in at least three conspicuous places within the building and maintaining the posted notices intact and in legible form for 30 days. For purposes of paragraph (f) of this section, a high-rise building is a structure that is equipped with an elevator and has a common lobby.

(2) For purposes of computing time periods following service of the notice, service is effective on the day that all notices are delivered or mailed, or in the case of service by posting, on the day that all notices are initially posted.

§ 5.356 Housing programs: Pet rule violation procedures.

(a) *Notice of pet rule violation.* If a project owner determines on the basis of objective facts, supported by written statements, that a pet owner has violated a rule governing the owning or keeping of pets; the project owner may serve a written notice of pet rule violation on the pet owner in accordance with § 5.353(f)(1)(i) or (ii). The notice of pet rule violation must:

(1) Contain a brief statement of the factual basis for the determination and the pet rule or rules alleged to be violated;

(2) State that the pet owner has 10 days from the effective date of service of the notice to correct the violation (including, in appropriate circumstances, removal of the pet) or to make a written request for a meeting to discuss the violation;

(3) State that the pet owner is entitled to be accompanied by another person of his or her choice at the meeting; and

(4) State that the pet owner's failure to correct the violation, to request a meeting, or to appear at a requested meeting may result in initiation of procedures to terminate the pet owner's tenancy.

(b) (1) *Pet rule violation meeting.* If the pet owner makes a timely request for a meeting to discuss an alleged pet rule violation, the project owner shall establish a mutually agreeable time and place for the meeting but no later than 15 days from the effective date of service of the notice of pet rule violation (unless the project owner agrees to a later date). At the pet rule violation meeting, the pet owner and project owner shall discuss any alleged pet rule violation and attempt to correct it. The project owner may, as a result of the meeting, give the pet owner additional time to correct the violation.

(2) *Notice for pet removal.* If the pet owner and project owner are unable to resolve the pet rule violation at the pet rule violation meeting, or if the project owner determines that the pet owner has failed to correct the pet rule violation within any additional time provided for this purpose under paragraph (b)(1) of this section, the project owner may serve a written notice on the pet owner in accordance with § 5.353(f)(1)(i) or (ii) (or at the meeting, if appropriate), requiring the pet owner to remove the pet. The notice must:

(i) Contain a brief statement of the factual basis for the determination and the pet rule or rules that have been violated;

(ii) State that the pet owner must remove the pet within 10 days of the effective date of service of the notice of pet removal (or the meeting, if notice is served at the meeting); and

(iii) State that failure to remove the pet may result in initiation of procedures to terminate the pet owner's tenancy.

(c) *Initiation of procedures to remove a pet or terminate the pet owner's tenancy.* (1) The project owner may not initiate procedures to terminate a pet owner's tenancy based on a pet rule violation, unless:

(i) The pet owner has failed to remove the pet or correct a pet rule violation within the applicable time period specified in this section (including any additional time permitted by the owner); and

(ii) The pet rule violation is sufficient to begin procedures to terminate the pet owner's tenancy under the terms of the lease and applicable regulations.

(2) The project owner may initiate procedures to remove a pet under § 5.327 at any time, in accordance with the provisions of applicable State or local law.

§ 5.359 Housing programs: Rejection of units by applicants for tenancy.

(a) An applicant for tenancy in a project for the elderly or persons with disabilities may reject a unit offered by a project owner if the unit is in close

proximity to a dwelling unit in which an existing tenant of the project owns or keeps a common household pet. An applicant's rejection of a unit under this section shall not adversely affect his or her application for tenancy in the project, including (but not limited to) his or her position on the project waiting list or qualification for any tenant selection preference.

(b) Nothing in this subpart C imposes a duty on project owners to provide alternate dwelling units to existing or prospective tenants because of the proximity of common household pets to a particular unit or the presence of such pets in the project.

§ 5.360 Housing programs: Additional lease provisions.

(a) *Inspections.* In addition to other inspections permitted under the lease, the leases for all Housing program tenants of projects for the elderly or persons with disabilities may state that the project owner may, after reasonable notice to the tenant and during reasonable hours, enter and inspect the premises. The lease shall permit entry and inspection only if the project owner has received a signed, written complaint alleging (or the project owner has reasonable grounds to believe) that the conduct or condition of a pet in the dwelling unit constitutes, under applicable State or local law, a nuisance or a threat to the health or safety of the occupants of the project or other persons in the community where the project is located.

(b) *Emergencies.* (1) If there is no State or local authority (or designated agent of such an authority) authorized under applicable State or local law to remove a pet that becomes vicious, displays symptoms of severe illness, or demonstrates other behavior that constitutes an immediate threat to the health or safety of the tenancy as a whole, the project owner may place a provision in tenant leases permitting the project owner to enter the premises (if necessary), remove the pet, and take such action with respect to the pet as may be permissible under State and local law, which may include placing it in a facility that will provide care and shelter for a period not to exceed 30 days.

(2) The lease shall permit the project owner to enter the premises and remove the pet or take such other permissible action only if the project owner requests the pet owner to remove the pet from the project immediately, and the pet owner refuses to do so, or if the project owner is unable to contact the pet owner to make a removal request. The lease may not contain a provision relieving the project owner from liability for wrongful removal of a pet. The cost of the animal care facility shall be paid as provided in § 5.363.

(3) The project owner may place a provision in tenant leases permitting the project owner to enter the premises, remove the pet, and place the pet in a facility that will provide care and shelter, in accordance with the provisions of § 5.363. The lease may not contain a provision relieving the project owner from liability for wrongful removal of a pet.

§ 5.363 Housing programs: protection of the pet.

(a) If the health or safety of a pet is threatened by the death or incapacity of the pet owner, or by other factors that render the pet owner unable to care for the pet, the project owner may contact the responsible party or parties listed in the pet registration required under § 5.350(d)(1)(iii).

(b) If the responsible party or parties are unwilling or unable to care for the pet, or the project owner, despite reasonable efforts, has been unable to contact the responsible party or parties, the project owner may contact the appropriate State or local authority (or designated agent of such an authority) and request the removal of the pet.

(c) If there is no State or local authority (or designated agent of such an authority) authorized to remove a pet under these circumstances and the project owner has placed a provision in the lease agreement (as described in § 5.360(c)(2)), the project owner may enter the pet owner's unit, remove the pet, and place the pet in a facility that will provide care and shelter until the pet owner or a representative of the pet owner is able to assume responsibility for the pet, but not longer than 30 days.

(d) The cost of the animal care facility provided under this section shall be borne by the pet owner. If the pet owner (or the pet owner's estate) is unable or unwilling to pay, the cost of the animal care facility may be paid from the pet deposit, if imposed under the pet rules.

Pet Ownership Requirements for Public Housing Programs

§ 5.380 Public Housing programs: Procedure for development of pet rules.

PHAs that choose to promulgate pet rules shall consult with tenants of projects for the elderly or persons with disabilities administered by them with respect to their promulgation and subsequent amendment. PHAs shall develop the specific procedures governing tenant consultation, but these procedures must be designed to give tenants (or, if appropriate, tenant councils) adequate opportunity to review and comment upon the pet rules before they are issued for effect. PHAs are solely responsible for the content of final pet rules, but must give consideration to tenant comments. PHAs shall send to the responsible HUD field office, copies of the final (or amended) pet rules, as well as summaries or copies of all tenant comments received in the course of the tenant consultation.

PART 243—[REMOVED]

3. Part 243 is removed.

PART 842—[REMOVED]

4. Part 842 is removed.

PART 942—[REMOVED]

5. Part 942 is removed.

Dated: February 22, 1996.

Henry G. Cisneros,

Secretary.

Note: This Appendix A will not be codified in Title 24 of the CFR.

Appendix A—Guide to Definition of Projects for the Elderly or Persons With Disabilities for Purposes of HUD's Housing Programs

Sec.

1. Purpose

The regulations at 24 CFR part 5, subpart C, describe HUD's pet ownership requirements. Section 5.306 provides separate definitions of the term ''Project for the elderly or persons with disabilities'' for HUD's Housing and Public Housing programs. The definition applicable to the Housing programs states that projects must be assisted under certain HUD programs in order to qualify as projects for the elderly or persons with disabilities. However, in order to eliminate the necessity of amending this regulatory definition as HUD programs are created, terminated, or revised, HUD has not listed the relevant Housing programs in the definition. Rather, the definition states that HUD will identify these programs through notice. The purpose of this appendix is to identify HUD's Housing programs which insure or assist projects for the elderly or persons with disabilities.

2. Housing Programs Which Insure or Assist Project for the Elderly or Persons With Disabilities

This appendix repeats the definition for HUD's Housing programs in 24 CFR 5.306, but lists the applicable programs. HUD may periodically update this appendix through notice.

Project for the elderly or persons with disabilities means:

(1) *For purposes of Housing programs:* A specific rental or cooperative multifamily

property that, unless currently owned by HUD, is subject to a first mortgage, and:

(i) That is assisted under section 202 of the Housing Act of 1959 (Housing for the Elderly or Handicapped);

(ii) That was designated for occupancy by elderly or disabled families when funds for the project were reserved, or when the commitment to insure the mortgage was issued or, if not then so designated, that is designated for such occupancy in an effective amendment to the regulatory agreement covering the project, made pursuant to the project owner's request, and:

(A) That is assisted (with or without HUD mortgage insurance) under section 221(d)(3) (BMIR) of the National Housing Act or 24 CFR part 236; or

(B) Insured under section 221(d)(3) (Market Rate) or section 221(d)(4) of the National Housing Act, or 24 CFR part 231 (Housing Mortgage Insurance for the Elderly);

(iii) For which preference in tenant selection is given for all units in the project to elderly or disabled families and that is owned by HUD or assisted under the following programs:

(A) Housing Development Grant program;

(B) Section 8 New Construction;

(C) Section 8 Substantial Rehabilitation;

(D) Section 8 Moderate Rehabilitation;

(E) Section 8 State Housing Agency programs;

(F) Section 8 Rural Set-Aside;

(G) Section 8 Loan Management and Property Disposition.

(2) This term does not include health and care facilities that have mortgage insurance under the National Housing Act. This term also does not include any of the project owner's other property that does not meet the criteria contained in any one of paragraphs (1) (i) through (iii) of this definition, even if the property is adjacent to or under joint or common management with such specific property.

Note: This Appendix B Will not be Codified in Title 24 of the CFR.

Appendix B—Guide to Maximum Pet Deposit for Housing Programs

Sec.

1. Purpose

The regulations at 24 CFR part 5, subpart C, describe the pet ownership requirements for HUD's Housing and Public housing programs. Paragraph (d)(2) of § 5.318 limits the pet deposit charges that may be imposed by project owners assisted under certain HUD programs. In order to eliminate the necessity of amending this regulatory provision as HUD programs are created, eliminated, or amended, HUD has not listed the relevant Housing programs in this regulation. Rather, paragraphs (d)(2)(i) (A) and (B) of § 5.318 state that HUD will identify through notice the Housing programs affected by the maximum pet deposit requirements. The purpose of this appendix is to identify these Housing programs.

2. Housing Programs Affected by Maximum Pet Deposit Requirements

This appendix repeats the maximum pet deposit provision in 24 CFR 5.318(d)(2), but lists the applicable Housing programs. HUD may periodically update this appendix through notice.

Housing programs: Maximum pet deposit.

(i) Pet deposits for the following tenants shall not exceed an amount periodically fixed by HUD through notice:

(A) Tenants whose rents are subsidized (including tenants of a HUD-owned project, whose rents were subsidized before HUD acquired it) under the following programs:

(*1*) Rent Supplement Payments;

(*2*) Rental assistance Payments;

(*3*) Housing Development Grant program;

(*4*) Section 8 New Construction;

(*5*) Section 8 Substantial Rehabilitation;

(*6*) Section 8 Moderate Rehabilitation;

(*7*) Section 8 State Housing Agency program;

(*8*) Section 8 Rural Set-Aside;

(*9*) Loans for Housing for the Elderly or Persons with Disabilities; or

(*10*) Section 8 Loan Management and Property Disposition.

(B) Tenants who live in a project assisted (including tenants who live in a HUD-owned project that was assisted before HUD acquired it) under:

(*1*) The Interest Reduction Payments program;

(*2*) Section 202 of the Housing Act of 1959; or

(*3*) Section 221(d)(3) (BMIR) of the National Housing Act.

(C) For all other tenants of projects for the elderly or persons with disabilities, the pet deposit shall not exceed one month's rent at the time the pet is brought onto the premises. The house pet rules may permit gradual accumulation of the pet deposit by the pet owner.

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Federal Register

Friday
March 8, 1996

Part III

Department of Transportation

Federal Highway Administration

49 CFR Part 382, et al.

Commercial Driver's License Program and Controlled Substances and Alcohol Use and Testing; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 382, 383, 390, 391 and 392

[FHWA Docket Nos. MC–92–19 and MC–92–23]

RIN 2125–AD46

Commercial Driver's License Program and Controlled Substances and Alcohol Use and Testing

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; technical amendments.

SUMMARY: The Federal Highway Administration is making technical amendments to its alcohol and drug testing rules and its regulations implementing the commercial driver's license program. The testing rules require employers to test drivers who are required to obtain commercial driver's licenses (CDLs) for the illegal use of alcohol and controlled substances. The amendments are necessary to correct minor errors in the final rule, codify final dispositions of waivers of the commercial driver's license program, and make conforming metrification changes.

EFFECTIVE DATE: This rule is effective March 8, 1996.

FOR FURTHER INFORMATION CONTACT: *For information regarding program issues:* Office of Motor Carrier Research and Standards, (202) 366–1790, *For information regarding legal issues:* Office of the Chief Counsel—Motor Carrier Law Division, (202) 366–0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

A final rule published in the Federal Register on February 15, 1994 (59 FR 7484), added 49 CFR part 382 and made conforming amendments to parts 391, 392, and 395.

Applicability

Sections 382.103 and 383.3 are being revised to clarify which driver groups have been exempted from commercial driver's license requirements and, by extension, from alcohol and drug testing requirements. Since the final rule was published on February 15, 1994, numerous questions have arisen about which groups have been granted waivers from CDL requirements and how those waivers apply to alcohol and drug testing. For clarity about the driver groups exempted from Federal CDL requirements in September 1988 (53 FR 37313, September 26, 1988), the FHWA is amending these sections to note those groups (farmers, firefighters, military personnel, emergency response personnel) identified in the waiver notice of final disposition. In the September 1988 waiver notice, States were given the option to exempt these groups from all CDL requirements. Drivers in States which have exercised these options do not have to be tested. Drivers in States which have not exercised these options, but require those drivers to obtain CDLs, must be tested for alcohol and drugs under part 382.

The FHWA is also amending § 383.3 to codify part 383 exceptions to certain CDL requirements for drivers that meet specific conditions in the State of Alaska, in the farm-related service industries or in the pyrotechnics industry. The final dispositions of the restricted CDL requirements for certain Alaskan drivers, farm-related service industry drivers, and pyrotechnic industry drivers allow States to waive certain requirements for CDL applicants under certain conditions. These drivers must still obtain CDLs and will be subject to alcohol and drug testing by their employers. The restrictions placed on the CDL do not exempt these drivers from the requirements of the alcohol and drug testing program. For more information about the State of Alaska, farm-related service industry, and pyrotechnic industry final dispositions, see 54 FR 33230, August 14, 1989, 57 FR 13650, April 17, 1992, and 60 FR 34188, June 30, 1995.

Definitions

The FHWA is adding definitions in § 382.107 for the terms ''controlled substances,'' ''disabling damage,'' and ''licensed medical practitioner.'' The definition of controlled substances will include the substances tested for in part 40 of this title. The FHWA is copying the definition of ''disabling damage'' in § 390.5 for placement in § 382.107 to clarify that this definition is to be used in § 382.303. The FHWA is adding a definition for ''licensed medical practitioner'' that is patterned after the § 390.5 definition of the term ''medical examiner'' to state what types of individuals may prescribe controlled substances to drivers under § 382.213. See the discussion below about *licensed medical practitioners.*

Finally, the FHWA is modifying the definitions of ''driver'' and ''safety-sensitive function.'' ''Driver'' is being modified to remove the last sentence with respect to pre-employment testing. This change, along with modification to pre-employment testing discussed later in this document, will allow employers to conduct pre-hire road testing of applicants that will ensure the applicants know how to properly operate particular equipment of an employer. ''Safety-sensitive function'' is being modified to remove the reference to the § 395.2 *On-duty time* definition and add the text of part of the *on-duty time* definition in its place. The FHWA has received numerous comments that it is difficult for the public to make a cross reference to part 395, especially for employers not subject to it. Also, in light of the FHWA's future recodification of the Federal Motor Carrier Safety Regulations under its zero base regulatory review project, the FHWA is removing most cross referencing within subchapter B of Chapter III of Title 49, Code of Federal Regulations.

Starting Date for Testing Programs

The FHWA has had numerous questions as to which testing regulations an interstate motor carrier is subject to when the motor carrier begins operations after March 17, 1994. To clarify the FHWA's intent in requiring such an interstate motor carrier to start drug testing under part 391, the FHWA is amending paragraph (c) and adding paragraph (d) to § 382.115. This will clarify that employers that begin commercial vehicle operations after March 17, 1994, will have until January 1, 1996, to implement testing programs required by part 382. However, if an employer begins operating in interstate commerce after March 17, 1994, and prior to January 1, 1996, such an employer is considered an interstate motor carrier and may be subject to part 391, subpart H. If such an interstate motor carrier is required to implement the subpart H testing program, it must do so immediately. On January 1, 1996, the motor carrier will modify its drug testing program to part 382 requirements and add alcohol testing at that time.

Licensed Medical Practitioner

The FHWA has had inquiries concerning whether drivers, who are prescribed medications by non-physicians licensed to dispense controlled substances in their jurisdiction, may take such controlled substances and not be considered to be in violation of §§ 382.213 and 392.4. Although the terms ''medical review officer'' and ''substance abuse

professional'' use the term physician with a parenthetical describing the type of physician, the FHWA did not intend that such a condition be applied to the term ''physician'' in §§ 382.213 and 392.4. The term ''physician'' in the definitions of ''medical review officer'' and ''substance abuse professional'' is followed by a parenthetical stating ''medical doctor or doctor of osteopathy.'' Therefore, the FHWA is replacing the term ''physician'' in §§ 382.213 and 392.4 with the term ''licensed medical practitioner.'' A definition of the term ''licensed medical practitioner'' will be added to § 382.107. A licensed medical practitioner means a person who is licensed, certified, and/or registered, in accordance with applicable Federal, State, local, or foreign laws and regulations, to prescribe controlled substances and other drugs. In addition, the FHWA is removing the footnote to § 392.4(a)(1). The Government Printing Office (GPO) publishes Appendix D to the FMCSRs and the FHWA believes all individuals have access to the GPO codified versions of Appendix D.

Pre-Employment Testing

The FHWA is amending § 382.301(a) to clarify that an employer must either administer a pre-employment controlled substances test for drivers who the employer intends to hire or use or utilize the exception and obtain specified information from previous employers. An employer which obtains the information does not have to administer a test. The information may also be obtained from third party service providers that act as agents for employers. Regardless of which option is chosen, an employer must comply with the separate requirements of § 382.413 to obtain certain prior testing information. Of course, all testing information may be released only pursuant to the consent of the driver.

Some questions have arisen regarding whether records prepared by or obtained from former employers about a driver's pre-employment controlled substances test results must be retained. These records must be retained from one to five years in accordance with § 382.401. In order to be absolutely clear, the FHWA is adding the words ''and retain'' to § 382.301(d)(1) and is adding the types of records required to be maintained by § 382.301 to § 382.401, *Retention of records*, to address these concerns. Note, however, that such records would only be subject to an information request under § 382.413 if the driver was actually employed or used as a driver by the employer.

Paragraph (d)(2) of § 382.301 is also being revised. The rule text is being rewritten to better explain use of the pre-employment testing exception for occasional, intermittent, and casual drivers. A similar paragraph has been in the drug testing rules of part 391 since the rules were first promulgated. This paragraph relieves employers who use intermittent, casual, or occasional drivers on a regular basis (generally for short periods, such as trip-lease drivers or drivers called from a union hiring hall) from the requirement to make the verifications in § 382.301(d)(1) each time the driver is used by the employer to operate commercial motor vehicles (CMVs). These drivers may be used as little as once each quarter or once each month by an employer, and are generally in another employer's testing program or are in a union hall's testing program that conforms to part 40 of this title.

In response to questions regarding the intent of this section, the FHWA believes that this revision will make the regulation more understandable. When employer A uses a driver for the first time, employer A must verify the information from former employers to ensure the driver is actively participating in a testing program(s). The driver may then work for employers B, C, or D, driving CMVs on a short term basis, or return to driving on a regular basis for a regular employer. If the driver returns to employer A to operate a CMV within six months of the previous verification, no verification of the information or pre-employment test is needed. If the driver returns to drive a commercial motor vehicle for employer A more than six months after employer A last verified the information as required under § 381.301(d)(1), employer A must again verify and record that the driver is participating in a DOT agency testing program using part 40 procedures.

Post-Accident Testing

The FHWA is clarifying that drivers involved in accidents, as defined in § 390.5, are subject to post-accident testing. Despite the general cross reference to § 390.5 in § 382.107, many people appear to be unclear about what types of accidents require a test. Therefore, the FHWA will include the definition of ''disabling damage'' to § 382.107, revise the introductory phrase of § 382.303(a), add a clarifying phrase to § 382.303(a)(2) that comports to the style of § 382.303(a)(1), and add § 382.303(a)(3), a table to note when a post-accident test is required.

Random Testing

On December 2, 1994, the FHWA, along with other DOT agencies, published a final rule in the Federal Register (59 FR 62218) allowing the agencies' Administrators to adjust the random drug testing rates based on information obtained by the respective agencies in their drug testing management information system reports. The agencies, generally, require certain employers to submit a report covering their drug testing program for a calendar year. The FHWA has randomly selected a sample of interstate motor carriers in the past and will make random selections of employers subject to part 382 in the future.

The FHWA included in the December 2, 1994, rule text of § 382.305(f) an example of when the FHWA Administrator may lower the random drug testing rate. The example incorrectly stated that the Federal Highway Administrator will have the first opportunity, based on reported data, to reduce the random drug testing rate in 1997. In fact, as stated in the DOT common preamble, the FHWA testing rate may first be reduced in 1998. Recodified paragraph (g) of § 382.305 is revised accordingly.

Second, the rule changed the words ''average number of driver positions'' in § 382.305(a) to ''number of drivers each selection period.'' This change was unintentional. Since the change was unintentional, paragraph (a) is revised accordingly. The revised rule is corrected using the original words ''average number of driver positions.''

Third, employers have said that they believed they were not required to have a random testing program, since the random testing section does not specifically state that employers are required to have one. The FHWA, therefore, is adding clarifying language to § 382.305(a) that states every employer must have a random testing program and every driver shall submit to random testing.

Finally, employers have asked whether § 382.305(k), recodified as § 382.305(l), prohibits a driver from driving a commercial motor vehicle to a testing collection site after notification. The FHWA's intent in requiring an employer to ensure that the driver ceases to perform safety-sensitive functions prior to proceeding to the collection site was to allow the driver to finish a task that may affect workplace safety, e.g., lowering a load on a forklift prior to leaving the forklift or finishing the securement of a load prior to proceeding to the collection site. The FHWA did not intend for the random

testing rule proviso in paragraph (k) to include driving a commercial motor vehicle to a collection site to provide a breath, saliva, or urine sample. A prohibition from using such a vehicle to travel to a collection site is not reasonable to the FHWA when there is no reasonable suspicion to suspect the driver is using alcohol or controlled substances. Therefore, the FHWA will allow a driver to drive a commercial motor vehicle to a collection site after being notified of the driver's random selection. This will include allowing a driver to be notified en route to proceed to a collection site en route. However, the FHWA will not allow an employer, who has notified a driver of a random test selection, to permit or require the driver to complete a trip or dispatch the driver on another trip prior to the driver providing the appropriate sample or specimen at the collection site(s) for the random testing requirement. Of course, if an alcohol test result of 0.02 or greater alcohol concentration is obtained from this en route random testing, the driver is prohibited from completing all trips. Recodified paragraph (l) of § 382.305 is revised accordingly.

Computation of the Average Number of Driver Positions for Random Testing

The FHWA explained how to compute the average number of driver positions for the old drug testing program on the February 1, 1990 (55 FR 3546, at 3549). For clarity and to assist those employers that were not subject to the old drug testing program under 49 CFR part 391, the FHWA is reprinting this discussion.

The FHWA realizes that there are fluctuations in an employer's CMV driver work force which will make an accurate computation of a testing rate difficult. An employer's random testing program plan should take into account these fluctuations by estimating the number of random tests needed to be performed over the course of the year. If the employer's CMV driver work force is expected to be relatively constant (i.e., the total number of CMV driver positions are approximately the same or changes at a relatively constant rate), then the number of tests to be performed in any given year could be determined by multiplying the average number of CMV driver positions by the testing rate.

However, if there are large fluctuations in the number of CMV driver positions throughout the year without any clear indication of the average number of CMV driver positions, the employer should make a reasonable estimate of the number of CMV driver positions. After making the estimate, the employer should then be able to determine the number of tests necessary. The total random tests taken for the year, however, must equal or exceed the average number of CMV driver positions (for calendar years 1996 and 1997, 50% for controlled substances testing and 25% for alcohol testing).

For example, if an employer decided to perform random selections four times a year, the number of tests to be performed during each of the testing periods (T) must equal or exceed 50% (25% for alcohol) of the number of CMV driver positions eligible to be tested (D) divided by the number of test periods per year (P). As a formula, the controlled substances formula may be expressed as:

$$T = 50\% \times \frac{D}{P}$$

The alcohol formula may be expressed as:

$$T = 25\% \times \frac{D}{P}$$

At the time of selecting the individuals to be tested, the employer determined that there were an average of 60 CMV drivers eligible for testing during the period covered by the February test, 80 CMV drivers in May, 100 CMV drivers in August, and 70 CMV drivers in November. Using the formulas given above, the employer would have to perform 8 controlled substances tests and 4 alcohol tests in February (50% [25%] times 60 divided by 4 equals 7.5 controlled substances (3.75 alcohol tests) and rounding up to the nearest whole number), 10 controlled substances (5 alcohol tests) in May, 13 tests (7 alcohol tests) in August, and 9 tests (5 alcohol tests) in November for a total of 40 controlled substances and 21 alcohol tests.

However, throughout the year the employer needed to perform 39 controlled substances (20 alcohol) tests in order to assure testing at the 50% (25%) rate. This figure was computed using the same formula with D equal to the summation of the number of drivers eligible for testing in each of the selection periods (D=60+80+100+70=310 CMV drivers), and by completing the formula, T=50% times 310 divided by 4=38.75) and rounding up to the nearest whole number, 39. For alcohol testing, T=25% times 310 divided by 4=19.375) and rounding up to the nearest whole number, 20. In these examples, the employer could perform one less controlled substances test and one less alcohol test in the last testing period.

Since CMV driver populations may vary during any given period in a year, an employer who only conducted random testing during low CMV driver periods would not be able to meet the 50% and 25% random testing ratios.

The employer's random testing policy/plan must be documented. The FHWA emphasizes that each selection for random testing must include *all* CMV drivers to whom the final rule applies, regardless of whether or not the CMV drivers have been tested in the past. This would include individuals who do not regularly drive CMVs (such as clerks, mechanics, supervisors, officials), but are expected by the employer to be immediately available to perform the safety-sensitive function of driving a CMV, as defined in § 382.107, for the employer. It is quite likely with a large driver turnover rate that an employer, over the course of the year, will be employing/using more CMV drivers than there are CMV driver positions. In determining the number of tests, an employer should use the number of CMV driver positions, not the number of CMV drivers used/employed during the testing period.

To illustrate using the previous example, in the February selection (which represents the quarter January 1 through March 31), the employer determined that there were an average of 60 CMV driver positions. However, during the same quarter (at least up to the date the employer performed the random selection of CMV drivers to be tested, say February 12) the employer used/employed a total of 75 individuals as CMV drivers or persons expected to be CMV drivers. Of these 75 individuals, 15 were no longer used by the employer at the time the selection was made (February 12). As noted earlier, eight individuals will be selected for controlled substances testing and four individuals will be selected for alcohol testing.

Training Supervisors for Reasonable Suspicion Testing

The FHWA has learned that some employers and drivers believe that only certain supervisors of a driver are required to be trained in techniques of determining reasonable suspicion of alcohol and drug use or that this is subject to collective bargaining. The intent of the FHWA was, however, to require that all persons designated to supervise drivers be trained under § 382.603. Section 382.307 is being amended to clarify this requirement.

The current rule at § 382.401(b)(2) may also be interpreted to allow employers to discard documents proving that supervisors had received

training to determine whether reasonable suspicion exists to conduct alcohol and controlled substances testing two years after being trained. The FHWA believes it is necessary to maintain documents related to such training during the entire period for which a supervisor is authorized to make such determinations. It was the FHWA's intent to allow employers to discard such training records two years after the supervisor leaves the employer or ceases to perform the tasks requiring the training. The FHWA, therefore, is clarifying the record retention requirements in § 382.401(b)(4) for all persons who are required to be trained or educated under the rules, such as collection site personnel, breath alcohol technicians, screening test technicians and supervisors.

Record Retention Requirements

The FHWA is revising the record retention section to clarify certain requirements and to add items that were included in part 391 requirements for drug testing but inadvertently left out of the part 382 regulations.

The FHWA is clarifying that § 382.401(b) is meant to note the time periods for which records must be kept and § 382.401(c) is meant to specify most of the records that must be kept. The FHWA declines to list every record that could be generated in an alcohol and drug testing program. The FHWA's intent, however, is that all records that are generated by an employer or its agents in the administration of the testing program must be maintained to the same extent as required in part 391. Administrative records are required to be maintained for a minimum of five years under § 391.87(d). The FHWA is adding an item to § 382.401(b) noting that administrative records must be maintained for the same time period.

A new paragraph, § 382.401(e), is also being added to note the locations in the rule of information collection requirements required by part 382. The FHWA believes that this provision will allow the public to easily locate those rule sections which require documents to be prepared and maintained.

Medical Review Officer Notification to the Employer

The FHWA also has received numerous questions regarding the new requirement that signed, written notifications of the results be sent from the MRO to the employer. Many MROs have asked whether their staff may sign the reports, and if not, whether the MRO signature may be handwritten, rubber stamped, or electronically produced. These MROs stated that requiring them to personally sign written reports of negative test results would be extremely burdensome. The FHWA's intent with the new requirement was to get reliable information concerning positive and negative test results into the hands of the employer and avoid communication problems from occurring over the telephone. Some employers have stated that they have heard the MRO say ''negative,'' when in fact, the MROs records indicate the driver was verified positive for illegal controlled substances use.

The FHWA will continue to require that all test results be forwarded to the employer in writing and be signed by the MRO within three business days after completion of the verification of test results. (*Note that the Office of the Secretary of Transportation's Drug Enforcement and Program Compliance office has held, under § 40.33, that positive test result verifications may not be completed until part 2 of the Federal Custody and Control Form is received by the MRO from the laboratory.*) Some consortia have reported that MROs never receive their copy from the collection site, Copy 4, of the Federal Custody and Control Form. The FHWA would expect in these circumstances that the MRO would contact the collection site or the employer to obtain a photocopy of their copy of the form, Copies 6 or 7 in order to complete the verification process for both negatives and positives.

To facilitate transmittal of information, § 382.407(a) is being changed to allow MROs to notify employers using a legible photocopy of the fourth copy of part 40's Appendix A subtitled *COPY 4—SEND DIRECTLY TO MEDICAL REVIEW OFFICER—DO NOT SEND TO LABORATORY* of the *Federal Custody and Control Form*. This copy may be used in lieu of producing a new record to make the signed, written notification to the employer, provided that for verified positive test results the controlled substance(s) identified and verified as positive shall be legibly noted in the remarks section for step 8. If a Copy 4 is used, the MRO must sign his or her name on the form.

The MRO shall forward the test results and other information required by § 382.407(a) within three business days after the completion of the MRO's review of the test result and the MRO must sign his or her name on positive notification records. The FHWA does not believe a driver should be subject to the consequences of the rule based on results that are not signed by a MRO. Therefore, the MRO's signature must be handwritten by the MRO. The MRO's staff will not be allowed to sign or rubber stamp verified positive test results for the MRO. The MRO's staff, however, would be allowed to rubber stamp negative test results for the MRO when the MRO delegates such authority to the MRO staff. At this time, the FHWA shall not allow electronic signature technology to be used. If such electronic signature technology is considered in the future, the public will be provided an opportunity to comment on such a proposal at that time.

Inquiring for Alcohol and Controlled Substances Information From Previous Employers

The FHWA has had numerous questions about the new requirement to obtain prior positive testing information from former employers. Many questions have arisen about the good faith effort discussed in the preamble and about other provisions of the section. Also, since publication of the alcohol and drug testing rule, Congress enacted legislation requiring interstate motor carriers subject to § 391.23 to obtain safety information from former employers of drivers similar to that required under § 382.413 (Hazardous Materials Transportation Authorization Act of 1994 (HazMat Act), Pub. L. 103–311, sec. 114). The FHWA will provide notice and an opportunity for comment in a future rulemaking on § 391.23 about possible conforming changes to § 382.413.

Section 382.413 requires the sharing of information on certain violations of part 382—positive drug test results, alcohol results of 0.04 alcohol concentration or greater, and refusals to be tested. It should be noted that the records required to be obtained under § 382.413 are limited to only those records generated under part 382 after January 1, 1995. See paragraph (h). Employers are expected to request the information from former employers as soon as the employer expects to use/hire the driver to drive or perform other safety-sensitive functions.

The rule continues to require that, if feasible, the employer obtain the information prior to the first performance of safety-sensitive functions by a driver. If obtaining the information prior to the driver's first performance of safety-sensitive functions for the employer is not feasible, the information should be obtained as soon as possible, but not more than 14 days later. If a driver leaves a new employer before the new employer obtains the information, the new employer must continue to attempt to obtain the information. In response to inquiry on this point, a clarifying amendment to § 382.413(b) expressly

limits this provision to drivers actually hired and used by the employer to perform safety-sensitive functions. A prospective employer need not obtain the information from an employer which tested but did not hire a driver. This is consistent with § 391.21, which requires drivers to list only previous employers. However, a prospective employer may request the information if it chooses to obtain the information.

In another clarifying change, § 382.413(a)(2) is being added to explain that a new employer may obtain from a former employer information on all records of that employer relevant to § 382.413(a)(1) (i)–(iii). This includes not only that information recorded as the result of the driver's violations of the rules by that former employer, but also any records of violations within the past two years which the former employer obtained from other former employers. For example, Sue Driver is applying for a job with ABC Trucking. Ms. Driver notes on her application that she previously drove CMVs for three employers—DEF City Schools, XYZ Airlines, and the Minnesota DOT (MnDOT). ABC Trucking obtains from Ms. Driver three written authorization requests to obtain information required by § 382.413(a)(1) and transmits them to the three employers. In response to the request, DEF City Schools transmits all the relevant information it has on file, including not only the information resulting from tests it administered, but also all the information it has in its files from XYZ Airlines and the MnDOT, if any, which it had obtained pursuant to § 382.413 and which referred to tests occurring during the past two years. No information beyond the two year period is required to be obtained. ABC Trucking would then have a complete, perhaps overlapping, picture of Ms. Driver's testing and violation history. ABC Trucking may, in turn, pass this information along to the next employer with the information ABC develops from Ms. Driver's ABC Trucking employment, provided it falls within the two year time period.

New and prospective employers should ensure that the driver's written consent authorizes former employers to disclose all prohibitions listed under § 382.413(a)(1), that occurred within the previous two years, of which the former employer has knowledge. Otherwise, a former employer may be prohibited by § 382.405(f) from passing along to the inquiring employer any § 382.413(a)(1) information that was obtained from another previous employer. Section 382.405(f) states that records under part 382 may only be released to a subsequent employer upon receipt of written authorization from a driver. Disclosure of the part 382 records by the subsequent employer is also permitted only as expressly authorized by the terms of the driver's signed authorization. If the driver's authorization had prohibited the subsequent employer from disclosing the information, sharing that information with the inquiring employer would be in violation of § 382.405(f).

In another change, § 382.413(f) is being added to explain that a new employer may obtain directly from the driver the information required to be shared in § 382.413(a)(1) (i)–(iii). The purpose of the provision is to facilitate information exchange where it might not otherwise be possible. Drivers may be the sole source of their testing records when their previous employers have gone out of business or refuse to provide the required information. Given the fluidity of driver-employer relationships in the commercial motor vehicle industry, employers in some situations might find it difficult to obtain the necessary testing information on certain drivers. Allowing drivers to present the information should prevent § 382.413 from being a hindrance to operations while still ensuring that accurate information is exchanged. It should also result in more information being exchanged.

An employer presented with testing information from a driver must assure itself that the copies of former employer's records provided by the driver are true and accurate. The rule does not specify how an employer can assure itself that the copies of former employer's testing records are true and accurate and it may vary on a case-by-case basis. One method might be to transmit a confidential fax to the former employer's (listed on the employment application required by § 383.35) testing program representative, the driver's written authorization for release of specific information and the list provided by the driver. The prospective employer would then telephone the former employer to verify the information on the testing record copies. A former employer who has a driver's written authorization in hand and verifies a prospective employer's inquiry over the telephone is less sensitive to confidentiality than the former employer providing the information without any written authorization. Verification might also have to be made with SAPs directly when the former employer did not provide for a full rehabilitative program. Prospective employer verification of this information should help prevent drivers who have violated the rules by testing positive from continually skipping from one employer to the next without getting needed treatment. These drivers will be subject to this previous employer verification check at every employer where the drivers seek work. Former employers will be able to share information on these drivers with prospective employers about the problems with alcohol and/or drugs these drivers have had in the past.

For example, Sam Trip works as an occasional driver for interstate motor carriers that use his services in accordance with § 391.63. Mr. Trip arranges with PWC Contract Carriers to haul a load from Chicago to Kansas City. PWC Contract Carriers continues to be subject to § 383.35 and must obtain an employment application from Sam Trip. Mr. Trip lists three employers where he worked as a CMV operator since January 1, 1995. Mr. Trip also provides copies of his testing records for the period January 1, 1995, to the present. PWC Contract Carriers transmits by confidential telecommunications the information in Sam Trip's records for the past two years, including testing information from January 1, 1995, with Mr. Trip's written authorization for release of such information, verifies the information to be accurate, and allows Mr. Trip to haul its load to Kansas City.

A subject of many questions since the publication of the February 15, 1994, final rule is the discussion of good faith effort which appeared in the preamble to the final rule. In response, the good faith concept is being incorporated into § 382.413(b) of the rule. It is recognized that, given the high level of fluidity of the motor carrier population, obtaining responses to information requests may not always prove to be easy. Former employers may have gone out of business, changed locations, been less than diligent in reporting, or simply refused to respond. Drivers and new employers should not be punished for this situation when they have been diligent in requesting the information. Therefore, it is provided that an employer may not use a driver for more than 14 days without having made a good faith effort to obtain the information.

Good faith in this context means a request of each former employer listed on the driver's employment application or known to exist. Where information is not forthcoming, a good faith effort consists of something more than the original mailed request for information and will vary depending on the situation. Except where there is a clear refusal by the former employer to transmit the information, rendering

further requests futile, there should also be a follow-up attempt, preferably by telephone, to obtain the information. Refusals to respond should be reported to the FHWA for investigation as a violation of the requirement in § 382.405(f) to release information to a subsequent employer.

In keeping with the intent of this section, there must be a good faith effort in the first instance to obtain the information before permitting the driver to drive. If that is not feasible, then the information should be obtained as soon as possible, but no later than expiration of the 14-day period. An employer is certainly not acting in good faith when only beginning to attempt to obtain the information on the 13th day. Moreover, if, for example, it is possible to obtain the information in 5 days, it is not good faith and is a violation of the rule to wait until the 12th day to obtain it. In most circumstances, good faith dictates that the information should be requested by the new employer immediately after making a conditional offer of employment.

If, after making a good faith effort, the information is not available, § 382.413(c) requires a record to be made of the attempt. The employer may then continue to use the driver. Paragraph (c) also requires all information obtained in response to a request under paragraph (a) to be recorded, including failures to obtain the information. This includes the information in paragraph (a)(1) (i)–(iii) on violations, as well as the information that the former employer has no records of any violations. If the information somehow is made available after the 14-day period, the employer would then be obligated to take appropriate action on it, including not using a driver with a violation who has not been subsequently evaluated by an SAP.

A typical good faith effort would begin with the employer obtaining the driver's written consent on the employer's letterhead stationary. The driver should complete the document at the time the driver prepares other documents in the hiring process (e.g., the document the employer is required to obtain from the driver in compliance with § 383.35 *Notification of Previous Employment* or § 391.21 *Application for Employment*). Immediately after the employer makes a conditional offer of employment, a written consent letter is sent via certified mail to the former employer(s), along with instructions on how the information should be transmitted back to the requesting employer (e.g., by secure and confidential facsimile, by certified mail, or by telephone to a designated person).

After a reasonable period without a response, the employer should contact the driver's former employers' alcohol and drug testing program managers to ask about the status of the request to obtain the driver's testing records. The employer should not wait until a few days before the first time the employer uses the driver to perform safety-sensitive functions to make a follow-up contact with the former employers. Former employers are required to forward, upon receipt of a former driver's specific written consent, their testing information to the driver, the employer or any third party the driver designates. Failure to do so is a violation of § 382.405.

If a driver's former employer has gone out of business or refuses to comply with part 382, subpart D, requirements to forward its testing information about the driver to the new employer, or for some other reason the employer cannot obtain the testing information from a particular former employer, the employer must document the facts and any related information and retain this information in the employer's files.

Finally, the section heading is being changed to clarify the intent of the section and the current § 382.413(a) is being removed. The FHWA explained in the February 15, 1994, final rule preamble that paragraph (a) restated § 382.405(b) in terms of the prospective employer. The FHWA wrote in the preamble ''An employer may obtain any of the information retained by other employers under part 382, pursuant to a driver's consent.'' Because this paragraph merely repeats § 382.405(f) requirements, it is being removed.

Part 391, Subpart H Record Retention

Questions have also been asked about whether interstate motor carriers who prepare and maintain records under part 391 may discard those records when, in accordance with § 391.125, they cease compliance with part 391 and begin complying with part 382. The intent of the FHWA was to terminate compliance with the applicability, consequences, and testing requirements of part 391. It was the FHWA's intent that the records prepared and maintained under part 391 would continue to be kept in accordance with part 382. The FHWA is amending § 391.125 to specify that the recordkeeping requirements of part 391, subpart H, will be transferred to part 382. Also, part 382 is being amended to note that records generated under part 391, subpart H, must be maintained under § 382.401(c)(6)(v).

Possession of Alcohol

The FHWA has had numerous inquiries about the alcohol possession prohibition in parts 382 and 392. The FHWA has reconsidered its position on whether prohibiting unmanifested possession of alcohol on commercial motor vehicles is necessary given the new regulations for alcohol use. The FHWA believes the possession prohibition is not needed in part 382.

Section 392.5 prohibits the possession of alcoholic beverages and is generally enforced as a part of roadside inspections by FHWA and State officials. Formerly, § 392.5 prohibited possession of intoxicating beverages. On February 15, 1994 (59 FR 7484), § 392.5 was amended to prohibit possession of ''alcoholic beverages.'' The intent of § 392.5 is to prohibit the carrying of any substance on a CMV that could be consumed by the driver and result in impairment. However, it does not prohibit the possession of other forms of alcohol that would be used for the safe operation of commercial motor vehicles, such as alcohol formulations to be used in the fuel tank, on the windshield, as cleaning agents, and for other safety uses.

Section 382.204, in contrast, could be construed as prohibiting the possession of substances such as windshield washer fluid, denatured alcohol, fuel line antifreeze, rubbing alcohol, and other products that contain alcohol and have been allowed in the past for the safe operation of CMVs. This section could also be construed to prohibit the possession of shaving lotion, cologne, or room deodorizers. This is the case because a broader definition of alcohol was used in part 382, rather than ''alcoholic beverage.'' The FHWA believes, however, that mere possession of alcohol in forms other than beverage does not render a person unable to safely operate a CMV. Moreover, the new testing regulations for alcohol will provide controls in addition to the amended § 392.5 to ensure that impaired drivers do not operate CMVs. The FHWA does not believe, therefore, that it is necessary to repeat an alcohol possession prohibition in part 382 and is removing it.

The FHWA will continue to prohibit the possession of alcoholic beverages in § 392.5 for interstate motor carriers and drivers. The term ''alcoholic beverage'' is not defined in the general definitions of § 390.5, so the FHWA has decided to amend § 392.5 to add the content of the definition in § 383.5. This definition is consistent with the Commercial Motor Vehicle Safety Act of 1986 (CMVSA) and is restricted to beer, wine, and

distilled spirits as defined under the Internal Revenue Code of 1954.

In addition, consistent with an interpretation published on November 17, 1993 (58 FR 60734), the FHWA is explaining the exception for the possession of alcoholic beverages on buses and motorcoachs in greater detail. The FHWA will not prohibit motor carriers from transporting alcoholic beverages for distribution to passengers, or alcoholic beverages that have been brought on board by passengers for the passengers' personal consumption. However, any driver who is seated in the passenger seating area or who is resting in sleeper berth equipment shall be prohibited from possessing alcoholic beverages. It should be noted, however, that States may have stricter laws regarding whether bus passengers may possess alcoholic beverages. If a State would have a stricter law regarding bus passenger possession of alcoholic beverages, such a law would not be preempted by this rule.

The FHWA has had, and will continue to have, a strong policy of zero tolerance of consumption and use of alcohol by commercial motor vehicle drivers. The consumption or presence in the body of any form of alcohol, including any alcoholic mixture, preparation, or beverage, is strictly prohibited while driving. This includes any substance containing alcohol, including, but not limited to, windshield washer fluid, liquid fuels, fuel line antifreeze, denatured alcohol, shaving lotion, cologne, beer, wine, and distilled spirits. In terms of possession, the form of prohibited alcohol is narrower. Drivers subject to § 392.5 may not possess beer, wine, or distilled spirits. Many States have laws that are similar to § 392.5 regarding the possession of alcoholic beverages for commercial motor vehicle drivers operating in intrastate commerce and the FHWA does not believe that it must supersede those State laws. The FHWA will allow those States to use and enforce those laws without expressly preempting them.

Metric System

The Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, sec. 5164) amended the Metric Conversion Act of 1975 to require, among other things, that each Federal agency, by the end of the fiscal year 1992, use the metric system of measurement in its procurements, grants, and other business-related activities, except to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms, such as when foreign competitors are producing competing products in non-metric units.

The term ''metric system'' means the International System of Units (SI) established by the General Conference of Weights and Measures in 1960, as interpreted or modified from time to time for the United States by the Secretary of Commerce under the authority of the Metric Conversion Act of 1975 and the Metric Education Act of 1978. The Commerce Department requires Federal agencies to coordinate and plan for the use of the metric system in their procurements, grants and other business-related activities consistent with the requirements of the Metric Conversion Act, as amended. The FHWA has begun the transition process to convert to the metric system. In so doing, the FHWA believes it must convert to metric equivalents those parts of the definition of the term, ''commercial motor vehicle,'' which use gross vehicle weight ratings in the U.S. Customary System of measurement. The FHWA is therefore taking this opportunity to change the definition to the SI system in line with 15 CFR part 19. The customary equivalent is provided parenthetically for convenience.

Locations of Regional Offices of Motor Carriers

The FHWA regional Offices of Motor Carriers for regions four and nine have recently moved. The FHWA, therefore, is updating the title of the section and the addresses in the table found in § 390.27.

Rulemaking Analyses and Notices

Because this final rule simply makes minor edits to the FHWA's alcohol and drug testing rules to clarify these regulations, the FHWA believes that prior notice and opportunity for comment are unnecessary under 5 U.S.C. 553(b)(3)(B). In addition, due to the technical nature of this final rule, the FHWA has determined that prior notice and opportunity for comment are not required under the Department of Transportation's regulatory policies and procedures, as it is not anticipated that such action would result in the receipt of useful information. In this final rule, the FHWA is not exercising discretion in a way that could be meaningfully affected by public comment.

This action also effectively grants an exemption from an alcohol and drug testing regulation to employers and MROs. The amendments to § 382.407 relieve MROs from the requirement to prepare, in writing, a document if they wish to legibly photocopy Copy 4 of the Federal Chain of Custody form, fill in verified positive or negative test information, add a statement about compliance with 49 CFR parts 40 and 382, and sign the photocopy.

Because this final rule relieves employers and MROs from certain regulations cited above, the FHWA also believes that good cause exists to publish this rule less than 30 days before it is effective, as is ordinarily required under 5 U.S.C. 553(d). Accordingly, the FHWA is proceeding directly to a final rule which is effective on its date of publication.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is neither a significant regulatory action under Executive Order 12866 or significant under the Department of Transportation's regulatory policies and procedures. It is anticipated that the economic impact of this action will not be substantial because this rule simply makes minor, technical changes to the Federal Motor Carrier Safety Regulations to clarify the FHWA's alcohol and drug testing rules. Therefore, a full regulatory evaluation is not warranted.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. This final rule will technically amend and clarify the requirements for employers to test drivers for the use of alcohol and controlled substances. Accordingly, the FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

The amendments made by this rule do not have a substantial direct effect on the States or on the relationship or distribution of power between the national government and the States because they do little to limit the policymaking discretion of the States. To the extent that these amendments do require States to make minor modifications to their laws or regulations, the authority to preempt inconsistent State and local laws, regulations, rules and orders was expressly provided under 49 U.S.C. 31306(g). Therefore, the FHWA is not required to prepare a separate Federalism Assessment for this rule.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved 2,900,717 hours for the information collection requirements in the existing drug and alcohol testing regulations at 49 CFR part 382, under OMB control no. 2125–0543. One of the changes contained in this rule will decrease the burden hours required to comply with these regulations by a significant amount. Other changes are due to technical modifications, clarification of language, and closing loopholes for drivers with numerous previous employers. Also, a rule amendment published on March 13, 1995, contains a significant decrease in burden hours. Accordingly, the overall effect of these amendments is to decrease the burden of complying with the recordkeeping and reporting requirements of the drug and alcohol testing regulations.

In addition, the FHWA is clarifying the record retention provisions in § 382.401 to require that records documenting supervisors' reasonable suspicion training be retained for two years after the supervisor ceases to perform the tasks requiring this training, replacing the current requirement to retain such records for two years after the training is completed.

Finally, the total number of burden hours will be decreased by this final rule as a result of the FHWA allowing MROs to send Copy 4 of the Federal Custody and Control form rather than complete a new written document that is signed as a notification of test results to the employer of each driver tested. The net effect of these changes will be a decrease in burden hours. The FHWA will be sending a revised burden estimate for this information collection request to the Office of Management and Budget.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action will not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Parts 382, 383, 390, 391, and 392

Alcohol testing, Controlled substances testing, Drivers, Highways and roads, Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements, Safety, Transportation.

Issued on: February 29, 1996.

Rodney E. Slater,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA is amending title 49, CFR, subtitle B, chapter III, parts 382, 383, 390, 391, and 392 as set forth below:

1. Part 382 is revised to read as follows:

PART 382—CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING

Subpart A—General

Sec.

Subpart B—Prohibitions

Subpart C—Tests Required

Subpart D—Handling of Test Results, Record Retention, and Confidentiality

Subpart E—Consequences for Drivers Engaging in Substance Use-Related Conduct

Subpart F—Alcohol Misuse and Controlled Substances Use Information, Training, and Referral

Authority: 49 U.S.C. 31133, 31136, 31301 *et seq.*, 31502; and 49 CFR 1.48.

Subpart A—General

§ 382.101 Purpose.

The purpose of this part is to establish programs designed to help prevent accidents and injuries resulting from the misuse of alcohol or use of controlled substances by drivers of commercial motor vehicles.

§ 382.103 Applicability.

(a) This part applies to every person and to all employers of such persons who operate a commercial motor vehicle in commerce in any State, and is subject to:

(1) The commercial driver's license requirements of part 383 of this subchapter;

(2) The Licencia Federal de Conductor (Mexico) requirements; or

(3) The commercial driver's license requirements of the Canadian National Safety Code.

(b) An employer who employs himself/herself as a driver must comply with both the requirements in this part that apply to employers and the requirements in this part that apply to drivers. An employer who employs only himself/herself as a driver shall implement a random alcohol and controlled substances testing program of two or more covered employees in the random testing selection pool.

(c) The exceptions contained in § 390.3(g) of this subchapter do not apply to this part. The employers and drivers identified in § 390.3(g) must comply with the requirements of this part, unless otherwise specifically provided in paragraph (d) of this section.

(d) *Exceptions.* This part shall not apply to employers and their drivers:

(1) Required to comply with the alcohol and/or controlled substances testing requirements of parts 653 and

654 of this title (Federal Transit Administration alcohol and controlled substances testing regulations); or

(2) Who a State must waive from the requirements of part 383 of this subchapter. These individuals include active duty military personnel; members of the reserves; and members of the national guard on active duty, including personnel on full-time national guard duty, personnel on part-time national guard training and national guard military technicians (civilians who are required to wear military uniforms), and active duty U.S. Coast Guard personnel;

(3) Who a State has, at its discretion, exempted from the requirements of part 383 of this subchapter. These individuals may be:

(i) Operators of a farm vehicle which is:

(A) Controlled and operated by a farmer;

(B) Used to transport either agricultural products, farm machinery, farm supplies, or both to or from a farm;

(C) Not used in the operations of a common or contract motor carrier; and

(D) Used within 241 kilometers (150 miles) of the farmer's farm.

(ii) Firefighters or other persons who operate commercial motor vehicles which are necessary for the preservation of life or property or the execution of emergency governmental functions, are equipped with audible and visual signals, and are not subject to normal traffic regulation.

§ 382.105 Testing procedures.

Each employer shall ensure that all alcohol or controlled substances testing conducted under this part complies with the procedures set forth in part 40 of this title. The provisions of part 40 of this title that address alcohol or controlled substances testing are made applicable to employers by this part.

§ 382.107 Definitions.

Words or phrases used in this part are defined in §§ 386.2 and 390.5 of this subchapter, and § 40.3 of this title, except as provided herein—

Alcohol means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.

Alcohol concentration (or content) means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test under this part.

Alcohol use means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.

Commerce means:

(1) Any trade, traffic or transportation within the jurisdiction of the United States between a place in a State and a place outside of such State, including a place outside of the United States and

(2) Trade, traffic, and transportation in the United States which affects any trade, traffic, and transportation described in paragraph (1) of this definition.

Commercial motor vehicle means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle—

(1) Has a gross combination weight rating of 11,794 or more kilograms (26,001 or more pounds) inclusive of a towed unit with a gross vehicle weight rating of more than 4,536 kilograms (10,000 pounds); or

(2) Has a gross vehicle weight rating of 11,794 or more kilograms (26,001 or more pounds); or

(3) Is designed to transport 16 or more passengers, including the driver; or

(4) Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).

Confirmation test for alcohol testing means a second test, following a screening test with a result of 0.02 or greater, that provides quantitative data of alcohol concentration. For controlled substances testing means a second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the screen test and which uses a different technique and chemical principle from that of the screen test in order to ensure reliability and accuracy. (Gas chromatography/mass spectrometry (GC/MS) is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine.)

Consortium means an entity, including a group or association of employers or contractors, that provides alcohol or controlled substances testing as required by this part, or other DOT alcohol or controlled substances testing rules, and that acts on behalf of the employers.

Controlled substances mean those substances identified in § 40.21(a) of this title.

Disabling damage means damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

(1) *Inclusions.* Damage to motor vehicles that could have been driven, but would have been further damaged if so driven.

(2) *Exclusions.*

(i) Damage which can be remedied temporarily at the scene of the accident without special tools or parts.

(ii) Tire disablement without other damage even if no spare tire is available.

(iii) Headlight or taillight damage.

(iv) Damage to turn signals, horn, or windshield wipers which make them inoperative.

DOT Agency means an agency (or ''operating administration'') of the United States Department of Transportation administering regulations requiring alcohol and/or drug testing (14 CFR parts 61, 63, 65, 121, and 135; 49 CFR parts 199, 219, 382, 653 and 654), in accordance with part 40 of this title.

Driver means any person who operates a commercial motor vehicle. This includes, but is not limited to: Full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent, owner-operator contractors who are either directly employed by or under lease to an employer or who operate a commercial motor vehicle at the direction of or with the consent of an employer.

Employer means any person (including the United States, a State, District of Columbia, tribal government, or a political subdivision of a State) who owns or leases a commercial motor vehicle or assigns persons to operate such a vehicle. The term *employer* includes an employer's agents, officers and representatives.

Licensed medical practitioner means a person who is licensed, certified, and/or registered, in accordance with applicable Federal, State, local, or foreign laws and regulations, to prescribe controlled substances and other drugs.

Performing (a safety-sensitive function) means a driver is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions.

Positive rate means the number of positive results for random controlled substances tests conducted under this part plus the number of refusals of random controlled substances tests required by this part, divided by the total of random controlled substances tests conducted under this part plus the number of refusals of random tests required by this part.

Refuse to submit (to an alcohol or controlled substances test) means that a driver:

(1) Fails to provide adequate breath for alcohol testing as required by part 40

of this title, without a valid medical explanation, after he or she has received notice of the requirement for breath testing in accordance with the provisions of this part,

(2) Fails to provide an adequate urine sample for controlled substances testing as required by part 40 of this title, without a genuine inability to provide a specimen (as determined by a medical evaluation), after he or she has received notice of the requirement for urine testing in accordance with the provisions of this part, or

(3) Engages in conduct that clearly obstructs the testing process.

Safety-sensitive function means all time from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. Safety-sensitive functions shall include:

(1) All time at an employer or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the employer;

(2) All time inspecting equipment as required by §§ 392.7 and 392.8 of this subchapter or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;

(3) All time spent at the driving controls of a commercial motor vehicle in operation;

(4) All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth (a berth conforming to the requirements of § 393.76 of this subchapter);

(5) All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and

(6) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

Screening test (also known as initial test) In alcohol testing, it means an analytical procedure to determine whether a driver may have a prohibited concentration of alcohol in his or her system. In controlled substance testing, it means an immunoassay screen to eliminate ''negative'' urine specimens from further consideration.

Substance abuse professional means a licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

Violation rate means the number of drivers (as reported under § 382.305 of this part) found during random tests given under this part to have an alcohol concentration of 0.04 or greater, plus the number of drivers who refuse a random test required by this part, divided by the total reported number of drivers in the industry given random alcohol tests under this part plus the total reported number of drivers in the industry who refuse a random test required by this part.

§ 382.109 Preemption of State and local laws.

(a) Except as provided in paragraph (b) of this section, this part preempts any State or local law, rule, regulation, or order to the extent that:

(1) Compliance with both the State or local requirement and this part is not possible; or

(2) Compliance with the State or local requirement is an obstacle to the accomplishment and execution of any requirement in this part.

(b) This part shall not be construed to preempt provisions of State criminal law that impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees, employers, or the general public.

§ 382.111 Other requirements imposed by employers.

Except as expressly provided in this part, nothing in this part shall be construed to affect the authority of employers, or the rights of drivers, with respect to the use of alcohol, or the use of controlled substances, including authority and rights with respect to testing and rehabilitation.

§ 382.113 Requirement for notice.

Before performing an alcohol or controlled substances test under this part, each employer shall notify a driver that the alcohol or controlled substances test is required by this part. No employer shall falsely represent that a test is administered under this part.

§ 382.115 Starting date for testing programs.

(a) *Large domestic employers.* Each employer with fifty or more drivers on March 17, 1994, will implement the requirements of this part beginning on January 1, 1995.

(b) *Small domestic employers.* Each employer with less than fifty drivers on March 17, 1994, will implement the requirements of this part beginning on January 1, 1996.

(c) *All domestic employers.* Each domestic employer that begins commercial motor vehicle operations after March 17, 1994, but before January 1, 1996, will implement the requirements of this part beginning on January 1, 1996. However, such an employer may be subject to the requirements of part 391, subpart H on the date they begin operations, if operating commercial motor vehicles in interstate commerce. A domestic employer that begins commercial motor vehicle operations on or after January 1, 1996, will implement the requirements of this part on the date the employer begins such operations.

(d) *Large foreign employers.* Each foreign-domiciled employer with fifty or more drivers assigned to operate commercial motor vehicles in North America on December 17, 1995, must implement the requirements of this part beginning on July 1, 1996.

(e) *Small foreign employers.* Each foreign-domiciled employer with less than fifty drivers assigned to operate commercial motor vehicles in North America on December 17, 1995, must implement the requirements of this part beginning on July 1, 1997.

(f) *All foreign employers.* Each foreign-domiciled employer that begins commercial motor vehicle operations in the United States after December 17, 1995, but before July 1, 1997, must implement the requirements of this part beginning on July 1, 1997. A foreign employer that begins commercial motor vehicle operations in the United States on or after July 1, 1997, must implement the requirements of this part on the date the foreign employer begins such operations.

Subpart B—Prohibitions

§ 382.201 Alcohol concentration.

No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. No employer having actual knowledge that a driver has an alcohol concentration of 0.04 or greater shall permit the driver to perform or continue to perform safety-sensitive functions.

§ 382.205 On-duty use.

No driver shall use alcohol while performing safety-sensitive functions. No employer having actual knowledge that a driver is using alcohol while

performing safety-sensitive functions shall permit the driver to perform or continue to perform safety- sensitive functions.

§ 382.207 Pre-duty use.

No driver shall perform safety-sensitive functions within four hours after using alcohol. No employer having actual knowledge that a driver has used alcohol within four hours shall permit a driver to perform or continue to perform safety-sensitive functions.

§ 382.209 Use following an accident.

No driver required to take a post-accident alcohol test under § 382.303 of this part shall use alcohol for eight hours following the accident, or until he/she undergoes a post- accident alcohol test, whichever occurs first.

§ 382.211 Refusal to submit to a required alcohol or controlled substances test.

No driver shall refuse to submit to a post-accident alcohol or controlled substances test required under § 382.303, a random alcohol or controlled substances test required under § 382.305, a reasonable suspicion alcohol or controlled substances test required under § 382.307, or a follow-up alcohol or controlled substances test required under § 382.311. No employer shall permit a driver who refuses to submit to such tests to perform or continue to perform safety-sensitive functions.

§ 382.213 Controlled substances use.

(a) No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses any controlled substance, except when the use is pursuant to the instructions of a licensed medical practitioner, as defined in § 382.107 of this part, who has advised the driver that the substance will not adversely affect the driver's ability to safely operate a commercial motor vehicle.

(b) No employer having actual knowledge that a driver has used a controlled substance shall permit the driver to perform or continue to perform a safety-sensitive function.

(c) An employer may require a driver to inform the employer of any therapeutic drug use.

§ 382.215 Controlled substances testing.

No driver shall report for duty, remain on duty or perform a safety-sensitive function, if the driver tests positive for controlled substances. No employer having actual knowledge that a driver has tested positive for controlled substances shall permit the driver to perform or continue to perform safety-sensitive functions.

Subpart C—Tests Required

§ 382.301 Pre-employment testing.

(a) Prior to the first time a driver performs safety-sensitive functions for an employer, the driver shall undergo testing for alcohol and controlled substances as a condition prior to being used, unless the employer uses the exception in paragraphs (c) and (d) of this section. No employer shall allow a driver, who the employer intends to hire or use, to perform safety-sensitive functions unless the driver has been administered an alcohol test with a result indicating an alcohol concentration less than 0.04, and has received a controlled substances test result from the MRO indicating a verified negative test result. If a pre-employment alcohol test result under this section indicates an alcohol content of 0.02 or greater but less than 0.04, the provision of § 382.505 shall apply.

(b) *Exception for pre-employment alcohol testing.* An employer is not required to administer an alcohol test required by paragraph (a) of this section if:

(1) The driver has undergone an alcohol test required by this section or the alcohol misuse rule of another DOT agency under part 40 of this title within the previous six months, with a result indicating an alcohol concentration less than 0.04; and

(2) The employer ensures that no prior employer of the driver of whom the employer has knowledge has records of a violation of this part or the alcohol misuse rule of another DOT agency within the previous six months.

(c) *Exception for pre-employment controlled substances testing.* An employer is not required to administer a controlled substances test required by paragraph (a) of this section if:

(1) The driver has participated in a controlled substances testing program that meets the requirements of this part within the previous 30 days; and

(2) While participating in that program, either

(i) Was tested for controlled substances within the past 6 months (from the date of application with the employer) or

(ii) Participated in the random controlled substances testing program for the previous 12 months (from the date of application with the employer); and

(3) The employer ensures that no prior employer of the driver of whom the employer has knowledge has records of a violation of this part or the controlled substances use rule of another DOT agency within the previous six months.

(d)(1) An employer who exercises the exception in either paragraph (b) or (c) of this section shall contact the alcohol and/or controlled substances testing program(s) in which the driver participates or participated and shall obtain and retain from the testing program(s) the following information:

(i) Name(s) and address(es) of the program(s).

(ii) Verification that the driver participates or participated in the program(s).

(iii) Verification that the program(s) conforms to part 40 of this title.

(iv) Verification that the driver is qualified under the rules of this part, including that the driver has not refused to be tested for controlled substances.

(v) The date the driver was last tested for alcohol or controlled substances.

(vi) The results of any tests taken within the previous six months and any other violations of subpart B of this part.

(2) An employer who uses, but does not employ, a driver more than once a year to operate commercial motor vehicles must obtain the information in paragraph (d)(1) of this section at least once every six months. The records prepared under this paragraph shall be maintained in accordance with § 382.401. If the employer cannot verify that the driver is participating in a controlled substances testing program in accordance with this part and part 40, the employer shall conduct a pre-employment alcohol and/or controlled substances test.

(e) Nothwithstanding any other provisions of this subpart, all provisions and requirements in this section pertaining to pre-employment testing for alcohol are vacated as of May 1, 1995.

§ 382.303 Post-accident testing.

(a) As soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, each employer shall test for alcohol and controlled substances each surviving driver:

(1) Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or

(2) Who receives a citation under State or local law for a moving traffic violation arising from the accident, if the accident involved:

(i) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

(ii) One or more motor vehicles incurring disabling damage as a result of

the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

(3) This table notes when a post-accident test is required to be conducted by paragraphs (a)(1) and (a)(2) of this section.

TABLE FOR § 382.303(a)(3)

Type of accident involved	Citation issued to the CMV driver	Test must be performed by employer
Human fatality	YES	YES.
	NO	YES.
Bodily injury with immediate medical treatment away from the scene.	YES	YES.
	NO	NO.
Disabling damage to any motor vehicle requiring tow away.	YES	YES.
	NO	NO.

(b)(1) *Alcohol tests.* If a test required by this section is not administered within two hours following the accident, the employer shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by this section is not administered within eight hours following the accident, the employer shall cease attempts to administer an alcohol test and shall prepare and maintain the same record. Records shall be submitted to the FHWA upon request of the Associate Administrator.

(2) For the years stated in this paragraph, employers who submit MIS reports shall submit to the FHWA each record of a test required by this section that is not completed within eight hours. The employer's records of tests that are not completed within eight hours shall be submitted to the FHWA by March 15, 1996; March 15, 1997, and March 15, 1998, for calendar years 1995, 1996, and 1997, respectively. Employers shall append these records to their MIS submissions. Each record shall include the following information:

(i) Type of test (reasonable suspicion/post-accident);

(ii) Triggering event (including date, time, and location);

(iii) Reason(s) test could not be completed within eight hours;

(iv) If blood alcohol testing could have been completed within eight hours, the name, address, and telephone number of the testing site where blood testing could have occurred; and

(3) Records of alcohol tests that could not be completed in eight hours shall be submitted to the FHWA at the following address: Attn: Alcohol Testing Program, Office of Motor Carrier Research and Standards (HCS–1), Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

(4) Controlled substance tests. If a test required by this section is not administered within 32 hours following the accident, the employer shall cease attempts to administer a controlled substances test, and prepare and maintain on file a record stating the reasons the test was not promptly administered. Records shall be submitted to the FHWA upon request of the Associate Administrator.

(c) A driver who is subject to post-accident testing shall remain readily available for such testing or may be deemed by the employer to have refused to submit to testing. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.

(d) An employer shall provide drivers with necessary post-accident information, procedures and instructions, prior to the driver operating a commercial motor vehicle, so that drivers will be able to comply with the requirements of this section.

(e)(1) The results of a breath or blood test for the use of alcohol, conducted by Federal, State, or local officials having independent authority for the test, shall be considered to meet the requirements of this section, provided such tests conform to the applicable Federal, State or local alcohol testing requirements, and that the results of the tests are obtained by the employer.

(2) The results of a urine test for the use of controlled substances, conducted by Federal, State, or local officials having independent authority for the test, shall be considered to meet the requirements of this section, provided such tests conform to the applicable Federal, State or local controlled substances testing requirements, and that the results of the tests are obtained by the employer.

(f) *Exception.* This section does not apply to:

(1) An occurrence involving only boarding or alighting from a stationary motor vehicle; or

(2) An occurrence involving only the loading or unloading of cargo; or

(3) An occurrence in the course of the operation of a passenger car or a multipurpose passenger vehicle (as defined in § 571.3 of this title) by an employer unless the motor vehicle is transporting passengers for hire or hazardous materials of a type and quantity that require the motor vehicle to be marked or placarded in accordance with § 177.823 of this title.

§ 382.305 Random testing.

(a) Every employer shall comply with the requirements of this section. Every driver shall submit to random alcohol and controlled substance testing as required in this section.

(b)(1) Except as provided in paragraphs (c) through (e) of this section, the minimum annual percentage rate for random alcohol testing shall be 25 percent of the average number of driver positions.

(2) Except as provided in paragraphs (f) through (h) of this section, the minimum annual percentage rate for random controlled substances testing shall be 50 percent of the average number of driver positions.

(c) The FHWA Administrator's decision to increase or decrease the minimum annual percentage rate for alcohol testing is based on the reported violation rate for the entire industry. All information used for this determination is drawn from the alcohol management information system reports required by § 382.403 of this part. In order to ensure reliability of the data, the FHWA Administrator considers the quality and completeness of the reported data, may obtain additional information or reports from employers, and may make appropriate modifications in calculating the industry violation rate. Each year, the FHWA Administrator will publish in the Federal Register the minimum annual percentage rate for random alcohol testing of drivers. The new minimum annual percentage rate for random alcohol testing will be applicable starting January 1 of the calendar year following publication.

(d)(1) When the minimum annual percentage rate for random alcohol testing is 25 percent or more, the FHWA Administrator may lower this rate to 10 percent of all driver positions if the FHWA Administrator determines that the data received under the reporting requirements of § 382.403 for two consecutive calendar years indicate that the violation rate is less than 0.5 percent.

(2) When the minimum annual percentage rate for random alcohol testing is 50 percent, the FHWA Administrator may lower this rate to 25 percent of all driver positions if the FHWA Administrator determines that the data received under the reporting

requirements of § 382.403 for two consecutive calendar years indicate that the violation rate is less than 1.0 percent but equal to or greater than 0.5 percent.

(e)(1) When the minimum annual percentage rate for random alcohol testing is 10 percent, and the data received under the reporting requirements of § 382.403 for that calendar year indicate that the violation rate is equal to or greater than 0.5 percent, but less than 1.0 percent, the FHWA Administrator will increase the minimum annual percentage rate for random alcohol testing to 25 percent for all driver positions.

(2) When the minimum annual percentage rate for random alcohol testing is 25 percent or less, and the data received under the reporting requirements of § 382.403 for that calendar year indicate that the violation rate is equal to or greater than 1.0 percent, the FHWA Administrator will increase the minimum annual percentage rate for random alcohol testing to 50 percent for all driver positions.

(f) The FHWA Administrator's decision to increase or decrease the minimum annual percentage rate for controlled substances testing is based on the reported positive rate for the entire industry. All information used for this determination is drawn from the controlled substances management information system reports required by § 382.403 of this part. In order to ensure reliability of the data, the FHWA Administrator considers the quality and completeness of the reported data, may obtain additional information or reports from employers, and may make appropriate modifications in calculating the industry positive rate. Each year, the FHWA Administrator will publish in the Federal Register the minimum annual percentage rate for random controlled substances testing of drivers. The new minimum annual percentage rate for random controlled substances testing will be applicable starting January 1 of the calendar year following publication.

(g) When the minimum annual percentage rate for random controlled substances testing is 50 percent, the FHWA Administrator may lower this rate to 25 percent of all driver positions if the FHWA Administrator determines that the data received under the reporting requirements of § 382.403 for two consecutive calendar years indicate that the positive rate is less than 1.0 percent. However, after the initial two years of random testing by large employers and the initial first year of testing by small employers under this section, the FHWA Administrator may lower the rate the following calendar year, if the combined positive testing rate is less than 1.0 percent, and if it would be in the interest of safety.

(h) When the minimum annual percentage rate for random controlled substances testing is 25 percent, and the data received under the reporting requirements of § 382.403 for any calendar year indicate that the reported positive rate is equal to or greater than 1.0 percent, the FHWA Administrator will increase the minimum annual percentage rate for random controlled substances testing to 50 percent of all driver positions.

(i) The selection of drivers for random alcohol and controlled substances testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with drivers' Social Security numbers, payroll identification numbers, or other comparable identifying numbers. Under the selection process used, each driver shall have an equal chance of being tested each time selections are made.

(j) The employer shall randomly select a sufficient number of drivers for testing during each calendar year to equal an annual rate not less than the minimum annual percentage rate for random alcohol and controlled substances testing determined by the FHWA Administrator. If the employer conducts random testing for alcohol and/or controlled substances through a consortium, the number of drivers to be tested may be calculated for each individual employer or may be based on the total number of drivers covered by the consortium who are subject to random alcohol and/or controlled substances testing at the same minimum annual percentage rate under this part or any DOT alcohol or controlled substances random testing rule.

(k) Each employer shall ensure that random alcohol and controlled substances tests conducted under this part are unannounced and that the dates for administering random alcohol and controlled substances tests are spread reasonably throughout the calendar year.

(l) Each employer shall require that each driver who is notified of selection for random alcohol and/or controlled substances testing proceeds to the test site immediately; provided, however, that if the driver is performing a safety-sensitive function, other than driving a commercial motor vehicle, at the time of notification, the employer shall instead ensure that the driver ceases to perform the safety-sensitive function and proceeds to the testing site as soon as possible.

(m) A driver shall only be tested for alcohol while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions.

(n) If a given driver is subject to random alcohol or controlled substances testing under the random alcohol or controlled substances testing rules of more than one DOT agency for the same employer, the driver shall be subject to random alcohol and/or controlled substances testing at the annual percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the driver's function.

(o) If an employer is required to conduct random alcohol or controlled substances testing under the alcohol or controlled substances testing rules of more than one DOT agency, the employer may—

(1) Establish separate pools for random selection, with each pool containing the DOT-covered employees who are subject to testing at the same required minimum annual percentage rate; or

(2) Randomly select such employees for testing at the highest minimum annual percentage rate established for the calendar year by any DOT agency to which the employer is subject.

§ 382.307 Reasonable suspicion testing.

(a) An employer shall require a driver to submit to an alcohol test when the employer has reasonable suspicion to believe that the driver has violated the prohibitions of subpart B of this part concerning alcohol. The employer's determination that reasonable suspicion exists to require the driver to undergo an alcohol test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver.

(b) An employer shall require a driver to submit to a controlled substances test when the employer has reasonable suspicion to believe that the driver has violated the prohibitions of subpart B of this part concerning controlled substances. The employer's determination that reasonable suspicion exists to require the driver to undergo a controlled substances test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver. The observations may include indications of the chronic and withdrawal effects of controlled substances.

(c) The required observations for alcohol and/or controlled substances

reasonable suspicion testing shall be made by a supervisor or company official who is trained in accordance with § 382.603 of this part. The person who makes the determination that reasonable suspicion exists to conduct an alcohol test shall not conduct the alcohol test of the driver.

(d) Alcohol testing is authorized by this section only if the observations required by paragraph (a) of this section are made during, just preceding, or just after the period of the work day that the driver is required to be in compliance with this part. A driver may be directed by the employer to only undergo reasonable suspicion testing while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions.

(e)(1) If an alcohol test required by this section is not administered within two hours following the determination under paragraph (a) of this section, the employer shall prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If an alcohol test required by this section is not administered within eight hours following the determination under paragraph (a) of this section, the employer shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test.

(2) For the years stated in this paragraph, employers who submit MIS reports shall submit to the FHWA each record of a test required by this section that is not completed within 8 hours. The employer's records of tests that could not be completed within 8 hours shall be submitted to the FHWA by March 15, 1996; March 15, 1997; and March 15, 1998; for calendar years 1995, 1996, and 1997, respectively. Employers shall append these records to their MIS submissions. Each record shall include the following information:

(i) Type of test (reasonable suspicion/post-accident);

(ii) Triggering event (including date, time, and location);

(iii) Reason(s) test could not be completed within 8 hours; and

(iv) If blood alcohol testing could have been completed within eight hours, the name, address, and telephone number of the testing site where blood testing could have occurred.

(3) Records of tests that could not be completed in eight hours shall be submitted to the FHWA at the following address: Attn.: Alcohol Testing program, Office of Motor Carrier Research and Standards (HCS–1), Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

(4) Notwithstanding the absence of a reasonable suspicion alcohol test under this section, no driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while the driver is under the influence of or impaired by alcohol, as shown by the behavioral, speech, and performance indicators of alcohol misuse, nor shall an employer permit the driver to perform or continue to perform safety-sensitive functions, until:

(i) An alcohol test is administered and the driver's alcohol concentration measures less than 0.02; or

(ii) Twenty four hours have elapsed following the determination under paragraph (a) of this section that there is reasonable suspicion to believe that the driver has violated the prohibitions in this part concerning the use of alcohol.

(5) Except as provided in paragraph (e)(2) of this section, no employer shall take any action under this part against a driver based solely on the driver's behavior and appearance, with respect to alcohol use, in the absence of an alcohol test. This does not prohibit an employer with independent authority of this part from taking any action otherwise consistent with law.

(f) A written record shall be made of the observations leading to a controlled substance reasonable suspicion test, and signed by the supervisor or company official who made the observations, within 24 hours of the observed behavior or before the results of the controlled substances test are released, whichever is earlier.

§ 382.309 Return-to-duty testing.

(a) Each employer shall ensure that before a driver returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited by subpart B of this part concerning alcohol, the driver shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02.

(b) Each employer shall ensure that before a driver returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited by subpart B of this part concerning controlled substances, the driver shall undergo a return-to-duty controlled substances test with a result indicating a verified negative result for controlled substances use.

§ 382.311 Follow-up testing.

(a) Following a determination under § 382.605(b) that a driver is in need of assistance in resolving problems associated with alcohol misuse and/or use of controlled substances, each employer shall ensure that the driver is subject to unannounced follow-up alcohol and/or controlled substances testing as directed by a substance abuse professional in accordance with the provisions of § 382.605(c)(2)(ii).

(b) Follow-up alcohol testing shall be conducted only when the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing safety-sensitive functions.

Subpart D—Handling Of Test Results, Record Retention and Confidentiality

§ 382.401 Retention of records.

(a) *General requirement.* Each employer shall maintain records of its alcohol misuse and controlled substances use prevention programs as provided in this section. The records shall be maintained in a secure location with controlled access.

(b) *Period of retention.* Each employer shall maintain the records in accordance with the following schedule:

(1) *Five years.* The following records shall be maintained for a minimum of five years:

(i) Records of driver alcohol test results indicating an alcohol concentration of 0.02 or greater,

(ii) Records of driver verified positive controlled substances test results,

(iii) Documentation of refusals to take required alcohol and/or controlled substances tests,

(iv) Driver evaluation and referrals,

(v) Calibration documentation,

(vi) Records related to the administration of the alcohol and controlled substances testing programs, and

(vii) A copy of each annual calendar year summary required by § 382.403.

(2) *Two years.* Records related to the alcohol and controlled substances collection process (except calibration of evidential breath testing devices).

(3) *One year.* Records of negative and canceled controlled substances test results (as defined in part 40 of this title) and alcohol test results with a concentration of less than 0.02 shall be maintained for a minimum of one year.

(4) *Indefinite period.* Records related to the education and training of breath alcohol technicians, screening test technicians, supervisors, and drivers shall be maintained by the employer while the individual performs the functions which require the training and for two years after ceasing to perform those functions.

(c) *Types of records.* The following specific types of records shall be

maintained. ''Documents generated'' are documents that may have to be prepared under a requirement of this part. If the record is required to be prepared, it must be maintained.

(1) Records related to the collection process:

(i) Collection logbooks, if used;

(ii) Documents relating to the random selection process;

(iii) Calibration documentation for evidential breath testing devices;

(iv) Documentation of breath alcohol technician training;

(v) Documents generated in connection with decisions to administer reasonable suspicion alcohol or controlled substances tests;

(vi) Documents generated in connection with decisions on post-accident tests;

(vii) Documents verifying existence of a medical explanation of the inability of a driver to provide adequate breath or to provide a urine specimen for testing; and

(viii) Consolidated annual calendar year summaries as required by § 382.403.

(2) Records related to a driver's test results:

(i) The employer's copy of the alcohol test form, including the results of the test;

(ii) The employer's copy of the controlled substances test chain of custody and control form;

(iii) Documents sent by the MRO to the employer, including those required by § 382.407(a).

(iv) Documents related to the refusal of any driver to submit to an alcohol or controlled substances test required by this part; and

(v) Documents presented by a driver to dispute the result of an alcohol or controlled substances test administered under this part.

(vi) Documents generated in connection with verifications of prior employers' alcohol or controlled substances test results that the employer:

(A) Must obtain in connection with the exception contained in § 382.301 of this part, and

(B) Must obtain as required by § 382.413 of this subpart.

(3) Records related to other violations of this part.

(4) Records related to evaluations:

(i) Records pertaining to a determination by a substance abuse professional concerning a driver's need for assistance; and

(ii) Records concerning a driver's compliance with recommendations of the substance abuse professional.

(5) Records related to education and training:

(i) Materials on alcohol misuse and controlled substance use awareness, including a copy of the employer's policy on alcohol misuse and controlled substance use;

(ii) Documentation of compliance with the requirements of § 382.601, including the driver's signed receipt of education materials;

(iii) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol and/or controlled substances testing based on reasonable suspicion;

(iv) Documentation of training for breath alcohol technicians as required by § 40.51(a) of this title, and

(v) Certification that any training conducted under this part complies with the requirements for such training.

(6) Administrative records related to alcohol and controlled substances testing:

(i) Agreements with collection site facilities, laboratories, breath alcohol technicians, screening test technicians, medical review officers, consortia, and third party service providers;

(ii) Names and positions of officials and their role in the employer's alcohol and controlled substances testing program(s);

(iii) Quarterly laboratory statistical summaries of urinalysis required by § 40.29(g)(6) of this title;

(iv) The employer's alcohol and controlled substances testing policy and procedures; and

(v) Records generated in connection with part 391, subpart H of this subchapter.

(d) *Location of records.* All records required by this part shall be maintained as required by § 390.31 of this subchapter and shall be made available for inspection at the employer's principal place of business within two business days after a request has been made by an authorized representative of the Federal Highway Administration.

(e)(1) *OMB control number.* The information collection requirements of this part have been reviewed by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control number 2125–0543, approved through March 31, 1997.

(2) The information collection requirements of this part are found in the following sections: Section 382.105, 382.113, 382.301, 382.303, 382.305, 382.307, 382.309, 382.311, 382.401, 382.403, 382.405, 382.407, 382.409, 382.411, 382.413, 382.601, 382.603, 382.605.

§ 382.403 Reporting of results in a management information system.

(a) An employer shall prepare and maintain a summary of the results of its alcohol and controlled substances testing programs performed under this part during the previous calendar year, when requested by the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the employer or any of its drivers.

(b) If an employer is notified, during the month of January, of a request by the Federal Highway Administration to report the employer's annual calendar year summary information, the employer shall prepare and submit the report to the Federal Highway Administration by March 15 of that year. The employer shall ensure that the annual summary report is accurate and received by March 15 at the location that the Federal Highway Administration specifies in its request. The report shall be in the form and manner prescribed by the Federal Highway Administration in its request. When the report is submitted to the Federal Highway Administration by mail or electronic transmission, the information requested shall be typed, except for the signature of the certifying official. Each employer shall ensure the accuracy and timeliness of each report submitted by the employer or a consortium.

(c) *Detailed summary.* Each annual calendar year summary that contains information on a verified positive controlled substances test result, an alcohol screening test result of 0.02 or greater, or any other violation of the alcohol misuse provisions of subpart B of this part shall include the following informational elements:

(1) Number of drivers subject to Part 382;

(2) Number of drivers subject to testing under the alcohol misuse or controlled substances use rules of more than one DOT agency, identified by each agency;

(3) Number of urine specimens collected by type of test (e.g., pre-employment, random, reasonable suspicion, post-accident);

(4) Number of positives verified by a MRO by type of test, and type of controlled substance;

(5) Number of negative controlled substance tests verified by a MRO by type of test;

(6) Number of persons denied a position as a driver following a pre-employment verified positive controlled substances test and/or a pre-employment alcohol test that indicates

an alcohol concentration of 0.04 or greater;

(7) Number of drivers with tests verified positive by a medical review officer for multiple controlled substances;

(8) Number of drivers who refused to submit to an alcohol or controlled substances test required under this subpart;

(9)(i) Number of supervisors who have received required alcohol training during the reporting period; and

(ii) Number of supervisors who have received required controlled substances training during the reporting period;

(10)(i) Number of screening alcohol tests by type of test; and

(ii) Number of confirmation alcohol tests, by type of test;

(11) Number of confirmation alcohol tests indicating an alcohol concentration of 0.02 or greater but less than 0.04, by type of test;

(12) Number of confirmation alcohol tests indicating an alcohol concentration of 0.04 or greater, by type of test;

(13) Number of drivers who were returned to duty (having complied with the recommendations of a substance abuse professional as described in §§ 382.503 and 382.605), in this reporting period, who previously:

(i) Had a verified positive controlled substance test result, or

(ii) Engaged in prohibited alcohol misuse under the provisions of this part;

(14) Number of drivers who were administered alcohol and drug tests at the same time, with both a verified positive drug test result and an alcohol test result indicating an alcohol concentration of 0.04 or greater; and

(15) Number of drivers who were found to have violated any non-testing prohibitions of subpart B of this part, and any action taken in response to the violation.

(d) *Short summary.* Each employer's annual calendar year summary that contains only negative controlled substance test results, alcohol screening test results of less than 0.02, and does not contain any other violations of subpart B of this part, may prepare and submit, as required by paragraph (b) of this section, either a standard report form containing all the information elements specified in paragraph (c) of this section, or an ''EZ'' report form. The ''EZ'' report shall include the following information elements:

(1) Number of drivers subject to this Part 382;

(2) Number of drivers subject to testing under the alcohol misuse or controlled substance use rules of more than one DOT agency, identified by each agency;

(3) Number of urine specimens collected by type of test (e.g., pre-employment, random, reasonable suspicion, post-accident);

(4) Number of negatives verified by a medical review officer by type of test;

(5) Number of drivers who refused to submit to an alcohol or controlled substances test required under this subpart;

(6)(i) Number of supervisors who have received required alcohol training during the reporting period; and

(ii) Number of supervisors who have received required controlled substances training during the reporting period;

(7) Number of screen alcohol tests by type of test; and

(8) Number of drivers who were returned to duty (having complied with the recommendations of a substance abuse professional as described in §§ 382.503 and 382.605), in this reporting period, who previously:

(i) Had a verified positive controlled substance test result, or

(ii) Engaged in prohibited alcohol misuse under the provisions of this part.

(e) Each employer that is subject to more than one DOT agency alcohol or controlled substances rule shall identify each driver covered by the regulations of more than one DOT agency. The identification will be by the total number of covered functions. Prior to conducting any alcohol or controlled substances test on a driver subject to the rules of more than one DOT agency, the employer shall determine which DOT agency rule or rules authorizes or requires the test. The test result information shall be directed to the appropriate DOT agency or agencies.

(f) A consortium may prepare annual calendar year summaries and reports on behalf of individual employers for purposes of compliance with this section. However, each employer shall sign and submit such a report and shall remain responsible for ensuring the accuracy and timeliness of each report prepared on its behalf by a consortium.

§ 382.405 Access to facilities and records.

(a) Except as required by law or expressly authorized or required in this section, no employer shall release driver information that is contained in records required to be maintained under § 382.401.

(b) A driver is entitled, upon written request, to obtain copies of any records pertaining to the driver's use of alcohol or controlled substances, including any records pertaining to his or her alcohol or controlled substances tests. The employer shall promptly provide the records requested by the driver. Access to a driver's records shall not be contingent upon payment for records other than those specifically requested.

(c) Each employer shall permit access to all facilities utilized in complying with the requirements of this part to the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the employer or any of its drivers.

(d) Each employer shall make available copies of all results for employer alcohol and/or controlled substances testing conducted under this part and any other information pertaining to the employer's alcohol misuse and/or controlled substances use prevention program, when requested by the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the employer or any of its drivers.

(e) When requested by the National Transportation Safety Board as part of an accident investigation, employers shall disclose information related to the employer's administration of a post-accident alcohol and/or controlled substance test administered following the accident under investigation.

(f) Records shall be made available to a subsequent employer upon receipt of a written request from a driver. Disclosure by the subsequent employer is permitted only as expressly authorized by the terms of the driver's request.

(g) An employer may disclose information required to be maintained under this part pertaining to a driver, the decisionmaker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of an alcohol and/or controlled substance test administered under this part, or from the employer's determination that the driver engaged in conduct prohibited by subpart B of this part (including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the driver.)

(h) An employer shall release information regarding a driver's records as directed by the specific, written consent of the driver authorizing release of the information to an identified person. Release of such information by the person receiving the information is permitted only in accordance with the terms of the employee's consent.

§ 382.407 Medical review officer notifications to the employer.

(a) The medical review officer may report to the employer using any communications device, but in all instances a signed, written notification must be forwarded within three

business days of completion of the medical review officer's review, pursuant to part 40 of this title. A legible photocopy of the fourth copy of Part 40 Appendix A subtitled *COPY 4—SEND DIRECTLY TO MEDICAL REVIEW OFFICER—DO NOT SEND TO LABORATORY* of the *Federal Custody and Control Form OMB Number 9999–0023* may be used to make the signed, written notification to the employer for all test results (positive, negative, canceled, etc.), provided that the controlled substance(s) verified as positive, and the MRO's signature, shall be legibly noted in the remarks section of step 8 of the form completed by the medical review officer. The MRO must sign all verified positive test results. An MRO may sign or rubber stamp negative test results. An MRO's staff may rubber stamp negative test results under written authorization of the MRO. In no event shall an MRO, or his/her staff, use electronic signature technology to comply with this section. All reports, both oral and in writing, from the medical review officer to an employer shall clearly include:

(1) A statement that the controlled substances test being reported was in accordance with part 40 of this title and this part, except for legible photocopies of Copy 4 of the Federal Custody and Control Form;

(2) The full name of the driver for whom the test results are being reported;

(3) The type of test indicated on the custody and control form (i.e. random, post-accident, follow-up);

(4) The date and location of the test collection;

(5) The identities of the persons or entities performing the collection, analyzing the specimens, and serving as the medical review officer for the specific test;

(6) The results of the controlled substances test, positive, negative, test canceled, or test not performed, and if positive, the identity of the controlled substance(s) for which the test was verified positive.

(b) A medical review officer shall report to the employer that the medical review officer has made all reasonable efforts to contact the driver as provided in § 40.33(c) of this title. The employer shall, as soon as practicable, request that the driver contact the medical review officer prior to dispatching the driver or within 24 hours, whichever is earlier.

§ 382.409 Medical review officer record retention for controlled substances.

(a) A medical review officer shall maintain all dated records and notifications, identified by individual, for a minimum of five years for verified positive controlled substances test results.

(b) A medical review officer shall maintain all dated records and notifications, identified by individual, for a minimum of one year for negative and canceled controlled substances test results.

(c) No person may obtain the individual controlled substances test results retained by a medical review officer, and no medical review officer shall release the individual controlled substances test results of any driver to any person, without first obtaining a specific, written authorization from the tested driver. Nothing in this paragraph shall prohibit a medical review officer from releasing, to the employer or to officials of the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the controlled substances testing program under this part, the information delineated in § 382.407(a) of this subpart.

§ 382.411 Employer notifications.

(a) An employer shall notify a driver of the results of a pre-employment controlled substance test conducted under this part, if the driver requests such results within 60 calendar days of being notified of the disposition of the employment application. An employer shall notify a driver of the results of random, reasonable suspicion and post-accident tests for controlled substances conducted under this part if the test results are verified positive. The employer shall also inform the driver which controlled substance or substances were verified as positive.

(b) The designated management official shall make reasonable efforts to contact and request each driver who submitted a specimen under the employer's program, regardless of the driver's employment status, to contact and discuss the results of the controlled substances test with a medical review officer who has been unable to contact the driver.

(c) The designated management official shall immediately notify the medical review officer that the driver has been notified to contact the medical review officer within 24 hours.

§ 382.413 Inquiries for alcohol and controlled substances information from previous employers.

(a)(1) An employer shall, pursuant to the driver's written authorization, inquire about the following information on a driver from the driver's previous employers, during the preceding two years from the date of application, which are maintained by the driver's previous employers under § 382.401(b)(1) (i) through (iii) of this subpart:

(i) Alcohol tests with a result of 0.04 alcohol concentration or greater;

(ii) Verified positive controlled substances test results; and

(iii) Refusals to be tested.

(2) The information obtained from a previous employer may contain any alcohol and drug information the previous employer obtained from other previous employers under paragraph (a)(1) of this section.

(b) If feasible, the information in paragraph (a) of this section must be obtained and reviewed by the employer prior to the first time a driver performs safety-sensitive functions for the employer. If not feasible, the information must be obtained and reviewed as soon as possible, but no later than 14-calendar days after the first time a driver performs safety-sensitive functions for the employer. An employer may not permit a driver to perform safety-sensitive functions after 14 days without having made a good faith effort to obtain the information as soon as possible. If a driver hired or used by the employer ceases performing safety-sensitive functions for the employer before expiration of the 14-day period or before the employer has obtained the information in paragraph (a) of this section, the employer must still make a good faith effort to obtain the information.

(c) An employer must maintain a written, confidential record of the information obtained under paragraph (a) or (f) of this section. If, after making a good faith effort, an employer is unable to obtain the information from a previous employer, a record must be made of the efforts to obtain the information and retained in the driver's qualification file.

(d) The prospective employer must provide to each of the driver's previous employers the driver's specific, written authorization for release of the information in paragraph (a) of this section.

(e) The release of any information under this section may take the form of personal interviews, telephone interviews, letters, or any other method of transmitting information that ensures confidentiality.

(f) The information in paragraph (a) of this section may be provided directly to the prospective employer by the driver, provided the employer assures itself that the information is true and accurate.

(g) An employer may not use a driver to perform safety-sensitive functions if

the employer obtains information on a violation of the prohibitions in subpart B of this part by the driver, without obtaining information on subsequent compliance with the referral and rehabilitation requirements of § 382.605 of this part.

(h) Employers need not obtain information under paragraph (a) of this section generated by previous employers prior to the starting dates in § 382.115 of this part.

Subpart E—Consequences For Drivers Engaging In Substance Use-Related Conduct

§ 382.501 Removal from safety-sensitive function.

(a) Except as provided in subpart F of this part, no driver shall perform safety-sensitive functions, including driving a commercial motor vehicle, if the driver has engaged in conduct prohibited by subpart B of this part or an alcohol or controlled substances rule of another DOT agency.

(b) No employer shall permit any driver to perform safety-sensitive functions, including driving a commercial motor vehicle, if the employer has determined that the driver has violated this section.

(c) For purposes of this subpart, commercial motor vehicle means a commercial motor vehicle in commerce as defined in § 382.107, and a commercial motor vehicle in interstate commerce as defined in Part 390 of this subchapter.

§ 382.503 Required evaluation and testing.

No driver who has engaged in conduct prohibited by subpart B of this part shall perform safety-sensitive functions, including driving a commercial motor vehicle, unless the driver has met the requirements of § 382.605. No employer shall permit a driver who has engaged in conduct prohibited by subpart B of this part to perform safety-sensitive functions, including driving a commercial motor vehicle, unless the driver has met the requirements of § 382.605.

§ 382.505 Other alcohol-related conduct.

(a) No driver tested under the provisions of subpart C of this part who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 shall perform or continue to perform safety-sensitive functions for an employer, including driving a commercial motor vehicle, nor shall an employer permit the driver to perform or continue to perform safety-sensitive functions, until the start of the driver's next regularly scheduled duty period, but not less than 24 hours following administration of the test.

(b) Except as provided in paragraph (a) of this section, no employer shall take any action under this part against a driver based solely on test results showing an alcohol concentration less than 0.04. This does not prohibit an employer with authority independent of this part from taking any action otherwise consistent with law.

§ 382.507 Penalties.

Any employer or driver who violates the requirements of this part shall be subject to the penalty provisions of 49 U.S.C. section 521(b).

Subpart F—Alcohol Misuse and Controlled Substances Use Information, Training, and Referral

§ 382.601 Employer obligation to promulgate a policy on the misuse of alcohol and use of controlled substances.

(a) *General requirements.* Each employer shall provide educational materials that explain the requirements of this part and the employer's policies and procedures with respect to meeting these requirements.

(1) The employer shall ensure that a copy of these materials is distributed to each driver prior to the start of alcohol and controlled substances testing under this part and to each driver subsequently hired or transferred into a position requiring driving a commercial motor vehicle.

(2) Each employer shall provide written notice to representatives of employee organizations of the availability of this information.

(b) *Required content.* The materials to be made available to drivers shall include detailed discussion of at least the following:

(1) The identity of the person designated by the employer to answer driver questions about the materials;

(2) The categories of drivers who are subject to the provisions of this part;

(3) Sufficient information about the safety-sensitive functions performed by those drivers to make clear what period of the work day the driver is required to be in compliance with this part;

(4) Specific information concerning driver conduct that is prohibited by this part;

(5) The circumstances under which a driver will be tested for alcohol and/or controlled substances under this part, including post-accident testing under § 382.303(d);

(6) The procedures that will be used to test for the presence of alcohol and controlled substances, protect the driver and the integrity of the testing processes, safeguard the validity of the test results, and ensure that those results are attributed to the correct driver, including post-accident information, procedures and instructions required by § 382.303(d) of this part;

(7) The requirement that a driver submit to alcohol and controlled substances tests administered in accordance with this part;

(8) An explanation of what constitutes a refusal to submit to an alcohol or controlled substances test and the attendant consequences;

(9) The consequences for drivers found to have violated subpart B of this part, including the requirement that the driver be removed immediately from safety-sensitive functions, and the procedures under § 382.605;

(10) The consequences for drivers found to have an alcohol concentration of 0.02 or greater but less than 0.04;

(11) Information concerning the effects of alcohol and controlled substances use on an individual's health, work, and personal life; signs and symptoms of an alcohol or a controlled substances problem (the driver's or a coworker's); and available methods of intervening when an alcohol or a controlled substances problem is suspected, including confrontation, referral to any employee assistance program and or referral to management.

(c) *Optional provision.* The materials supplied to drivers may also include information on additional employer policies with respect to the use of alcohol or controlled substances, including any consequences for a driver found to have a specified alcohol or controlled substances level, that are based on the employer's authority independent of this part. Any such additional policies or consequences must be clearly and obviously described as being based on independent authority.

(d) *Certificate of receipt.* Each employer shall ensure that each driver is required to sign a statement certifying that he or she has received a copy of these materials described in this section. Each employer shall maintain the original of the signed certificate and may provide a copy of the certificate to the driver.

§ 382.603 Training for supervisors.

Each employer shall ensure that all persons designated to supervise drivers receive at least 60 minutes of training on alcohol misuse and receive at least an additional 60 minutes of training on controlled substances use. The training will be used by the supervisors to determine whether reasonable suspicion exists to require a driver to undergo

testing under § 382.307. The training shall include the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.

§ 382.605 Referral, evaluation, and treatment.

(a) Each driver who has engaged in conduct prohibited by subpart B of this part shall be advised by the employer of the resources available to the driver in evaluating and resolving problems associated with the misuse of alcohol and use of controlled substances, including the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs.

(b) Each driver who engages in conduct prohibited by subpart B of this part shall be evaluated by a substance abuse professional who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse and controlled substances use.

(c)(1) Before a driver returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited by subpart B of this part, the driver shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02 if the conduct involved alcohol, or a controlled substances test with a verified negative result if the conduct involved a controlled substance.

(2) In addition, each driver identified as needing assistance in resolving problems associated with alcohol misuse or controlled substances use,

(i) Shall be evaluated by a substance abuse professional to determine that the driver has properly followed any rehabilitation program prescribed under paragraph (b) of this section, and

(ii) Shall be subject to unannounced follow-up alcohol and controlled substances tests administered by the employer following the driver's return to duty. The number and frequency of such follow-up testing shall be as directed by the substance abuse professional, and consist of at least six tests in the first 12 months following the driver's return to duty. The employer may direct the driver to undergo return-to-duty and follow-up testing for both alcohol and controlled substances, if the substance abuse professional determines that return-to-duty and follow-up testing for both alcohol and controlled substances is necessary for that particular driver. Any such testing shall be performed in accordance with the requirements of 49 CFR part 40. Follow-up testing shall not exceed 60 months from the date of the driver's return to duty. The substance abuse professional may terminate the requirement for follow-up testing at any time after the first six tests have been administered, if the substance abuse professional determines that such testing is no longer necessary.

(d) Evaluation and rehabilitation may be provided by the employer, by a substance abuse professional under contract with the employer, or by a substance abuse professional not affiliated with the employer. The choice of substance abuse professional and assignment of costs shall be made in accordance with employer/driver agreements and employer policies.

(e) The employer shall ensure that a substance abuse professional who determines that a driver requires assistance in resolving problems with alcohol misuse or controlled substances use does not refer the driver to the substance abuse professional's private practice or to a person or organization from which the substance abuse professional receives remuneration or in which the substance abuse professional has a financial interest. This paragraph does not prohibit a substance abuse professional from referring a driver for assistance provided through—

(1) A public agency, such as a State, county, or municipality;

(2) The employer or a person under contract to provide treatment for alcohol or controlled substance problems on behalf of the employer;

(3) The sole source of therapeutically appropriate treatment under the driver's health insurance program; or

(4) The sole source of therapeutically appropriate treatment reasonably accessible to the driver.

(f) The requirements of this section with respect to referral, evaluation and rehabilitation do not apply to applicants who refuse to submit to a pre-employment alcohol or controlled substances test or who have a pre-employment alcohol test with a result indicating an alcohol concentration of 0.04 or greater or a controlled substances test with a verified positive test result.

PART 383—[AMENDED]

2. The authority citation for 49 CFR part 383 is revised to read as follows:

Authority: 49 U.S.C. 31101 *et seq.*, 31136, and 31502; and 49 CFR 1.48.

3. Section 383.3 is revised to read as follows:

§ 383.3 Applicability.

(a) The rules in this part apply to every person who operates a commercial motor vehicle (CMV) in interstate, foreign, or intrastate commerce, to all employers of such persons, and to all States.

(b) The exceptions contained in § 390.3(g) of this subchapter do not apply to this part. The employers and drivers identified in § 390.3(g) must comply with the requirements of this part, unless otherwise provided in this section.

(c) *Exception for certain military drivers.* Each State must exempt from the requirements of this part individuals who operate CMVs for military purposes. This exception is applicable to active duty military personnel; members of the military reserves; member of the national guard on active duty, including personnel on full-time national guard duty, personnel on part-time national guard training, and national guard military technicians (civilians who are required to wear military uniforms); and active duty U.S. Coast Guard personnel. This exception is not applicable to U.S. Reserve technicians.

(d) *Exception for farmers, firefighters and emergency response vehicle drivers.* A State may, at its discretion, exempt individuals identified in paragraphs (d)(1), (d)(2), and (d)(3) of this section from the requirements of this part. The use of this waiver is limited to the driver's home State unless there is a reciprocity agreement with adjoining States.

(1) Operators of a farm vehicle which is:

(i) Controlled and operated by a farmer, including operation by employees or family members;

(ii) Used to transport either agricultural products, farm machinery, farm supplies, or both to or from a farm;

(iii) Not used in the operations of a common or contract motor carrier; and

(iv) Used within 241 kilometers (150 miles) of the farmer's farm.

(2) Firefighters and other persons who operate CMVs which are necessary to the preservation of life or property or the execution of emergency governmental functions, are equipped with audible and visual signals and are not subject to normal traffic regulation. These vehicles include fire trucks, hook and ladder trucks, foam or water transport trucks, police SWAT team vehicles, ambulances, or other vehicles that are used in response to emergencies.

(e) *Restricted commercial drivers license (CDL) for certain drivers in the State of Alaska.* (1) The State of Alaska may, at its discretion, waive only the following requirements of this part and issue a CDL to each driver that meets

the conditions set forth in paragraphs (e)(2) and (3) of this section:

(i) The knowledge tests standards for testing procedures and methods of subpart H, but must continue to administer knowledge tests that fulfill the content requirements of subpart G for *all* applicants;

(ii) All the skills test requirements; and

(iii) The requirement under § 383.153(a)(4) to have a photograph on the license document.

(2) Drivers of CMVs in the State of Alaska must operate exclusively over roads that meet *both* of the following criteria to be eligible for the exception in paragraph (e)(1) of this section:

(i) Such roads are not connected by land highway or vehicular way to the land-connected State highway system; and

(ii) Such roads are not connected to any highway or vehicular way with an average daily traffic volume greater than 499.

(3) Any CDL issued under the terms of this paragraph must carry two restrictions:

(i) Holders may not operate CMVs over roads other than those specified in paragraph (e)(2) of this section; and

(ii) The license is not valid for CMV operation outside the State of Alaska.

(f) *Restricted CDL for certain drivers in farm-related service industries.* (1) A State may, at its discretion, waive the required knowledge and skills tests of subpart H of this part and issue restricted CDLs to employees of these designated farm-related service industries:

(i) Agri-chemical businesses;

(ii) Custom harvesters;

(iii) Farm retail outlets and suppliers;

(iv) Livestock feeders.

(2) A restricted CDL issued pursuant to this paragraph shall meet all the requirements of this part, except subpart H of this part. A restricted CDL issued pursuant to this paragraph shall be accorded the same reciprocity as a CDL meeting all of the requirements of this part. The restrictions imposed upon the issuance of this restricted CDL shall not limit a person's use of the CDL in a non-CMV during either validated or non-validated periods, nor shall the CDL affect a State's power to administer its driver licensing program for operators of vehicles other than CMVs.

(3) A State issuing a CDL under the terms of this paragraph must restrict issuance as follows:

(i) Applicants must have a good driving record as defined in this paragraph. Drivers who have not held any motor vehicle operator's license for at least one year shall not be eligible for this CDL. Drivers who have between one and two years of driving experience must demonstrate a good driving record for their entire driving history. Drivers with more than two years of driving experience must have a good driving record for the two most recent years. For the purposes of this paragraph, the term *good driving record* means that an applicant:

(A) Has not had more than one license (except in the instances specified in § 383.21(b));

(B) Has not had *any* license suspended, revoked, or canceled;

(C) Has not had *any* conviction for any type of motor vehicle for the disqualifying offenses contained in § 383.51(b)(2);

(D) Has not had *any* conviction for any type of motor vehicle for serious traffic violations; and

(E) Has not had *any* conviction for a violation of State or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with any traffic accident, and has no record of an accident in which he/she was at fault.

(ii) Restricted CDLs shall have the same renewal cycle as unrestricted CDLs, but shall be limited to the seasonal period or periods as defined by the State of licensure, provided that the total number of calendar days in any 12-month period for which the restricted CDL is valid does not exceed 180. If a State elects to provide for more than one seasonal period, the restricted CDL is valid for commercial motor vehicle operation only during the currently approved season, and must be revalidated for each successive season. Only one seasonal period of validity may appear on the license document at a time. The good driving record must be confirmed prior to any renewal or revalidation.

(iii) Restricted CDL holders are limited to operating Group B and C vehicles, as described in subpart F of this part.

(iv) Restricted CDLs shall not be issued with *any* endorsements on the license document. Only the limited tank vehicle and hazardous materials endorsement privileges that the restricted CDL automatically confers and are described in paragraph (f)(3)(v) of this section are permitted.

(v) Restricted CDL holders may not drive vehicles carrying any placardable quantities of hazardous materials, except for diesel fuel in quantities of 3,785 liters (1,000 gallons) or less; liquid fertilizers (i.e., plant nutrients) in vehicles or implements of husbandry in total quantities of 11,355 liters (3,000 gallons) or less; and solid fertilizers (i.e., solid plant nutrients) that are not transported with any organic substance.

(vi) Restricted CDL holders may not hold an unrestricted CDL at the same time.

(vii) Restricted CDL holders may not operate a commercial motor vehicle beyond 241 kilometers (150 miles) from the place of business or the farm currently being served.

(g) *Restricted CDL for certain drivers in the pyrotechnic industry.* (1) A State may, at its discretion, waive the required hazardous materials knowledge tests of subpart H of this part and issue restricted CDLs to part-time drivers operating commercial motor vehicles transporting less than 227 kilograms (500 pounds) of fireworks classified as DOT Class 1.3G explosives.

(2) A State issuing a CDL under the terms of this paragraph must restrict issuance as follows:

(i) The GVWR of the vehicle to be operated must be less than 4,537 kilograms (10,001 pounds);

(ii) If a State believes, at its discretion, that the training required by § 172.704 of this title adequately prepares part-time drivers meeting the other requirements of this paragraph to deal with fireworks and the other potential dangers posed by fireworks transportation and use, the State may waive the hazardous materials knowledge tests of subpart H of this part. The State may impose any requirements it believes is necessary to ensure itself that a driver is properly trained pursuant to § 172.704 of this title.

(iii) A restricted CDL document issued pursuant to this paragraph shall have a statement clearly imprinted on the face of the document that is substantially similar as follows: ''For use as a CDL only during the period from June 30 through July 6 for purposes of transporting less than 227 kilograms (500 pounds) of fireworks classified as DOT Class 1.3G explosives in a vehicle with a GVWR of less than 4,537 kilograms (10,001 pounds).

(3) A restricted CDL issued pursuant to this paragraph shall meet all the requirements of this part, except those specifically identified. A restricted CDL issued pursuant to this paragraph shall be accorded the same reciprocity as a CDL meeting all of the requirements of this part. The restrictions imposed upon the issuance of this restricted CDL shall not limit a person's use of the CDL in a non-CMV during either validated or non-validated periods, nor shall the CDL affect a State's power to administer its driver licensing program for operators of vehicles other than CMVs.

(4) Restricted CDLs shall have the same renewal cycle as unrestricted CDLs, but shall be limited to the seasonal period of June 30 through July 6 of each year or a lesser period as defined by the State of licensure.

(5) Persons who operate commercial motor vehicles during the period from July 7 through June 29 for purposes of transporting less than 227 kilograms (500 pounds) of fireworks classified as DOT Class 1.3G explosives in a vehicle with a GVWR of less than 4,537 kilograms (10,001 pounds) and who also operate such vehicles for the same purposes during the period June 30 through July 6 shall not be issued a restricted CDL pursuant to this paragraph.

4. Section 383.5 is amended by revising the term ''commercial motor vehicle'' to read as follows:

§ 383.5 Definitions.

* * * * *

Commercial motor vehicle (CMV) means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle—

(a) Has a gross combination weight rating of 11,794 kilograms or more (26,001 pounds or more) inclusive of a towed unit with a gross vehicle weight rating of more than 4,536 kilograms (10,000 pounds); or

(b) Has a gross vehicle weight rating of 11,794 or more kilograms (26,001 pounds or more); or

(c) Is designed to transport 16 or more passengers, including the driver; or

(d) Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F). * * *

* * * * *

5. Section 383.91 is amended by revising paragraph (a) to read as follows:

§ 383.91 Commercial motor vehicle groups.

(a) Vehicle group descriptions. Each driver applicant must possess and be tested on his/her knowledge and skills, described in subpart G of this part, for the commercial motor vehicle group(s) for which he/she desires a CDL. The commercial motor vehicle groups are as follows:

(1) Combination vehicle (Group A)—Any combination of vehicles with a gross combination weight rating (GCWR) of 11,794 kilograms or more (26,001 pounds or more) provided the GVWR of the vehicle(s) being towed is in excess of 4,536 kilograms (10,000 pounds).

(2) Heavy Straight Vehicle (Group B)—Any single vehicle with a GVWR of 11,794 kilograms or more (26,001 pounds or more), or any such vehicle towing a vehicle not in excess of 4,536 kilograms (10,000 pounds) GVWR.

(3) Small Vehicle (Group C)—Any single vehicle, or combination of vehicles, that meets neither the definition of Group A nor that of Group B as contained in this section, but that either is designed to transport 16 or more passengers including the driver, or is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).

* * * * *

PART 390—[AMENDED]

6. The authority citation for part 390 continues to read as follows:

Authority: 49 U.S.C. 5901–5907, 31132, 31133, 31136, 31502, and 31504; and 49 CFR 1.48.

§ 390.5 [Amended]

7. Section 390.5 is amended by revising the definition of ''commercial motor vehicle'' to read as follows:

* * * * *

Commercial motor vehicle means any self-propelled or towed vehicle used on public highways in interstate commerce to transport passengers or property when:

(a) The vehicle has a gross vehicle weight rating or gross combination weight rating of 4,537 or more kilograms (10,001 or more pounds); or

(b) The vehicle is designed to transport more than 15 passengers, including the driver; or

(c) The vehicle is used in the transportation of hazardous materials in a quantity requiring placarding under regulations issued by the Secretary under the Hazardous Materials Transportation Act (49 U.S.C. 5101 *et. seq.*).

* * * * *

8. Section 390.27 is revised to read as follows:

§ 390.27 Locations of regional offices of motor carriers.

Region No.	Territory included	Location of regional office
1	Connecticut, Maine, Massachusetts, New Jersey, New Hampshire, New York, Rhode Island, Vermont, Puerto Rico, and the Virgin Islands. That part of Canada east of Highways 19 and 8 from Port Burwell to Goderich, thence a straight line running north through Tobermory and Sudbury, and thence due north to the Canadian border.	Leo W. O'Brien Federal Office Building, Clinton & Pearl Streets, Room 737, Albany, NY 12207–2334.
3	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia.	City Crescent Building, #10 South Howard Street, Suite 4000, Baltimore, MD 21201–2819.
4	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.	1720 Peachtree Road, NW., Suite 200, Atlanta, GA 30367–2349.
5	Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin. That part of Canada west of Highways 19 and 8 from Port Burwell to Goderich, thence a straight line running north through Tobermory and Sudbury, and thence due north to the Canadian border, and east of the boundary between the Provinces of Ontario and Manitoba to Hudson Bay and thence a straight line north to the Canadian border.	19900 Governors Drive, Suite 210, Olympia Fields, IL 60461–1021.
6	Arkansas, Louisiana, New Mexico, Oklahoma, and Texas. All of Mexico, except the States of Baja California and Sonora and the Territory of Baja California Sur., Mexico. All nations south of Mexico.	Room 8A00, Federal Building, 819 Taylor Street, P.O. Box 902003, Fort Worth, TX 76102.

Region No.	Territory included	Location of regional office
7	Iowa, Kansas, Missouri, and Nebraska	6301 Rockhill Road, P.O. Box 419715, Kansas City, MO 64141–6715.
8	Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming. That part of Canada west of the boundary between the Provinces of Ontario and Manitoba to Hudson Bay and thence a straight line due north to the Canadian border, and east of Highway 95 from Kingsgate to Blaeberry and thence a straight line due north to the Canadian border.	555 Zang Street, room 190, Lakewood, CO 80228–1014.
9	Arizona, California, Hawaii, Nevada, Guam, American Samoa, and Mariana Islands. The States of Baja California and Sonora, Mexico, and the Territory of Baja California Sur., Mexico.	201 Mission Street, Suite 2100, San Francisco, CA 94105.
10	Alaska, Idaho, Oregon and Washington. That part of Canada west of Highway 95 from Kingsgate to Blaeberry and thence a straight line due north to the Canadian border, and all the Province of British Columbia.	KOIN Center, suite 600, 222 SW Columbia Street, Portland, OR 97201–2491.

PART 391—[AMENDED]

9. The authority citation for part 391 continues to read as follows:

Authority: 49 U.S.C. 504, 31133, 31136, and 31502; and 49 CFR 1.48.

10. Section 391.85 is amended by removing the term and definition of ''drivers subject to testing'' and by revising the definition ''commercial motor vehicle'' to read as follows:

§ 391.85 Definitions.

* * * * *

Commercial motor vehicle means any self-propelled or towed motor vehicle used on public highways in interstate commerce to transport passengers or property when:

(a) The motor vehicle has a gross vehicle weight rating or gross combination weight rating of 11,794 or more kilograms (26,001 or more pounds); or

(b) The motor vehicle is designed to transport more than 15 passengers, including the driver; or

(c) The motor vehicle is used in the transportation of hazardous materials in a quantity requiring placarding under regulations issued by the Secretary under the Hazardous Materials Transportation Act (49 U.S.C. 5101 *et. seq.*).

* * * * *

11. Section 391.125 is revised to read as follows:

§ 391.125 Termination schedule of this subpart.

(a) All motor carriers shall retain all records generated in connection with this subpart as required by § 382.401 of this subchapter.

(b) *Large employers.* Except as provided in paragraph (a) of this section, each motor carrier with fifty or more drivers on March 17, 1994, shall terminate compliance with this subpart and shall implement the requirements of part 382 of this subchapter beginning on January 1, 1995.

(c) *Small employers.* Except as provided in paragraph (a) of this section, each motor carrier with fewer than fifty drivers on March 17, 1994, shall terminate compliance with this subpart and shall implement the requirements of Part 382 of this subchapter beginning on January 1, 1996.

(d) Except as provided in paragraph (a) of this section, all motor carriers shall terminate compliance with this subpart on January 1, 1996.

PART 392—[AMENDED]

12. The authority citation for part 392 continues to read as follows:

Authority: 49 U.S.C. 31136 and 31502; and 49 CFR 1.48.

13. Section 392.4 is revised to read as follows:

§ 392.4 Drugs and other substances.

(a) No driver shall be on duty and possess, be under the influence of, or use, any of the following drugs or other substances:

(1) Any Schedule I drug or other substance identified in appendix D to this subchapter;

(2) An amphetamine or any formulation thereof (including, but not limited, to ''pep pills,'' and ''bennies'');

(3) A narcotic drug or any derivative thereof; or

(4) Any other substance, to a degree which renders the driver incapable of safely operating a motor vehicle.

(b) No motor carrier shall require or permit a driver to violate paragraph (a) of this section.

(c) Paragraphs (a) (2), (3), and (4) do not apply to the possession or use of a substance administered to a driver by or under the instructions of a licensed medical practitioner, as defined in § 382.107 of this subchapter, who has advised the driver that the substance will not affect the driver's ability to safely operate a motor vehicle.

(d) As used in this section, ''possession'' does not include possession of a substance which is manifested and transported as part of a shipment.

14. Section 392.5 is amended by revising paragraph (a) to read as follows:

§ 392.5 Alcohol prohibition.

(a) No driver shall—

(1) Use alcohol, as defined in § 382.107 of this subchapter, or be under the influence of alcohol, within 4 hours before going on duty or operating, or having physical control of, a commercial motor vehicle; or

(2) Use alcohol, be under the influence of alcohol, or have any measured alcohol concentration or detected presence of alcohol, while on duty, or operating, or in physical control of a commercial motor vehicle; or

(3) Be on duty or operate a commercial motor vehicle while the driver possesses wine of not less than one-half of one per centum of alcohol by volume, beer *as defined in 26 U.S.C. 5052(a), of the Internal Revenue Code of 1954,* and distilled spirits *as defined in section 5002(a)(8), of such Code.* However, this does not apply to possession of wine, beer, or distilled spirits which are:

(i) Manifested and transported as part of a shipment; or

(ii) Possessed or used by bus passengers.

* * * * *

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Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 310

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; OTC Nasal Decongestant Drug Products; Partial Stay of Final Rule; Enforcement Policy

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 76N–052N]

RIN 0910–AA01

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; OTC Nasal Decongestant Drug Products; Partial Stay of Final Rule; Enforcement Policy

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; partial stay of regulation; enforcement policy.

SUMMARY: The Food and Drug Administration (FDA) is staying part of a final rule that established that certain over-the-counter (OTC) nasal decongestant drug products are not generally recognized as safe and effective and are misbranded. This action is being taken in response to a citizen petition for a stay of enforcement of regulatory action against OTC nasal decongestant drug products containing the active ingredient l-desoxyephedrine. The agency is also providing labeling requirements for OTC topical nasal decongestant drug products containing l-desoxyephedrine. This action is part of the ongoing review of OTC drug products conducted by FDA.

DATES: This partial stay is effective August 31, 1995. On or after September 9, 1996, no OTC drug product containing l-desoxyephedrine may be initially introduced or initially delivered for introduction into interstate commerce unless its labeling conforms to the conditions of this partial stay.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–105), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2304.

SUPPLEMENTARY INFORMATION:

I. Background

In the Federal Register of August 23, 1994 (59 FR 43386), the agency published a final rule in the form of a final monograph establishing conditions under which OTC nasal decongestant drug products are generally recognized as safe and effective. The final monograph did not include l-desoxyephedrine as a nasal decongestant active ingredient. The final rule listed l-desoxyephedrine in § 310.545(a)(6)(ii)(B) (21 CFR 310.545(a)(6)(ii)(B)) as not generally recognized as safe and effective. L-desoxyephedrine was declared nonmonograph because it was not currently standardized and characterized for quality and purity in an official compendium, i.e., the United States Pharmacopeia (USP)/National Formulary (NF) (59 FR 43386 at 43408). The agency stated in the final rule that OTC drug products containing l-desoxyephedrine as a topical nasal decongestant active ingredient were new drugs under section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(p)). The effective date of the final rule was August 23, 1995. To be marketed, OTC topical nasal decongestant drug products containing l-desoxyephedrine would require an application or abbreviated application approved under section 505 of the act (21 U.S.C. 355) and part 314 (21 CFR part 314). In the absence of an approved application, OTC topical nasal decongestant drug products containing l-desoxyephedrine would be misbranded under section 502 of the act (21 U.S.C. 352). The agency also stated that should interested parties develop appropriate standards that are included in the USP, the nasal decongestant final monograph would be amended to include l-desoxyephedrine as a topical nasal decongestant active ingredient. The agency reserved 21 CFR 341.20(b)(1) of the final monograph for OTC nasal decongestant drug products for possible future inclusion of l-desoxyephedrine as a topical nasal decongestant active ingredient.

Subsequently, a citizen petition (Ref. 1) requested that the agency defer the effective date of § 310.545(a)(6)(ii)(B) as it applies to l-desoxyephedrine (topical) until December 31, 1996. The petitioner stated that it had forwarded a draft compendial monograph (Ref. 2) for 1-desoxyephedrine to the USP in late July 1995. The petition stated that USP expects to publish a proposed monograph for public comment in the November/December 1995 issue of *Pharmacopeial Forum*, and expects the resulting monograph to become official with publication of USP23/NF18 Supplement No. 5, on November 15, 1996. The petition stated that USP, as a practical matter, will have concluded to adopt the monograph for l-desoxyephedrine well before November 15, 1996, and will have given notice of that conclusion in its Pharmacopeial Forum Interim Revision Announcement. The petitioner stated its belief that the agency should have ample time to initiate its process to amend the nasal decongestant final monograph by the end of 1996.

The agency was subsequently informed that the ingredient might become official in the USP in November 1996 or May 1997 (Ref. 3). On August 31, 1995, the agency stated its intent to stay the effective date for l-desoxyephedrine in the list of active ingredients in § 310.545(a)(6)(ii)(B) until December 31, 1996, to permit time for USP processing to include the ingredient in a compendial monograph (Ref. 4). At this time, the agency is staying the entry for ''l-desoxyephedrine (topical)'' in § 310.545(a)(6)(ii)(B) until further notice. When l-desoxyephedrine becomes official in the USP, the final monograph for OTC nasal decongestant drug products will be amended to include the ingredient and § 310.545(a)(6)(ii)(B) will be revised accordingly.

During the stay period, the following labeling requirements will be in effect for topical nasal decongestant drug products containing l-desoxyephedrine:

1. The statement of identity should follow § 341.80(a) (21 CFR 341.80(a)) of the final monograph for OTC nasal decongestant drug products (59 FR 43386 at 43409).

2. The indications should follow § 341.80(b) of the final monograph for OTC nasal decongestant drug products (59 FR 43386 at 43409 and 43410).

3. The warnings should follow § 341.80(c)(2)(i) of the final monograph for OTC nasal decongestant drug products (59 FR 43386 at 43410). In addition, the following warnings are required: ''Do not use this product for more than 7 days. Use only as directed. Frequent or prolonged use may cause nasal congestion to recur or worsen. If symptoms persist, consult a doctor.''

4. The directions are for a product that must deliver 0.04 to 0.150 milligram of l-desoxyephedrine in each 800 milliliters of air. Adults and children 12 years of age and over: Two inhalations in each nostril not more often than every 2 hours. Children 6 to under 12 years of age (with adult supervision): One inhalation in each nostril not more often than every 2 hours. Children under 6 years of age: Consult a doctor.

5. Other required statements should follow § 341.80(d)(viii)(A) and (d)(viii)(B).

As part of the conditions of this stay of action, the agency has determined that manufacturers of OTC topical nasal decongestant drug products containing l-desoxyephedrine should implement this labeling within 6 months of the publication of this partial stay. Therefore, on or after September 9,

1996, no OTC drug product that is subject to this partial stay of the final rule for OTC nasal decongestant drug products may be initially introduced or initially delivered for introduction into interstate commerce unless its labeling conforms to the conditions of this partial stay. Further, any OTC drug product subject to this partial stay that is repackaged or relabeled after the date of publication of this partial stay must be in compliance with the partial stay regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with this partial stay at the earliest possible date.

This partial stay of action applies only to l-desoxyephedrine in OTC topical nasal decongestant drug products and not to any other nasal decongestant active ingredient included under § 310.545(a)(6)(ii)(B).

II. References

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

(1) Comment No. CP1, Docket No. 95P–0245, Dockets Management Branch.

(2) Draft Compendial Monograph, in Comment No. CP1, Docket No. 95P–0245, Dockets Management Branch.

(3) Memorandum of telephone conversation between M. T. Benson, FDA, and T. Cecil, United States Pharmacopeial Convention, Inc., coded as MT1, Docket No. 95P–0245, Dockets Management Branch.

(4) Letter from W. E. Gilbertson, FDA, to S. Rexinger, Leiner Health Products, and E. Lambert, Covington & Burling, coded as LET1, Docket No. 95P–0245, Dockets Management Branch.

III. Paperwork Reduction Act of 1995

FDA concludes that the labeling requirements discussed in this document are not subject to review by the Office of Management and Budget because they do not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Rather, the labeling statements are a ''public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)).

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, 512–516, 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. In § 310.545 *Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses* in paragraph (a)(6)(ii)(B), the entry for ''l-desoxyephedrine (topical)'' is stayed until further notice.

Dated: February 22, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–5444 Filed 3–7–96; 8:45 am]

BILLING CODE 4160–01–F

Federal Register

Friday
March 8, 1996

Part V

Department of Labor

Bureau of Labor Statistics

Notice of Decision To Revise Method for Estimation of Monthly Labor Force Statistics for Certain Subnational Areas; Notice

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Notice of Decision To Revise Method for Estimation of Monthly Labor Force Statistics for Certain Subnational Areas

AGENCY: Bureau of Labor Statistics, Labor.

ACTION: Statement of Policy.

SUMMARY: The Department of Labor, through the Bureau of Labor Statistics (BLS), is responsible for the development and publication of local area labor force statistics. This program includes the issuance of monthly estimates of the labor force, employment, unemployment, and the unemployment rate for each State and labor market area in the nation. Beginning with estimates for January 1996, monthly labor force statistics for 11 large States (California, Florida, Illinois, Massachusetts, Michigan, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Texas) and two large areas (New York City, and the Los Angeles Metropolitan Area), are being developed according to the time series model approach used in the 39 other States and the District of Columbia. This action is in response to a reduction in the number of households in the Current Population Survey (CPS) undertaken to address lower funding levels for BLS and excessive volatility in the monthly CPS estimates for these large States and areas. Historically, the CPS sample in these States and areas was sufficiently large to meet the BLS standard for direct use and the monthly estimates were taken directly from the survey. The BLS will publish monthly estimates for these subnational areas based on the time series modeling approach starting in March 1996.

DATES: These changes were effective on January 7, 1996.

FOR FURTHER INFORMATION CONTACT: Sharon P. Brown, Chief, Division of Local Area Unemployment Statistics, Bureau of Labor Statistics, telephone 202–606–6390.

SUPPLEMENTARY INFORMATION:

Summary of Comments

The BLS received 5 comments in response to the proposal to revise the method of labor force estimation for certain large States and areas which was published November 3, 1995 [60 FR 55855]. Two commenters expressed support of the proposal; 2 were opposed. The fifth commenter expressed support for model-based estimation, but had reservations about the characterization of the model approach and reduction in sample size.'

Three commenters expressed concern that detailed demographic statistics from the CPS be preserved. The BLS will continue to make CPS demographic estimates available, although the variance of the monthly estimates will rise, with a negative impact on analytical uses, because of the sample size reduction. These monthly State characteristics data will not add up to the official labor force totals which are produced by the models.

Detailed characteristics will continue to be published in the annual Geographic Profile of Employment and Unemployment publication. These estimates will be consistent with annual totals, but the reliability of these estimates will be reduced, and a few may no longer be of publishable quality.

Two commenters asked that parallel estimates be prepared for a minimum of one year, to explore other options to maintain the sample size and to simulate the effect on the estimates and on federal fund allocations. The decision to reduce the sample size of the CPS was made because of the anticipated lower funding levels for BLS. Other options to achieve commensurate savings were not available. Since the modeling approach has been used successfully in the 39 smaller States and the District of Columbia, simulation in the larger States was not required.

One commenter noted that the CPS sample size cut and switch to model-based estimation appears to run counter to the purposes of the major redesign of the CPS implemented in 1994. BLS does not agree, as the models will benefit from the improvements in data accuracy and definitional changes stemming from the redesign. A similar concern was expressed by a commenter who felt that the models were portrayed as a fall-back method. The BLS strongly supports the statistical modeling modeling methodology. The models are designed to adapt to changes in trend and seasonality in the CPS while using historical relationships in the data to smooth current estimates and explicitly removing an estimate of the CPS noise. The resultant estimates exhibit considerably lower volatility as compared to the sample-based estimates.

A commenter noted that the CPS estimates have a statistical measure of reliability, while the models at this time do not. BLS is researching the development of monthly reliability measures for the modeled estimates.

The issue of revision of estimates was raised. Under the model methodology, State-wide estimates are revised monthly as well as at year-end.

Operational concerns were expressed by two commenters on the delay in the release of data. While the BLS will not publish the State labor force estimates until 3–4 weeks after the national release, BLS will update the estimating system immediately. Therefore, States will be able to make estimates as early as the day that the monthly national statistics are released, if they so desire.

Additional Information

The BLS has been responsible for the Local Area Unemployment Statistics (LAUS) program since 1972. In 1978, the BLS broadened the use of data from the CPS in the LAUS program by extending the annual reliability criterion to monthly data. This action was within the context of a budget proposal to expand the CPS to yield monthly employment and unemployment data for all States by June 1981. Under the expanded criterion, monthly CPS levels were used directly for the 10 largest States, two sub-States areas, and the respective balance-of-State areas. The use of annual average CPS data continued for the other 40 States and the District of Columbia. Ultimately, the budget proposal which initiated the direct use of monthly State CPS data was rejected as too costly. Based on population ranking, the State of North Carolina joined the group of direct-use States in 1985, bringing the group to a total size of 11 States. Also in 1985, sample redesign and other efficiencies improved the reliability of CPS data at the State level, resulting in the criterion on monthly and annual average data of an 8 percent coefficient of variation on the level of unemployment when the unemployment rate is 6 percent.

Especially in regard to the monthly direct use of State CPS data, concern had been expressed as to the volatility of the statistics. In the typical direct-use State, a month-to-month change in the unemployment rate had to exceed 0.7 percentage point to be considered significantly. Often, States experienced consecutive, offsetting large movements in the unemployment rate.

For the other 39 States and the District of Columbia, after extensive research and simulation, variable coefficient time series models for monthly estimation of State employment and unemployment were introduced in 1989. Further improvements was effected with the implementation of signal-plus-noise models in 1994. These models rely heavily on monthly CPS data, as well as current wage and salary employment

and unemployment insurance statistics. At the end of each year, the monthly model estimates are rebenchmarked so that the annual averages for each State match the annual averages derived directly from the CPS.

Because of budget reductions, the CPS sample is not of sufficient size to provide monthly data directly for the 11 large States, New York City, and the Los Angeles Metropolitan Area. Monthly estimates will continue to be produced, based on the time series modeling method currently used for the other States and the District of Columbia. Data for the current direct-use States and areas are no longer released by the BLS at the same time as the monthly national labor force statistics, but are published about four weeks later in the State and Metropolitan Area Employment and Unemployment news release. States that are able to do so have the option of releasing these data earlier, perhaps even simultaneously with the release of national data. Monthly data for these States also are subject to end-of-year benchmarking.

The impact of the CPS sample cut on the national statistics is to increase the variability of most national estimates by about 5 percent. For example, under the current sample, a month-to-month change of 0.19 percentage points in the national unemployment rate represents a statistically significant change at the 90-percent confidence level; the corresponding change under the former design was 0.18 percent.

Detailed descriptions of the estimating methods are available at the above address.

Signed at Washington, D.C., this 1st day of March, 1996.

Thomas J. Plewes,

Associate Commissioner for Employment and Unemployment Statistics, Bureau of Labor Statistics.

[FR Doc. 96–5549 Filed 3–7–96; 8:45 am]

BILLING CODE 4510–24–M

Federal Register

Friday
March 8, 1996

Part VI

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910

Grain Handling Facilities; Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H–117–B]

Grain Handling Facilities

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule; technical amendment.

SUMMARY: OSHA is amending its grain handling standard to clarify requirements intended to provide protection for employees who enter flat storage structures. This technical amendment assures that protection against engulfment, mechanical, and other hazards is provided without regard to the point at which the employee enters the storage structure. It also adds a definition of ''flat storage structure'' to clarify OSHA's original intent as to the scope of the entry provisions of the standard.

DATES: This final rule will become effective April 8, 1996.

ADDRESSES: In compliance with 28 U.S.C. 2112(a), for receipt of petitions for review of the standard, the Agency designates the Associate Solicitor for Occupational Safety and Health, Office of the Solicitor, U.S. Department of Labor, Room S–4004, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Anne C. Cyr, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue NW., Washington, DC 20210. Telephone (202)–219–8148. For electronic copies of documents, contact the Labor News Bulletin Board ((202)–219–4784), or OSHA's WebPage on the Internet at http://www.osha.gov/ . For news releases, fact sheets, and other short documents, contact OSHA FAX at (900)–555–3400 at $1.50 per minute.

SUPPLEMENTARY INFORMATION: On October 19, 1995 (60 FR 54047), OSHA published a proposed technical amendment to its standard for grain handling facilities. This proposed amendment was designed to clarify the Agency's original intention with regard to protecting employees who enter grain storage structures from engulfment and other hazards within those structures. In particular, the proposal focused on entries into ''flat storage'' structures. The proposed amendment added a definition of ''flat storage facility'' and set forth requirements to be followed to protect an employee who enters such a facility.

The proposal provided for a 30-day comment period, extending through November 20, 1995. Sixteen written comments were submitted by interested parties, and no hearing requests were received by OSHA. The Agency has reviewed all materials in the docket in developing this final rule.

The preamble to the proposed amendment discussed at length the hazards being addressed by, and the rationale for, the proposal. The comments generally supported the need to provide protection for employees exposed to engulfment, mechanical, and other hazards in grain storage structures, as expressed in the preamble. Most of the comments also supported the need to clarify the existing rule with regard to its coverage of entries into flat storage structures. Commenters taking issue with specific aspects of the proposal focused primarily on five areas: (1) the proposed definition of ''flat storage facility''; (2) the proposed requirement to deenergize equipment located within the storage structure; (3) the proposed lifeline requirements for employees exposed to engulfment hazards; (4) the proposed coverage of entries into areas of flat storage structures that do not pose engulfment or other hazards; and (5) the technical feasibility and economic impact of the proposal. The following discussion addresses these and other issues.

''Flat storage facility.'' The proposed rule attempted to define ''flat storage facility'' in a way that would describe what is unique about this type of grain storage and what differentiates it from other structures such as bins and silos. By contrast, the existing rule considered only the height-to-width ratio of a structure when determining whether to classify it as flat storage. The proposed definition read as follows: '' 'Flat storage facility' means a building or structure that is used to store grain and that has large doorways at ground level through which motorized vehicles are driven in order to move grain.'' In discussing the proposed definition, OSHA emphasized that the factors determining whether the flat storage provisions of the rule should apply to a structure are the nature of the structure and the kinds of hazards potentially encountered by the entering employee, and not just the mathematical relationship of the structure's dimensions.

The commenters strongly supported OSHA's decision to define the term ''flat storage facility'' in the final rule. However, the comments also suggested a variety of changes in the proposed definition. For example, the National Grain and Feed Association (NGFA) and the Grain Elevator and Processing Society (GEAPS) [Exs. 4–2, 4–12] contended that the proposed definition was not flexible enough to encompass many of the configurations that are considered by the industry to be ''flat storage.'' They were particularly concerned that OSHA's classification of flat storage structures as ''warehouse-type storage structures'' would not encompass many types of structures used for flat storage. In addition, commenters [Ex. 4–2, 4–9] noted that the use of the term ''flat storage *facility*'' could be misinterpreted to apply to an entire plant rather than to the storage space, and they recommended that the defined term be revised to ''flat storage.''

The National Oilseed Processors Association (NOPA) [Ex. 4–10] noted that some grain-moving machines, such as power scoops, are not ''motorized vehicles'' that are ''driven'' through the ground level doors, and that the definition of flat storage structure needs to be revised to recognize the use of this equipment.

OSHA has determined that several of the changes recommended by commenters will make the definition clearer and more precise, and has incorporated these changes into the final rule. First, the term ''flat storage facility'' is being changed to ''flat storage *structure*,'' to emphasize that the flat storage exception applies to the storage structure and not to the entire facility. Second, the definition notes that flat storage structures must have an unrestricted ground level opening for entry, and not just ''large doorways,'' and that the structure must be of a type that will not empty completely by gravity. The latter element clearly distinguishes flat storage from silos, bins, and tanks, which do rely on gravity for emptying. Finally, the definition recognizes that grain is often reclaimed through the ground level openings using means other than motorized vehicles. ''Unrestricted'' in the context of ground level entry means that employees can enter by stepping, walking, or driving through these openings. This clarification was suggested by NGFA [Ex. 4–12].

As discussed below, entries into flat storage structures will be covered by paragraph (h) only if there are no toxicity, flammability, oxygen-deficiency, or other atmospheric hazards in those structures. In addition, the final rule makes clear that paragraph (h) will only cover entries that are made through unrestricted ground level openings. Entries made at or above the level of the grain and above ground

level will be covered by the general provisions for entry into grain storage structures found in paragraph (g).

Entry into grain storage structures (paragraph (g)). Paragraph (g) of the grain handling standard covers entries into grain storage structures. OSHA proposed to add a new paragraph (h) to the rule to cover entries into flat storage facilities which contained no atmospheric hazards, and to except such entries from the general provisions of paragraph (g). This approach received widespread support among the commenters, who agreed with OSHA's intention to clarify the exception and limit its scope.

OSHA is promulgating the exception to paragraph (g) as proposed, with one significant addition. The proposed exception did not explicitly indicate that it would apply only to flat storage entries made at ground level. This was OSHA's original intent: the proposed definition of flat storage facility clearly stated that large, ground level doorways were an essential element of such a facility. Several commenters [Exs. 4–2, 4–9, 4–12, 4–13, 4–14] recommended that the exception be clarified to specify that it applies only to entries made through unrestricted ground level openings. OSHA agrees that this is a necessary precondition for an entry to be covered by paragraph (h) and to be excepted from coverage by paragraph (g), and has amended the exception accordingly. It is clear that an unrestricted ground level opening can protect an entrant under paragraph (h) only if the entry is made through that opening.

Deenergization of equipment (paragraphs (g)(1)(ii) and (h)(2)). Proposed paragraphs (g)(1)(ii) and (h)(2) would have required deenergization of energized equipment in a grain storage facility if it ''could'' present a danger to employees. There was widespread agreement in the record as to the need to deenergize equipment which endangers employees. However, the use of the phrase ''which could endanger'' was strongly opposed by most commenters, who felt that it would require deenergization in situations where other protective measures, such as machine guarding, would be effective in protecting employees. [cf. Exs. 4–2, 4–5, 4–10, 4–13, 4–15]. It was noted that this was particularly likely to occur in large flat storage structures, where motorized vehicles and other mobile equipment that are moving grain within the structure are not endangering employees. OSHA agrees that adding the word ''could'' is not necessary to provide the desired degree of protection, and has not included it in the final rule.

A new paragraph (g)(1)(iv) is being added to prohibit explicitly the practice of ''walking down grain.'' This and other similar practices require an employee to walk on the surface of the stored grain to get the grain to flow out of the structure. ''Walking down grain'' is an extremely dangerous practice because the employee is on the surface of the grain with the specific intention of making the grain flow away from him or her. This exposes the employee to an ever-increasing risk of engulfment as the surface layer of grain is eroded from underneath. It was this practice that led to the death of a 19-year-old employee in a corn storage structure on October 22, 1993. (This incident is discussed in detail in the preamble to the proposal, 60 FR at 54058, column 1.)

NGFA [Ex. 4–2] stated: '' 'Walking down grain' or similar practices where employees walk on grain to get grain to flow out of a grain storage structure or where employees are on moving grain (and thus exposed to an engulfment or a mechanical hazard) are not permitted.'' OSHA agrees with this comment, and is incorporating it into the text of new paragraph (g)(1)(iv). (As discussed below, language prohibiting ''walking down grain'' and related practices is also being added to the flat storage structure provisions, as new paragraph (h)(2)(ii).)

In paragraph (g)(2), OSHA proposed to require that whenever an employee enters a grain storage structure from a level at or above the level of the stored grain, or whenever an employee walks or stands on or in stored grain which could cause engulfment, the employer must equip the employee with a body harness with lifeline or a boatswain's chair. The lifeline, in turn, would have to be capable of preventing the employee from sinking further than waist-deep in the grain. This proposed provision (together with a similar provision in proposed paragraph (h)(1)), received considerable attention from the public during the comment period.

The public comments strongly favored a requirement to provide protection to employees exposed to engulfment hazards. However, several commenters [cf. Ex. 4–2, 4–10, 4–13] raised specific concerns about the proposed provision, including the following: (1) In some situations, lifelines could actually expose the employee to a greater hazard, and lifelines should not therefore be required in those situations; (2) lifelines are not necessary if the engulfment hazard either does not exist or can be controlled; (3) entry onto surfaces which are relatively free of grain, such as floors, platforms or catwalks, can be performed safely without lifelines; (4) the configuration of many flat storage structures does not allow tying off and rigging of lifelines to assure that the employee does not sink more than waist-deep in grain; (5) the proposed lifeline provisions were more extensive than those in the original standard, and their cost impact and feasibility had not been fully evaluated by OSHA.

The issues relating to lifelines or boatswain's chairs need to be addressed separately for bins, silos and tanks (paragraph (g)(2)) on the one hand, and for flat storage structures (paragraph (h)) on the other. In the context of bins, silos, and tanks, the requirement to provide a harness/lifeline or boatswain's chair for entry is not new to this proposal. Indeed, paragraph (g)(2) of OSHA's current standard reads as follows:

> When entering bins, silos, or tanks from the top, employees shall wear a body harness with lifeline, or use a boatswain's chair that meets the requirements of subpart D of this part.

It must be emphasized that this general entry requirement encompasses entry hazards that go well beyond those of engulfment in grain. In other words, employers whose employees enter bins, silos, or tanks from above the grain must consider many factors, such as whether there is an asphyxiation hazard, or whether there are hazardous atmospheric contaminants in the structure. In such cases, whether the entering employee is lowered directly onto stored grain is only one element to consider in providing protection for that employee. Further, in issuing the proposal, OSHA clearly indicated that the rulemaking was limited to the changes being proposed, which specifically address engulfment hazards and flat storage structures. Thus this technical amendment will not affect the extent to which harnesses and lifelines or boatswain's chairs are already required by the standard.

The only substantive changes proposed to paragraph (g)(2) were as follows: first, instead of referring to entry ''from the top,'' the proposal clarified that the provision refers to entry ''from a level at or above the level of the stored grain;'' second, the proposal made clear that the lifeline or boatswain's chair requirement was to apply ''whenever an employee walks or stands on or in stored grain of a depth which poses an engulfment hazard;'' and third, the proposal added the requirement that the lifeline must prevent the employee from sinking further than waist-deep in the grain.

Several comments contended that there were feasibility problems with the proposed requirement that lifelines must prevent the employee from sinking more than waist-deep in the grain. For example, NGFA [Ex. 4–2] stated:

> To comply with the requirement that the lifeline and harness prevent the employee from sinking no more than waist deep in grain, most grain storage structures and flat storage will need significant alterations, including new equipment and designs, not envisioned in the original RIA. For example, compliance with the proposed standard could require the installation of a winch system, costing between $3,000 to $4,000, in each grain storage structure, where the line can remain approximately vertical. Additionally, an engineering study would be needed to determine what alterations are required to enable the winch system to comply with the proposed standard and provide sufficient structural support for a winch system . . . To our knowledge, no viable system currently exists on the market today that would achieve the requirements in the proposed standard for flat storage and, frankly, we do not believe such a system could be installed at a reasonable cost. Lastly, the RIA did not address the impact of proposed paragraphs (g)(2) and (h)(1) to require lifelines and harnesses, regardless of risk.

With regard to employees who enter grain storage structures other than flat storage, and who are on, in, or under accumulations of grain which could engulf them, it is clear to OSHA that these employees need to be protected from engulfment. Paragraph (g)(2) of the final standard, like the proposal, provides for this protection through the use of a lifeline that will prevent the employee from sinking further than waist-deep in the grain. However, the final rule also recognizes that there are some situations in which this sort of restraint system may either be infeasible or create a greater hazard. For example, if a bin has many obstructions above the level of the grain, it may not be possible for the employer to rig a lifeline properly without having it become caught on the obstructions. Therefore, paragraph (g)(2) of the final rule also provides an exception for the employer who can demonstrate infeasibility or greater hazard, by allowing that employer to employ an alternative means of protection that will prevent the employee from being engulfed in the grain. This could be done by clearing a space on the floor of the tank where an employee could stand and work without being exposed to either an engulfment hazard or a mechanical hazard. OSHA emphasizes that, even in situations where the employer can show that lifelines meeting the standard are not feasible or will create a greater hazard, the employer continues to have the responsibility to protect the employee from engulfment.

As was noted in the NGFA [Ex. 4–2] and American Feed Industry Association [Ex. 4–9] comments, an employee who enters a grain storage structure under paragraph (g) may not be exposed continuously to engulfment hazards. For example, when the employee is on a flat floor of a structure, sweeping or otherwise manually moving residual grain towards an auger, there is no accumulation of grain beneath the employee that could cause engulfment. Under these circumstances, it is permissible for the employee to remove the lifeline during this operation. In situations where the employer can demonstrate that there is no exposure to engulfment, the standard does not require the use of a lifeline for protection against that hazard. OSHA is adding a note to paragraph (g)(2) to clarify the standard in that regard.

The proposed requirement for lifelines also caused concern in the context of proposed paragraph (h)(2), which addresses entries into flat storage structures. As discussed above, some commenters contended that, because of the size and configuration of flat storage structures, lifelines which would meet the requirements of the proposal (i.e., prevent the employee from sinking deeper than waist-deep into the grain) would pose feasibility problems. In addition, several commenters noted that an employee entering a flat storage structure at ground level is exposed to engulfment hazards only if there is operational drawoff equipment beneath the grain which could cause the grain beneath the employee to flow. However, in these cases, an alternative to lifelines is available: if the stored grain is blocked and will not flow, the employer can simply lock out the equipment in order to prevent engulfment from occurring.

Several commenters suggested areas and types of work in flat storage structures that did not present the hazards addressed by proposed paragraph (h). They contended that lifelines were not needed in these situations. For example, Layne and Myers Grain Co. [Ex. 4–3] noted: ''Grain may be piled against the bin wall 15 feet deep or more and a worker may never walk on anything more than two inches of grain while sweeping.'' NGFA [Ex. 4–2], Grain and Feed Association of Illinois [Ex. 4–15], and The Andersons [Ex. 4–13] agreed that the following three circumstances did not present engulfment hazards:

1. When the employee is on a flat floor area, such that the employee is not exposed to flowing grain hazards, or when the employee is operating mechanical equipment in a safe location;

2. When the employee is inside mobile equipment being used to reclaim grain; and

3. When the employee is on a catwalk or platform above the grain surface.

NGFA [Ex. 4–2] added a fourth situation:

> When entering on top of sound grain surfaces for inventory purposes or to apply fumigants [(]using appropriate respiratory protection), or to determine grain conditions or quality provided all reclaim systems are properly locked out, preventing the grain from being subject to movement.

AFIA [Ex. 4–9] suggested that when an employee has shoveled and cleared a place on the concrete floor of a flat storage structure, there is no longer a danger of the employee being drawn into the equipment or engulfed by grain. ''When the employee is able to clear an area and stand on the floor adjacent to the equipment opening, or must operate power shovels, bin sweeps or front-end loaders, a danger of being drawn into operating equipment may not exist.''

OSHA agrees that when the employee is not exposed to the hazards being addressed by this standard, the lifeline and deenergization requirements of this standard should not apply. To the extent that the above situations do not present engulfment, mechanical, or other hazards addressed by the standard, the standard does not require the employer to provide protection against those hazards. However, OSHA chooses not to provide a blanket exclusion from coverage for any specific work operation. Because of the wide range of work operations, conditions, and locations within a grain storage structure, OSHA believes it is more appropriate to address the presence of hazards, rather than to focus on specific jobs or activities. The Agency anticipates that where operations such as those noted in the comments do not expose employees to hazards, the employer will be able to demonstrate that those hazards are not present.

OSHA agrees with NGFA and others that many entries into flat storage structures do not present engulfment or mechanical hazards. The technical amendment does not require lifelines for ground level flat storage entries if employees are not exposed to these hazards. Similarly, where an employee in a flat storage structure is standing or walking on the grain under circumstances which cannot cause engulfment, the standard does not require the employee to wear a lifeline. A note is being added to paragraph (h) to clarify that where the employer can

demonstrate that the employee is standing on a surface which does not present an engulfment hazard, the standard does not require a lifeline or other protection against such hazard.

The employer can establish that no engulfment hazard exists for a wide variety of entry conditions. For example, an employee who is standing on the floor of the structure, or on a platform or catwalk, will not be exposed to engulfment if that employee is sufficiently far away from areas where grain is being drawn from storage. In brief, if the employer can demonstrate that the employee in the flat storage structure is not exposed to grain which is subject to flow, avalanching, collapsing, or sliding, and that the employee is also not exposed to hazards from equipment used to draw off or reclaim grain, the standard does not require a lifeline, nor does it require the equipment to be deenergized.

OSHA acknowledges that, in some cases, it may not be technically feasible to provide lifelines for employees who enter flat storage structures. The Agency also agrees with commenters that even where feasible, lifelines may not be necessary to protect entrants from engulfment hazards. Where engulfment hazards relate to the practice of ''walking down grain'' to make it flow more readily to the drawoff equipment, the standard is explicit: it prohibits that practice. However, in other circumstances where employees are on the grain in flat storage structures, OSHA has determined that paragraph (h)(2) of the final standard should be more flexible than the corresponding paragraph of the proposal. This is because entries at ground level of flat storage structures do not present the same potential for engulfment hazards as do entries made from at or above the level of the grain. As noted by several commenters, many activities inside flat storage structures do not expose employees to engulfment. Clearly, if an employee is not walking on the grain at all, but is walking on a floor, catwalk or platform, that employee is not exposed to engulfment. Similarly, if the grain cannot flow, avalanche, collapse or slide, and all reclaim and other equipment which could disturb the grain is properly locked out, an employee standing on the grain is unlikely to be exposed to an engulfment hazard. For these reasons, the final standard does not require the general use of lifelines for ground level entries. Instead, the standard requires only that the employer provide protection against engulfment hazards where such hazards exist, without specifying a particular method of providing this protection.

OSHA believes that for ground level entries into flat storage structures, the most serious engulfment hazards are addressed by two other provisions of the final rule: the prohibition on ''walking down grain'' and the requirement to deactivate equipment, including grain transport machinery, which could endanger employees.

As discussed earlier, OSHA has determined that ''walking the grain'' and similar practices used to move grain to the drawoff point are inherently unsafe, regardless of the size, configuration, or type of grain storage structure. Accordingly, new paragraph (h)(2)(ii) is being added to prohibit these practices in flat storage structures, just as new paragraph (g)(2)(iv) is being added to prohibit them for other types of grain storage structures.

Training. OSHA did not propose any changes in the training requirements of the grain handling standard. Paragraph (e) of § 1910.272 requires employers to provide training in both general safety precautions and specific procedures applicable to the employee's work. Training in bin entry procedures is specifically required under paragraph (e)(2).

Two commenters suggested that additional training be spelled out in the standard. NGFA [Ex. 4–2] recommended that employees who enter grain storage structures and flat storage structures be trained to recognize and avoid potential engulfment or equipment hazards. This recommendation was supported by The Andersons [Ex. 4–13].

The training provisions of paragraph (e) of the grain handling standard currently require employees to be trained in the specific procedures and safety practices applicable to their job tasks. In addition, paragraph (e)(2) specifically addresses the hazards of bin entry. These provisions already require training in the hazards being addressed in this notice. However, OSHA agrees that, in light of the attention being given to these hazards of entry into grain storage structures, it is appropriate to reemphasize that the standard requires the employer to train employees in ways of protecting themselves against these entry hazards. The Agency is, therefore, adding a note to the training provisions to provide additional emphasis in this area.

Other Issues

Paragraph (h) provides separate coverage for entries into flat storage structures only if there are no atmospheric hazards. AFIA [Ex. 4–9] recommended that the scope of paragraph (h) be revised to apply to flat storage facilities ''in which there is no reason to believe that atmospheric hazards exist, such as toxicity, flammability, or oxygen-deficiency.'' The intent of this suggested change was to enable the employer to determine the absence of atmospheric hazards in flat storage structures based on knowledge and experience, without the need to perform monitoring in all cases. OSHA recognizes that monitoring may not be necessary to determine that atmospheric hazards are not present in flat storage structures. However, the Agency believes that the provision as proposed provides employers with the flexibility needed. Unlike the requirements of paragraph (g), which address atmospheric monitoring directly, the criteria for coverage under paragraph (h) are silent on the subject of atmospheric monitoring. The employer may use knowledge and experience to make a determination that no atmospheric hazards are present if reaching such a conclusion is reasonable under the circumstances.

Some comments contended that OSHA's use of the word ''grain'' throughout the proposed technical amendment was too narrow, because the standard covers a wide range of grain and grain products. NOPA [Ex. 4–10] noted that flat storage structures can contain soybean meal and hulls, for example, in addition to grain. Ensign Safety and Health Advisory [Ex. 4–11] requested that the scope of the standard be clarified as to its coverage of raw and processed agricultural products.

In response, OSHA notes that § 1910.272 covers a wide range of grain handling and processing facilities, as noted in paragraph (b) of the standard. These facilities include those that handle and store both raw and processed grain and grain products, such as feed, flour, and soycake. The addition of paragraph (h) to cover flat storage structures is intended to cover the same range of products as are already covered by paragraph (b) of the existing rule. OSHA is clarifying this coverage, in paragraphs (g) and (h) to indicate that the word ''grain'' in these paragraphs refers to both raw and processed grain and grain products that fall within the scope of paragraph (b).

In proposing to add a new paragraph (h) to § 1910.272, OSHA also proposed to redesignate paragraphs (h) through (p) as paragraphs (i) through (q), respectively. In doing so, however, OSHA did not make a corresponding change in paragraph (b), which indicates which paragraphs of § 1910.272 cover what types of grain handling facilities. The final rule makes the necessary change, indicating that paragraphs (a) through (n) (formerly (a)

through (m)) cover all grain facilities, while paragraphs (o) through (q) (formerly paragraphs (n) through (p)) apply only to grain elevators. In addition, conforming changes are being made throughout § 1910.272 to assure that internal references within the standard are consistent with the new paragraph letters.

The American Society of Safety Engineers (ASSE) [Ex. 4–8] suggested that OSHA use the ANSI national consensus standard for confined spaces, ANSI Z–117.1–1995, as a resource in completing the grain handling standard. OSHA agrees with ASSE that the ANSI Z-117.1 standard is a valuable source document which is appropriate for the Agency to consider in developing confined space standards. In the context of this limited rulemaking, OSHA has reviewed the ANSI standard and has determined that the Agency's technical amendment is consistent with the consensus standard's requirements. Whereas the ANSI standard is directed at confined spaces in general, this notice is not directed primarily at confined space entries. Rather, the new requirements in paragraph (h) apply only to ground-level entries into flat storage structures that present no atmospheric hazards. OSHA believes that the final rule provides appropriate protection for these entries.

Summary of Economic Analysis and Regulatory Flexibility Analysis

The Economic Analysis OSHA has prepared to accompany the final technical amendment being issued today to the Agency's Grain Handling standard (29 CFR 1910.272) presents revised cost estimates for the regulatory provisions addressed in the amendment. Only the costs associated specifically with the provisions being clarified by the amendment are described here; all other costs and analytical results projected by the Regulatory Impact Analysis (RIA) [Ex. 223] originally prepared in 1987 to support the final Grain Handling standard remain unchanged. OSHA has determined that the regulatory actions being taken in this amendment do not constitute a ''significant regulatory action'' for the purposes of Executive Order (EO) 12866. That is, this technical amendment does not impose costs on the regulated community that approach the $100 million threshold specified by the EO, because the changes made in this amendment merely clarify the Agency's original intent when issuing the final rule in 1987. At that time, OSHA assumed that the flat storage exception contained in the final rule was clear and would not expose employees working in such structures to engulfment hazards. However, several tragedies involving employees working in these grain handling structures have shown that the flat storage exception in the 1987 rule was in need of clarification. The amendment being published today makes these needed changes.

As described elsewhere, these clarifications include: (1) clarifying in paragraphs (g) and (h) the employer's obligation to protect employees against grain engulfment hazards regardless of the dimensions of the structure or point of entry; (2) stating that means of protection must prevent the employee from sinking further than waist deep in grain, as explained in paragraphs (g)(2) and (h)(1); (3) in paragraph (g)(1)(iv), prohibiting ''walking the grain'' for the purpose of breaking up bridging conditions; and (4) in paragraph (e)(3), requiring that training must include a section dealing with engulfment and mechanical hazards.

These clarifications are expected to have substantial benefits for employers and employees. For example, the Agency estimated in the 1987 RIA [Ex. 223] that the final standard would prevent 80% of all grain handling engulfments. Based on more recent Agency data from its Integrated Management Information System (IMIS) database, however, OSHA now believes that as many as 2 to 4 engulfment fatalities annually will be prevented by the clarifications contained in this technical amendment. Based on the same data, the Agency believes that a similar number of equipment-related accidents (e.g., traumatic injuries caused by mechanical devices, such as augers) will also be prevented by the changes being made today.

In the 1987 RIA, the Agency estimated that there were 14,000 grain elevators with 118,011 full-time and seasonal employees, and 9,922 grain mills with 129,068 full-time and part-time employees [Ex. 223, Tables II–1, II–3]. OSHA believes that these numbers continue to represent the industry today. As noted in the 1987 RIA, although all grain facilities have upright structures, only a portion have flat storage structures [Exs. 10, 193]. Flat storage structures are typically add-ons, constructed quickly to handle excess grain.

This final technical amendment incorporates language into paragraph (g)(2) of the standard that requires employers to ensure that employees do not sink further than waist deep when walking or standing on or in grain; employees are required to use a lifeline to provide this protection when exposed to a grain engulfment hazard. This language, which has been taken from the Agency's current Grain Handling Facilities compliance directive, is intended to ensure that employers have a clear understanding of their obligations to protect employees from engulfment. The importance of this provision is underscored by OSHA's review of the Agency's Integrated Management Information System (IMIS) abstracts on fatal workplace injuries, which identified at least one fatality that occurred because the employee, although secured by a lifeline, was engulfed by the grain because the line had too much slack in it. In this amendment, the Agency is clarifying that merely requiring an employee to wear a lifeline is not sufficient; in order to meet the intent of the standard, the lifeline must be used in a way that prevents the hazard in question.

In comments on the proposed technical amendment, the NFGA [Ex. 4–2] stated that new paragraph (g)(2) would impose additional costs on the regulated community. In the view of NGFA, paragraph (g)(2) would require employers to install a winch system in all grain handling structures. OSHA believes, however, that many grain handling structures already have such systems, because winches and lifelines are commonly used safety devices that have been required by paragraph (g)(4) of the existing rule since 1988, the year that the Grain Handling Facilities standard became effective. Paragraph (g)(4) requires that employers provide rescue equipment that is specifically suited for the structure being entered. Mechanical assistance, such as that provided by a winch-and-lifeline system, appears to be the simplest and most common means of facilitating rescue and maintaining safe entry.

In the earlier rulemaking, industry representatives clearly recognized that paragraph (g)(4) would require employers to provide mechanical means to achieve compliance. For example, the American Feed Manufacturers Association reported at that time that many facilities already had such systems in place [Ex. 193]. OSHA recognizes that some grain handling facilities did not have such systems in 1987. However, OSHA believes that many of these facilities will have installed such systems in the interval since publication of the standard, although the Agency does not have a precise count of the number of systems in place today. Nevertheless, to be conservative, OSHA has evaluated the costs that some employers might incur to come into compliance with this technical amendment.

First, if an establishment believes that the purchase of a winch-and-lifeline system poses too great an economic burden, the final technical amendment allows employers to prohibit those work practices that would allow an employee to sink more than waist deep in grain. Such prohibitions are common in the industry. For example, the NFGA [Ex. 4–2] states that its work practice recommendations for this industry would accomplish this safety goal. For this reason, the Agency specifically is incorporating NFGA's suggestion [Ex. 4–2, p. 3] to ban the practice of ''walking the grain'' (i.e., attempting to stamp down a bridging condition) in the standard (paragraph (g)(1)(iv)). Because this and other practices prevent engulfment, they accomplish the same protective purpose as a winch-and-lifeline system (i.e., they keep an employee's lungs from being compressed by the weight of the grain). Thus, the provisions of this technical amendment can be complied with merely by the adoption of work practices that prohibit employees from walking on grain in situations of potential engulfment.

Alternatively, employers can choose to use a winch-and-lifeline system to protect their employees from engulfment and mechanical hazards. To assess the extent of the costs that such systems might impose on employers in this industry, OSHA turned to an industry study that was conducted in connection with the 1987 rulemaking. This study, known as the Stivers study [Ex. 193], assumed that one winch system per establishment would suffice in most structures, and that this single system could be moved from bin to bin as needed. In some cases, the Stivers report assumed that two systems would be required at a given mill. At the time, the cost of such a system was assumed to be $1400 [Ex. 193, pp. 3–16–17, 6–4]. To evaluate the costs employers might incur in the worst case as a result of the technical amendment being published today, OSHA obtained up-to-date cost estimates of approximately $3000 for these systems [*Lab Safety Supply*, 1996, pp. 234–236].

Although OSHA does not believe that many employers will in fact be required by this technical amendment to purchase winch-and-lifeline systems, the Agency nevertheless performed an economic analysis of potential worst-case impacts, i.e., analyzed the impacts that would occur if each facility in this industry was required by the amendment to purchase such a system. Capital costs, such as those incurred to purchase a rescue system of this type, are typically annualized over the life of the equipment. If OSHA conservatively assumes that the life of such equipment is 10 years,[1] every affected employer would be expected to incur an annualized cost of $427 per facility. According to the economic data reported in the original Regulatory Impact Analysis [Ex. 223], the annual profits for grain cooperatives in the early 1980s averaged $223,608 each, on average sales of $12.6 million per cooperative [Ex. 223, p. VII–5]. Annual costs of $427 amount to less than 1/100th of a percent of annual per-facility sales, and therefore would have only a negligible impact on prices. Even if employers were not able to pass any part of these costs through to their customers, a highly unlikely scenario, these costs would amount to approximately 2/10th of one percent of the total profits of a given facility. Grain mills reported average shipments of more than $36 million per establishment [Ex. 223, pp. II–4, VII–23], so impacts for these facilities would be even smaller.

Finally, a recent study that reviewed the methodology and findings of the original grain handling standard's economic analysis reported that all of the costs imposed by the standard, taken in their entirety, had in fact had no discernible economic impact on the grain handling industry [OTA 1995, p. 60]. For these reasons, the Agency finds that this amendment does not pose issues of economic feasibility for employers in the affected industry, and further has determined that this action will not have a significant impact even on the smallest grain handling facilities.

At the NFGA's suggestion [Ex. 4–2], the Agency is incorporating language in the training section of the amendment to ensure that employers dedicate some of their training to the prevention of engulfment situations. The Agency does not believe that the addition of this topic to the training curriculum will require additional training time or impose additional costs because OSHA believes that the final standard published in 1987 already requires such training. In this case, particularly after its review of IMIS fatality abstracts discussed above, OSHA agrees with the NFGA [Ex. 4–2] that emphasizing the importance of such training will help to avoid engulfment accidents in grain handling facilities in the future.

This final rule involves no recordkeeping or reporting requirements under the Paperwork Reduction Act of 1995. It has no impacts on Federalism beyond those evaluated at the time of the final rule in 1987.

Lists of Subject in 29 CFR Part 1910

Grain handling, Grain elevators, Occupational safety and health, Protective equipment, Safety.

State Plan States

The 25 States and Territories with their own OSHA-approved occupational safety and health plans must revise their existing standard within six months of the publication date of the final standard or show OSHA why there is no need for action, e.g. because an existing State standard covering this area is already ''at least as effective'' as the revised Federal standard. These States are: Alaska, Arizona, California, Connecticut (State and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York (State and local government employees only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming.

Authority

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210.

Accordingly, pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 1–90 (55 FR 9033), and 29 CFR Part 1911, 29 CFR part 1910 is hereby amended as set forth below.

Signed at Washington, D.C., this 1st day of March, 1996.

Joseph A. Dear,

Assistant Secretary of Labor.

29 CFR part 1910 is amended as follows:

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

1. The Authority Citation for subpart R of 29 CFR part 1910 continues to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable.

Sections 1910.261, 1910.262, 1910.265, 1910.266, 1910.267, 1910.268, 1910.269, 1910.272, 1910.274, and

[1] At a 7 percent discount rate, as indicated in the Office of Management and Budget's *Economic Analysis of Federal Regulations Under Executive Order 12866.*

1910.275 also issued under 29 CFR part 1911.

2. In paragraph (b)(1) of § 1910.272, ''(m)'' is revised to read ''(n).''

3. In paragraph (b)(2) of § 1910.272, ''(n), (o), and (p)'' is revised to read ''(o), (p), and (q).''

4. The paragraph numbers of the *Definitions* in paragraph (c) of § 1910.272 are removed.

5. A new definition of ''Flat storage structure'' is inserted in paragraph (c) of § 1910.272, between the definitions of ''Choked leg'' and ''Fugitive grain dust,'' to read as follows:

§ 1910.272 Grain handling facilities.

* * * * *

(c) *Definitions.*

* * * * *

Flat storage structure means a grain storage building or structure that will not empty completely by gravity, has an unrestricted ground level opening for entry, and must be entered to reclaim the residual grain using powered equipment or manual means.

* * * * *

6. A note is added to paragraph (e)(2) of § 1910.272, to read as follows:

§ 1910.272 Grain handling facilities.

* * * * *

(e) *Training.*

* * * * *

(2) * * *

Note to paragraph (e)(2): Training for an employee who enters grain storage structures includes training about engulfment and mechanical hazards and how to avoid them.

7. Paragraphs (h) through (p) of § 1910.272 are redesignated as new paragraphs (i) through (q), respectively.

8. In new paragraph (m)(3) of § 1910.272, the phrase ''this paragraph (l)'' is revised to read ''this paragraph (m),'' and the phrase ''specified in paragraph (l)(1)(i)'' is revised to read ''specified in paragraph (m)(1)(i).''

9. In new paragraph (q)(7) of § 1910.272, the phrase ''Paragraphs (p)(5) and (p)(6) of this section'' is revised to read ''Paragraphs (q)(5) and (q)(6) of this section.''

10. In new paragraph (q)(8) introductory text of § 1910.272, the phrase ''Paragraphs (p)(4), (p)(5), and (p)(6) of this section'' is revised to read ''Paragraphs (q)(4), (q)(5), and (q)(6) of this section.''

11. In the Information collection requirements parenthetical at the end of new paragraph (q) of § 1910.272, the phrase ''in paragraphs (d) and (i)'' is revised to read ''in paragraphs (d) and (j).''

12. In Appendix A to § 1910.272:

a. In the second paragraph of the section entitled ''8. Filter Collectors,'' the phrase ''paragraph (k)(1) of the standard'' is revised to read ''paragraph (l)(1) of the standard.''

b. In the last paragraph of the section entitled ''8. Filter Collectors,'' the phrase ''paragraph (k) of the standard'' is revised to read ''paragraph (l) of the standard.''

13. The introductory language in paragraph (g), and the text of paragraphs (g)(1)(ii) and (g)(2) of § 1910.272, are revised, and new paragraphs (g)(1)(iv) and (h) are added, to read as follows:

§ 1910.272 Grain handling facilities.

* * * * *

(g) *Entry into grain storage structures.* This paragraph applies to employee entry into bins, silos , tanks, and other grain storage structures. *Exception:* Entry through unrestricted ground level openings into flat storage structures in which there are no toxicity, flammability, oxygen-deficiency, or other atmospheric hazards is covered by paragraph (h) of this section. For the purposes of this paragraph (g), the term ''grain'' includes raw and processed grain and grain products in facilities within the scope of paragraph (b)(1) of this section.

(1) * * *

(ii) All mechanical, electrical, hydraulic, and pneumatic equipment which presents a danger to employees inside grain storage structures shall be deenergized and shall be disconnected, locked-out and tagged, blocked-off, or otherwise prevented from operating by other equally effective means or methods.

(iv) ''Walking down grain'' and similar practices where an employee walks on grain to make it flow within or out from a grain storage structure, or where an employee is on moving grain, are prohibited.

* * * * *

(2) Whenever an employee enters a grain storage structure from a level at or above the level of the stored grain or grain products, or whenever an employee walks or stands on or in stored grain of a depth which poses an engulfment hazard, the employer shall equip the employee with a body harness with lifeline, or a boatswain's chair that meets the requirements of subpart D of this part. The lifeline shall be so positioned, and of sufficient length, to prevent the employee from sinking further than waist-deep in the grain. *Exception:* Where the employer can demonstrate that the protection required by this paragraph is not feasible or creates a greater hazard, the employer shall provide an alternative means of protection which is demonstrated to prevent the employee from sinking further than waist-deep in the grain.

Note to paragraph (g)(2): When the employee is standing or walking on a surface which the employer demonstrates is free from engulfment hazards, the lifeline or alternative means may be disconnected or removed.

* * * * *

(h) *Entry into flat storage structures.* For the purposes of this paragraph (h), the term ''grain'' means raw and processed grain and grain products in facilities within the scope of paragraph (b)(1) of this section.

(1) Each employee who walks or stands on or in stored grain, where the depth of the grain poses an engulfment hazard, shall be equipped with a lifeline or alternative means which the employer demonstrates will prevent the employee from sinking further than waist-deep into the grain.

Note to paragraph (h)(1): When the employee is standing or walking on a surface which the employer demonstrates is free from engulfment hazards, the lifeline or alternative means may be disconnected or removed.

(2) (i) Whenever an employee walks or stands on or in stored grain or grain products of a depth which poses an engulfment hazard, all equipment which presents a danger to that employee (such as an auger or other grain transport equipment) shall be deenergized, and shall be disconnected, locked-out and tagged, blocked-off, or otherwise prevented from operating by other equally effective means or methods.

(ii) ''Walking down grain'' and similar practices where an employee walks on grain to make it flow within or out from a grain storage structure, or where an employee is on moving grain, are prohibited.

(3) No employee shall be permitted to be either underneath a bridging condition, or in any other location where an accumulation of grain on the sides or elsewhere could fall and engulf that employee.

[FR Doc. 96–5341 Filed 3–7–96; 8:45 am]

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Federal Register

Friday
March 8, 1996

Part VII

The President

Executive Order 12991—Adding the Small Business Administration to the President's Export Council

Federal Register
Vol. 61, No. 47
Friday, March 8, 1996

Presidential Documents

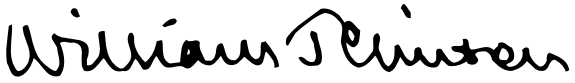
Title 3—

The President

Executive Order 12991 of March 6, 1996

Adding the Small Business Administration to the President's Export Council

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App. 2), and in order to add the Small Business Administration to the President's Export Council, it is hereby ordered that section 1–102(a) of Executive Order No. 12131, as amended, is further amended by adding a new subsection (8) to read ''(8) Small Business Administration.''



THE WHITE HOUSE,
March 6, 1996.

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FEDERAL REGISTER PAGES AND DATES, MARCH

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The rules and proposed rules in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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Textile wearing apparel and piece goods; care labeling; comments due by 3-12-96; published 12-28-95

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Food for human consumption:
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Nutrient content claims, health claims, and dietary supplements nutritional support statements; requirements; comments due by 3-13-96; published 12-28-95
Nutrient content claims; definitions, etc.; comments due by 3-13-96; published 12-28-95
GRAS or prior-sanctioned ingredients:
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Heartland Operation to Protect Environment; comments due by 3-11-96; published 1-9-96

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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

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